

THE PANDEMIC GENDER GAP BEHIND BARS

MEETING THE NEEDS OF WOMEN IN CUSTODY DURING COVID-19 AND PLANNING FOR THE FUTURE

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May 2021



COVID, Corrections, and Oversight Project

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We are grateful to Jessica Tremayne, Victoria Rossi, and Gina Hinojosa for their research assistance for this report as interns for the COVID, Corrections, and Oversight Project at the Lyndon B. Johnson School of Public Affairs at the University of Texas at Austin.

Special thanks to the following for the use of their images of women's prisons and jails: The Texas Tribune/Marjorie Kamys Cotera, Callie Richmond, The Marshall Project/Keri Blakinger, and Michele Deitch.

The Pandemic Gender Gap Behind Bars

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May 2021

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Preferred citation:

Alycia Welch and Michele Deitch, *The Pandemic Gender Gap Behind Bars*, Lyndon B. Johnson School of Public Affairs, May 2021.

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This report was produced with the generous support of the Bernard and Audre Rapoport Foundation. However, the views expressed herein are the authors' alone and do not represent the opinions or positions of the Bernard and Audre Rapoport Foundation, the Lyndon B. Johnson School of Public Affairs, or the University of Texas at Austin.

Preface

We are releasing this report as the U.S. celebrates Women's History Month and reflects on women's often-overlooked contributions to culture, history, and society. The month intentionally coincides with the annual observance of International Women's Day (IWD), a global day celebrating the achievements of women and amplifying the call for women's equality. This year, the IWD Campaign asked us to stay alert to gender inequities, and to call out those systems, institutions, and individuals that continue to perpetuate gender bias and harm. Nowhere is gender inequity more pervasive than in the U.S. correctional system, where women continue to languish in facilities that were not designed for them and that cause them harm, despite international efforts to create more humane conditions for women in prisons and jails.

We are also on the heels of the ten-year anniversary of the "The United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders," also known as the "Bangkok Rules." The 70 standards that together comprise the Bangkok Rules address a long-standing gap in operational standards that provide for the specific characteristics and needs of women, and they give guidance to policy makers, legislators, and corrections agencies to reduce the imprisonment of women while simultaneously meeting the specific needs of women who remain in custody. Taken together, these rules outline a holistic, women-centered model that recognizes the

central role of community-based corrections for women who are in conflict with the law.

The vast majority of state and local justice systems in the United States have not adjusted their practices to consider the needs of women and the harms that women in custody experience, despite the unprecedented rise in the number of women in prison and jail over the last four decades. Too many systems still have not even heard of "gender-responsive" approaches, let alone considered the ways to implement them. As a result, women remain locked inside facilities that do not take account of their particular needs.

The need for implementing the Bangkok Rules has never been more critical. COVID-19 has exposed the harm incarcerated women experience every day. The strategies that correctional systems have implemented to mitigate the spread of the virus within prisons and jails—many of which rely on additional separation and isolation among those in custody—exacerbate those harms and have made the incarceration experience worse for women in custody.

The COVID pandemic and its resulting impact on women in custody reveal that the Bangkok Rules remain critically important. We now have an opportunity to reflect on ways we can move away from imprisonment and adopt a healthier approach that will simultaneously strengthen public health and improve safety for women in custody as well as for their children, families, and communities.

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I. Introduction

During public health crises, prisons and jails face heightened risks of rapid viral spread due to overcrowding, inadequate sanitation, and delayed and insufficient medical care.¹ This reality has been particularly apparent during the COVID-19 pandemic: at the beginning of June 2020, people in prison were 550% more likely than the non-incarcerated population to contract COVID-19, and 300% more likely to die from it.² By December 2020, the COVID-19 case rate within prisons was still more than four times the rate of the general public, and the mortality rate was more than twice as great.³ And while these figures are strikingly high, experts have noted that the actual number of infections and deaths is likely even higher than the reported number because jails and prisons are conducting limited testing on incarcerated people.⁴

While fewer women in custody have contracted or died of COVID-19 than their male counterparts, they have still faced horrifying outcomes as a result of the pandemic's spread in prisons and jails.

We have not yet identified a comprehensive, nationwide accounting of the toll COVID has had specifically on women in custody,⁵ but the numbers reported by some correctional agencies have revealed the devastating impact of the virus. For example, as of December 2020 in federