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PUBLIC POLICY, WOMEN, AND CONFINEMENT: A PLEA FOR REASONABLENESS

PETER M. CARLSON*

ABSTRACT

This veteran correctional administrator reviews the explosion of numbers of female offenders confined in the United States today. The article explores the myriad causes and effects of this shift in public policy and notes the negative impact of today's policy outcomes on individual offenders, correctional systems, and our society. The author argues for a modification of policy to a more rational approach to judicial sentencing.

INTRODUCTION

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INTRODUCTION

Women in prison. Serving time. Sent up the river. Banished behind bars. Locked-up. Female offenders have become a large presence in correctional institutions today, and their numbers are increasing dramatically each year.¹

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1. WILLIAM J. SABOL, HEATHER COUTURE & PAIGE M. HARRISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PUBL'N NO. 219416, PRISONERS IN 2006 BULLETIN 1 (Dec. 2007), available at <http://www.csdp.org/research/p06.pdf> ("During 2006, the prison population grew at a faster rate than in the previous 5 years."); see also PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PUBL'N NO. 215092, PRISONERS IN 2005 BULLETIN 5 (Nov. 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p05.pdf> (depicting that between 1995 and 2005, "the State female prison population increased an average of 4.5% per year; the Federal female prison population increased 5.3% per year").

The number of confined men and women continues to expand.² The latest U.S. Department of Justice data in 2006 indicated that “at yearend 2006 Federal and State correctional authorities had jurisdiction over 1,570,861 prisoners, an increase of 2.8% since yearend 2005.”³ The overall “rate of incarceration in prison at yearend 2005 was 491 sentenced inmates per 100,000 U.S. residents,⁴ up from 411 in 1995.”⁵ During 2006, 37,504 men and women entered state custody,⁶ and an additional 5428 men and women entered the Federal prison system.⁷ To place this in perspective, in 1974, only 142,000 women had ever been confined in a state or federal prison;⁸ this number jumped to more than 580,000 by 2001.⁹

While the number of females who have ever been confined is still small in comparison to male offenders,¹⁰ the number of confined women is growing at a much higher rate than that of the men.¹¹ In the last thirty years, the number of females sentenced to prison or jail for more than a year increased by 757%¹² — nearly double the 388% growth of the imprisoned male population.¹³ The exponential growth in the number of women incarcerated for more than a year presents the prison system, and the nation as a whole, with increased financial and social costs.¹⁴

I. CAUSES OF INCREASED CONFINEMENT OF WOMEN

Why are we locking up so many women? The increase in female incarceration rates can be attributed to a number of things, particularly a shift in public policy. Over the last thirty years, our national criminal justice policies have significantly shifted as American society

2. SABOL ET AL., *supra* note 1, at 1.

3. *Id.*

4. HARRISON & BECK, *supra* note 1, at 1.

5. *Id.*

6. SABOL ET AL., *supra* note 1, at 1.

7. *Id.*

8. THOMAS P. BONCZAR, BUREAU OF JUSTICE STATISTICS, U.S. DEPT OF JUSTICE, PUBL'N NO. 197976, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974-2001, at 1 (Aug. 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/piusp01.pdf>.

9. *Id.*

10. *Id.* at 5 (stating men are nearly nine times more likely than women to have been incarcerated in state or federal prisons by the end of 2001 — 5,037,000 to 581,000 respectively).

11. NATASHA A. FROST, JUDITH GREENE & KEVIN PRANIS, INSTIT. ON WOMEN & CRIM. JUST., HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN, 1977-2004, at 29 (2006), available at <http://www.wpaonline.org/institute/hardhit/HardHitReport4.pdf>.

12. *Id.* at 9.

13. *Id.*

14. *Id.* at 25-27.

has reacted to increased violent crime.¹⁵ Gang activity and illegal drug trafficking have spawned a great deal of senseless aggressive behavior.¹⁶ The public is reminded of the violence by the ever-present news media that highlights bad news every day.¹⁷

The public's weariness of violent crime has most likely pressured our elected representatives to make responsive policy changes. Politicians have responded with an intense focus on the criminal justice laws across the United States.¹⁸ The politicization of the state and federal justice systems has created a harsh transformation in sentencing laws and correctional environments.¹⁹ For example, tough sentencing laws²⁰ and new "get-tough" correctional policies²¹ have "led to an unprecedented increase in jail and prison populations."²² As a result, the United States's rate of incarceration is now far beyond that of any other developed nation.²³ These policies have negatively impacted prison populations by creating more crowded institutions with less emphasis on rehabilitation.²⁴ Specific to the subject of this article, the stricter sentencing laws have created larger populations of female offenders behind American prison fences.²⁵

Illegal drug use can be linked to criminal behavior in two ways.²⁶ First, the offender could be under the influence while committing the crime,²⁷ and second, the crime could involve illegal drug trafficking.²⁸ Both of these factors impact women.

Nearly one half of female state inmates were using illegal drugs at the time they committed their offense behavior,²⁹ and 80% of female

15. *Id.* at 23.

16. Allen L. Hixon, *Preventing Street Gang Violence*, 59 AM. FAM. PHYSICIAN 2121 (1999), available at <http://www.aafp.org/afp/990415ap/medicine.html>.

17. *See, e.g.*, FROST ET AL., *supra* note 11, at 25.

18. *Id.* at 27.

19. *Id.* at 9, 27-29.

20. *See id.* at 27.

21. *Id.* at 9, 27.

22. *Id.* at 9.

23. *Id.*

24. *Id.* at 9-10.

25. *Id.* at 9. *See infra* Figure 1.

26. CHRISTOPHER J. MUMOLA & JENNIFER C. KARBERG, BUREAU OF JUSTICE STATISTICS, U.S. DEPT' OF JUSTICE, PUBL'N NO. 213530, DRUG USE & DEPENDENCE, STATE & FEDERAL PRISONERS, 2004, at 4 (Oct. 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/dudsf04.pdf>.

27. *Id.*

28. MARC MAUER, CATHY POTLER & RICHARD WOLF, THE SENTENCING PROJECT, GENDER AND JUSTICE: WOMEN, DRUGS, & SENTENCING POLICY 2 (Nov. 1999), available at http://www.sentencingproject.org/Admin/Documents/publications/dp_genderandjustice.pdf.

29. BARBARA BLOOM, BARBARA OWEN & STEPHANIE COVINGTON, U.S. DEPT' OF JUST., GENDER-RESPONSIVE STRATEGIES: RESEARCH, PRACTICE, AND GUIDING PRINCIPLES FOR WOMEN OFFENDERS 6 (June 2003), available at <http://www.nicic.org/pubs/2003/018017.pdf> [hereinafter BLOOM ET AL., GENDER-RESPONSIVE STRATEGIES].

state offenders have a substance abuse problem.³⁰ Many of the female drug offenders become involved with illegal drugs as a result of their past and present physical and sexual abuse.³¹ “[A]buse within this segment of the population is more likely than in the general population.”³² It has been reported that as many as 80% of confined women have suffered such abuse.³³ This abuse is often suffered at the hands of a family member or intimate.³⁴ Many of the women in abusive relationships turn to illegal drugs to “escape the abuse or to self medicate.”³⁵ In general, women abuse illegal drugs to cope with anxiety and depression stemming from negative experiences.³⁶

Women also commit crimes that involve illegal drugs.³⁷ A review of imprisonment data and research suggests that women are more heavily affected by federal and state drug policies,³⁸ especially sentencing laws.³⁹ Reduced judicial discretion and mandatory sentencing sanctions on users, as well as distributors, have increased the number of confined men and women.⁴⁰ For instance, drug offenses have accounted for nearly half (49%) of the rise in the number of women incarcerated in state prisons from 1986 through 1996.⁴¹ The number of females incarcerated for a drug offense rose by a staggering 888%.⁴² Approximately one in three confined women in 2005 was a drug offender.⁴³

There are also other causes for the massive increase in incarcerated females.⁴⁴ For years, women have been somewhat protected from the harsher sanction of confinement.⁴⁵ Women received the benefit

30. *Id.*

31. LENORA LAPIDUS ET AL., CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES 9, 18 (Mar. 15, 2005), available at http://www.aclu.org/images/asset_upload_file393_23513.pdf.

32. Barbara Bloom, Barbara Owen & Stephanie Covington, *Women Offenders and the Gendered Effects of Public Policy*, 21 REV. POL'Y RES. 31, 34-35 (2004).

33. BLOOM ET AL., GENDER-RESPONSIVE STRATEGIES, *supra* note 29, at 2-3.

34. CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, U.S. DEPT OF JUSTICE, PUBL'N NO. 172879, PRIOR ABUSE REPORTED BY INMATES AND PROBATIONERS 2 (Apr. 1999), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/parip.pdf>.

35. LAPIDUS ET AL., *supra* note 31, at 9.

36. *Id.* at 8.

37. MAUER ET AL., *supra* note 28, at 2.

38. FROST ET AL., *supra* note 11, at 24.

39. *Id.*

40. *Id.* at 25.

41. MAUER ET AL., *supra* note 28, at 2.

42. *Id.*

43. FROST ET AL., *supra* note 11, at 10.

44. Darrell J. Steffensmeier, *Assessing the Impact of the Women's Movement on Sex-Based Differences in the Handling of Adult Criminal Defendants*, 26 CRIME & DELINQ. 344, 346-47 (1980).

45. *Id.*

of sympathetic judges that were deeply concerned about taking a woman from her home.⁴⁶ Women tend to be the primary care-givers in American society, and historically, this has led many judges to give women sentencing breaks and generally to use alternatives to confinement.⁴⁷ It has been argued that the women's movement has decreased this sympathy factor.⁴⁸ The push for equality for women has led some judges to reconsider sentencing breaks and alternative sentences.⁴⁹ This along with sentencing guidelines⁵⁰ and mandatory minimum sentencing statutes⁵¹ has sent substantially more women into confinement.⁵²

Women's increased incarceration rate is also due to an increase in the number of women arrested.⁵³ Between 1995 and 2004, the number of women arrested rose 13%,⁵⁴ and the number of incarcerated women jumped by 53%.⁵⁵ Over the same time period, female imprisonment rates increased by 36%,⁵⁶ compared to only a 17% increase for men.⁵⁷ Consequently, women made up 7.2% of the prison population, an increase of nearly 1%.⁵⁸

This increase of female offenders behind bars is also due, in part, to the relatively small number of women who were in jail or prison "at the beginning of the boom . . . so that increases show up as larger proportional growth against smaller base figures."⁵⁹

Yet the fact remains that there has been a massive increase in the number of women inside American prisons.⁶⁰ The national public policy to deal with crime has been, and continues to be, punishment by prison confinement.⁶¹

46. David P. Farrington & Allison M. Morris, *Sex, Sentencing and Reconviction*, 23 BRIT. J. CRIMINOLOGY 229 (1983); see also Steffensmeier, *supra* note 44, at 349-50.

47. Steffensmeier, *supra* note 44, at 350.

48. *Id.* at 355.

49. *Id.* at 354-55.

50. Myrna S. Raeder, *A Primer on Gender-Related Issues that Affect Female Offenders*, 20 CRIM. JUST. 4, 12 (2005).

51. *Id.* Following *United States v. Booker*, 543 U.S. 220, 222 (2005), the federal sentencing guidelines became advisory and no longer mandatory. Despite the ruling, many judges still adhere closely to the sentencing guidelines. Julie Kay, *Florida Sees Little Change in Sentencing Post-Booker*, DAILY BUS. REV., Apr. 4, 2006, available at <http://www.law.com/jsp/article.jsp?id=1144067965689>.

52. See FROST ET AL., *supra* note 11, at 23.

53. *Id.* at 9.

54. *Id.* at 10.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 9.

60. *Id.* at 7.

61. Raeder, *supra* note 50, at 7. But see FROST ET AL., *supra* note 11, at 27. Responding to the fiscal crises, a majority of states have rethought their correctional policies aiming

II. WHY SHOULD WE CARE?

The American public tends to believe that all lawbreakers deserve fair and equal punishment.⁶² Studies suggest that there may be higher social costs related to incarcerating women.⁶³ While prison affects the individual confined, the imprisoning of women also directly impacts their children.⁶⁴ It also affects our correctional systems, as accommodations must be made for women's unique needs.⁶⁵

A characteristic of female inmates that represents a critical difference between the male and female prison populations is that women offenders are often custodial parents prior to their confinement.⁶⁶ Research shows that nearly 70% of females in the correctional system have two minor children.⁶⁷ Two-thirds of state prisoners and one-half of federal prisoners lived with their children prior to their incarceration.⁶⁸ When a mother is sent to prison, it is her children left behind who truly lose.⁶⁹ During 1999, women in federal and state prisons and in local jails were mothers to more than 250,000 children.⁷⁰ Families pay a large price when the primary care-giver is taken from the home.⁷¹ Extended family members are expected to step in and raise these children.⁷² Some children are not fortunate enough to have a family member who can care for them. These children end up in the foster care system where it becomes the government's responsibility to provide shelter, supervision and care.⁷³ This is a financial burden on the government, but the emotional damage to a developing young child can be devastating.⁷⁴ "The most tragic aspect of incarceration of women offenders is its effect on their children. Given that a large majority of these women are mothers, it is not an exaggeration

for shorter incarcerations and more effective rehabilitation models. As a result, most of these states have seen a slower increase in their prison populations. Some states, however, have remained loyal to the "get tough course" and continue to experience rapid growth in their prison populations. *Id.*

62. See generally FROST ET AL., *supra* note 11, at 29 ("Recent national research on public preferences about crime and corrections indicates strong support — by a two to one margin — for measures that address the causes of the crime over strict sentencing.").

63. *Id.* at 26.

64. *Id.*

65. *Id.* at 28, 30.

66. Raeder, *supra* note 50, at 7.

67. *Id.*

68. *Id.*

69. See, e.g., *id.*

70. *Id.*

71. *Id.*; FROST ET AL., *supra* note 11, at 29-30.

72. Raeder, *supra* note 50, at 7.

73. See, e.g., *id.* at 8.

74. See, e.g., *id.* at 7.

to say that having a mother arrested has impacted more than five million children.”⁷⁵

The financial cost of confinement today is astounding. In fiscal year 2001, the actual annual operating expenditures for state prison systems ranged from \$21.3 million in North Dakota⁷⁶ to \$5.08 billion in California.⁷⁷ According to the Federal Bureau of Prisons, the average cost of incarceration for federal inmates in the 2006 fiscal year was \$24,440.⁷⁸ This cost must be considered conservative as the figures do not include facility construction costs or healthcare and other contracted services.⁷⁹ With these additional costs, the average annual cost of imprisonment is closer to \$40,000.⁸⁰

The need to offer realistic programs of self-improvement for females is also a significant cost.⁸¹ Women who enter the prison system are behind men on numerous fronts.⁸² Many have no skills, minimal employment histories, inadequate educations, and hosts of medical concerns.⁸³ Further, as noted earlier in this article many of these women are often involved with illegal substances.⁸⁴ A majority of female inmates have also been victims of prior violence and abuse.⁸⁵ The abuse includes domestic violence, rape, sexual assault, and child abuse.⁸⁶ A recent study found that 79% of women in federal and state prisons reported past physical abuse, and over 60% reported past sexual abuse.⁸⁷ Finally, a significant number of females entering the correctional environment have serious mental health issues.⁸⁸ Nearly 25% are diagnosed with a mental illness,⁸⁹ and 12% of all confined

75. *Id.*

76. CRIMINAL JUSTICE INSTITUTE, THE 2002 CORRECTIONS YEARBOOK: ADULT CORRECTIONS 94 (Camille Graham Camp ed., 2003).

77. *Id.*

78. Dep't of Just., Bureau of Prisons: Annual Determination of Average Cost of Incarceration, 72 Fed. Reg. 31343 (June 6, 2007).

79. *Id.*

80. Center on Juvenile and Criminal Justice, America's One-Million Nonviolent Prisoners, http://www.cjcj.org/pubs/one_million/onemillion.html (last visited Jan. 14, 2008).

81. See Drug Policy Alliance, Policy Issues Concerning Women Offenders and Their Children (2001), http://www.drugpolicy.org/library/owen_women_offenders2.cfm (last visited Jan. 14, 2008).

82. *Id.*

83. *Id.*

84. MAUER ET AL., *supra* note 28, at 2.

85. LAPIDUS ET AL., *supra* note 31, at 9, 18.

86. *Id.*

87. *Id.* at 18.

88. *Id.*

89. SUSAN MCCAMPBELL, DEP'T OF JUST., THE GENDER-RESPONSIVE STRATEGIES PROJECT: JAIL APPLICATIONS 4 (2005), available at <http://www.nicic.org/pubs/2005/020417.pdf>.

women have severe psychiatric disorders.⁹⁰ Many of these women also have co-occurring disorders relating to substance abuse.⁹¹

III. ACCOMMODATING THE NUMBERS OF WOMEN INSIDE TODAY

As recently as forty years ago, our society did not send large numbers of females to correctional institutions.⁹² There were, comparatively, few women behind bars.⁹³ Most states housed their small female offender populations either in county jails or in segregated areas within the male institutions.⁹⁴ Women housed in the male institutions were disadvantaged, because they did not have access to most of the facilities and programs that served the men.⁹⁵ Some states, however, transferred their few female offenders to states that operated small female facilities.⁹⁶ Women in the federal system were most likely housed in the one of three independent women's institutions in Alderson, West Virginia, Fort Worth, Texas, or Terminal Island, California.⁹⁷

The small, state female-only facilities and the two federal female-only facilities were a positive development for female inmates and offered the full spectrum of correctional programs and opportunities for personal change.⁹⁸ Overall, this was beneficial, but these locations were a long way from home for the majority of women sentenced to confinement.⁹⁹ The distance prevented family from visiting the female inmate, making it more difficult to maintain the familial connections that are critical to women's identities.¹⁰⁰

Eventually, states found that female offenders needed a stand-alone facility with services, programs, and staff dedicated to the unique needs of women.¹⁰¹ Today, the majority of states and the federal government operate independent women's prisons.¹⁰² The Federal Bureau

90. *Id.*

91. LAPIDUS ET AL., *supra* note 31, at 18.

92. CLARICE FEINMAN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM* 14 (1980).

93. *Id.*

94. Note, *The Sexual Segregation of American Prisons*, 82 *Yale L.J.* 1229, 1231 n.4 (1973).

95. *Id.* at 1231-32 n.11, n.12.

96. *Id.* at 1232.

97. *Id.* at 1233 n.14.

98. *Id.* at 1234 n.26.

99. *Id.* at 1233-34.

100. *Id.* at 1233.

101. Jack W. Brown, *The Female Inmate*, *INT'L ENCYCLOPEDIA OF JUST. STUD.* (2003), available at http://www.iejs.com/Corrections/female_inmate.htm.

102. See FROST ET AL., *supra* note 11, at 31-138 (detailing the imprisonment of females in each state); Bureau of Prisons, *Institutions Housing Female Offenders*, http://www.bop.gov/locations/female_facilities.jsp (last visited Jan. 14, 2008).

of Prisons alone confines 13,499 women in twenty-seven locations throughout the country.¹⁰³ This represents 6.8% of the total 166,615 inmates in federal correctional facilities.¹⁰⁴

IV. HOW DID THIS DEMOGRAPHIC CHANGE IMPACT PRISONS?

What did this influx of large numbers of female offenders mean to a prison administrator and his or her staff? The lifestyle differences between men and women have been well-documented.¹⁰⁵ These gender-based differences have a large impact on prison and jail operations.¹⁰⁶ Correctional practitioners who have worked in a prison with a female population will attest that women present very differently to prison or jail facility personnel.¹⁰⁷ Upon arrival, female prisoners are economically deprived, under-educated, and unskilled — they have erratic histories of employment and are young, disproportionately of a minority race, not married, and on average, have two children under age eighteen.¹⁰⁸ In addition to presenting more relationship issues than men, women offenders also require much more staff time in terms of policy explanation.¹⁰⁹

Female offenders also have different health issues that are typically more complex than are found in an equivalent male facility.¹¹⁰ One medical condition that is of particular concern among the female population is HIV. At the end of the year 2000, more than 10% of women prisoners were HIV-positive in at least two state prison systems and in the District of Columbia.¹¹¹ By yearend 2005, the national average rate of HIV-infection among women in state prisons was 2.4%,¹¹² compared with 1.8% for men in state prisons.¹¹³

103. Bureau of Prisons, Quick Facts About the Bureau of Prisons, <http://www.bop.gov/about/facts.jsp#2> (last visited Jan. 14, 2008).

104. *Id.*

105. *See generally* DAVID GEARY, *MALE, FEMALE; THE EVOLUTION OF HUMAN SEX DIFFERENCES* (1998); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1993).

106. BLOOM ET AL., *GENDER-RESPONSIVE STRATEGIES*, *supra* note 29, at vi.

107. *See id.* at 11, 23-25.

108. *Id.* at 2-3, 7.

109. *Id.* at 54-55.

110. *Id.* at 6-7.

111. LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PUBL'N NO. 196023, *HIV IN PRISONS*, 2000, at 3 (Oct. 2002), available at www.ojp.usdoj.gov/bjs/pub/pdf/hivp03.pdf.

112. LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, PUBL'N NO. 218915, *HIV IN PRISONS*, 2005, at 1 (Sept. 2007), available at www.ojp.usdoj.gov/bjs/pub/pdf/hivp05.pdf.

113. *Id.*

As a retired federal prison warden, I can attest to the fact that these characteristics combine to create operational issues for those charged with the leadership and management of today's correctional facilities.¹¹⁴ Female offenders present many challenges. Although many are in need of help, placing them in a correctional setting for extended periods of time does not solve the problem.¹¹⁵ Further, incarcerating women creates many unintended effects for society.¹¹⁶

V. CHANGE IN OUR PUBLIC POLICY IS NEEDED

The national fear of crime and the political response to the perception of a violent and crime-riddled country have driven extreme changes in the political world.¹¹⁷ This has had a significant impact on the government agencies responsible for law enforcement, both policing and corrections.¹¹⁸ The "War on Drugs"¹¹⁹ has led to a new policy focused on punishment — and specifically, punishment by lengthy incarceration.¹²⁰ The dramatic increase of women inside America's prisons and jails can be primarily attributed to mandatory drug sentences.¹²¹ This policy has exacted a huge cost on female offenders.¹²²

This article has noted many issues and problems associated with women in custody that should be addressed. While time spent inside a prison can help ameliorate some of the deficits with which women enter the system, there are better opportunities to address each specific need. These alternatives do not take up the valuable resource of prison beds¹²³ and can be found in the offender's communities.¹²⁴

114. As problematic as female offenders can be, it must also be noted that the majority of women prisoners are incarcerated for non-violent crimes: females account for only 17% of violent crime arrests. Bloom et al., *supra* note 32, at 34.

115. LAPIDUS ET AL., *supra* note 31, at 47.

116. *Id.* at 47-50 (explaining the unintended effects of female incarceration, such as sexual, emotional and verbal abuse, medical problems, and long-term separation of mothers and children).

117. See generally KATHERINE BECKETT, *MAKING CRIME PAY: LAW AND ORDER IN CONTEMPORARY AMERICAN POLITICS*, (1997).

118. See LAPIDUS ET AL., *supra* note 31, at 35 (discussing current drug laws that affect law enforcement).

119. See *id.* at 1.

120. See *id.* at 38-41 (discussing minimum mandatory sentencing for drug offenses).

121. See *id.* at 1 (discussing the exponential growth of women incarcerated in state prisons for drug-related offenses). Other factors include social roles, longer sentencing due to criminal history, an increase in property offenses, and domestic violence laws. Butterfield Fox, *Women Find a New Area for Equality: Prison*, N.Y. TIMES, Dec. 29, 2003, at A9.

122. See LAPIDUS ET AL., *supra* note 31, at 41.

123. See, e.g., Louis Porter, *Feds Seek More Vermont Prison Beds*, TIMES ARGUS (Montpelier, Vt.), July 27, 2006, available at <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20060727/NEWS/607270371/1002/NEWS01>.

124. See MCCAMPBELL, *supra* note 89, at 11 (listing community-based methods for

America's state and federal prisons should not be viewed as the primary vocational, educational, or mental health institution. Regardless of the help female inmates may receive in prison, there is always the chance that the negative aspects of confinement will overpower the positive aspects.¹²⁵ If the purpose of a court sanction is to help the offender, it is best done in the home community.

This is not an argument to spare dangerous offenders from incarceration and separation from society. If a convicted criminal presents a danger to others, she should be confined. But if the convicted offender is not dangerous to others, she should not be confined in the limited prison and jail space. One way to accomplish this is to allow judges greater discretion when sentencing.

We must repeal mandatory sentencing laws. We pay judges for their knowledge of the law, for their wisdom in applying the law, and for their ability to make fair and impartial decisions. The judiciary should not be forced to comply with illogical and unreasonable sentencing laws. All criminal offenders should be sanctioned appropriately. Those that have harmed others should be placed in a prison environment. Other offenders should also be sanctioned but not necessarily with prison.

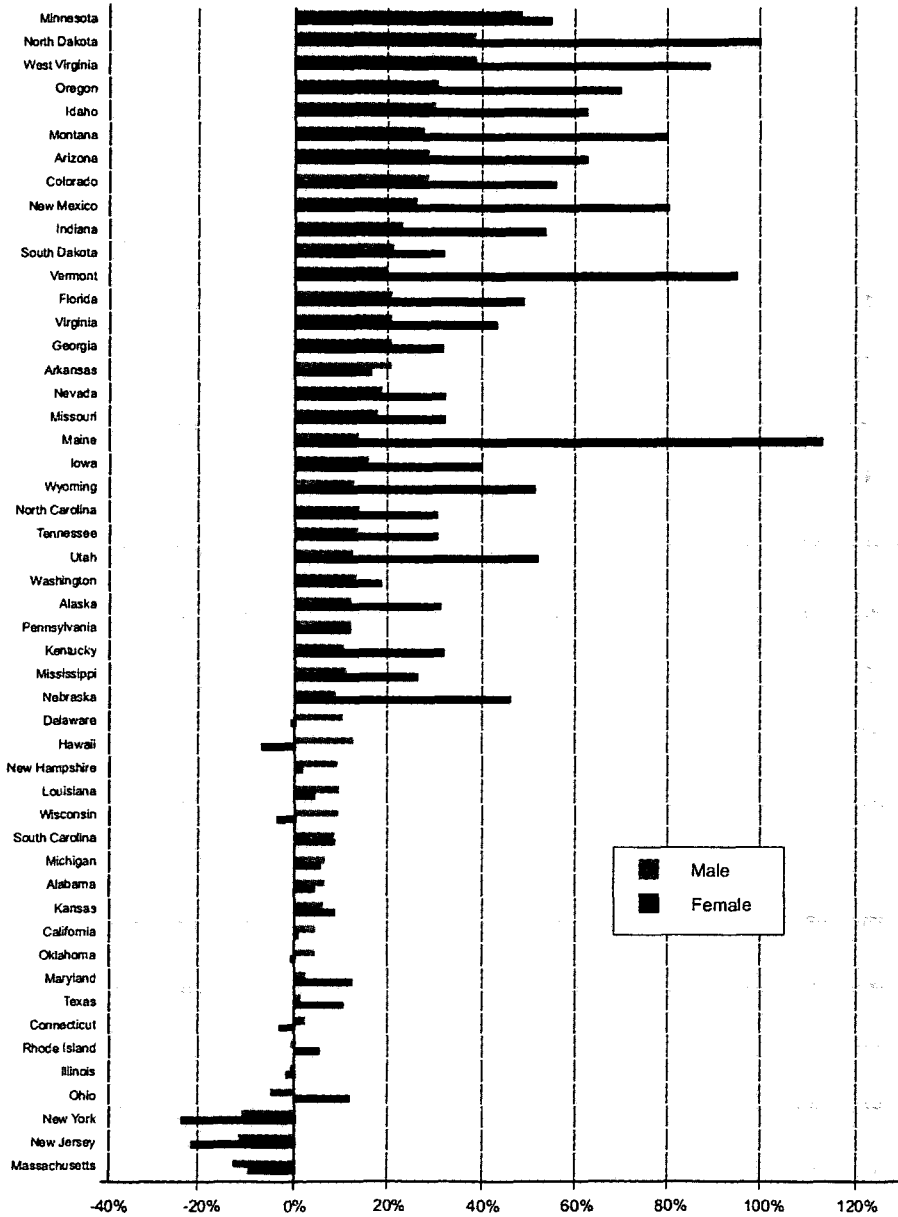
The public policy that mandates confinement for women that do not present a danger to the American public has high social costs. The convicted female offender, her children and other family members, the welfare systems, and taxpayers all suffer when a non-violent woman is incarcerated.¹²⁶ Reason and logic are calling out for a change of policy.

assisting women offenders).

125. See LAPIDUS ET AL., *supra* note 31, at 47 (discussing the harm incarceration inflicts on women such as physical and sexual abuse and lack of proper medical treatment).

126. *Id.* at 47-56 (discussing the impact incarceration has on women, children and families).

Figure 1: Change in state prison populations 1999-2004¹²⁷



SOURCE: Bureau of Justice Statistics

127. FROST ET AL., *supra* note 11, at 20.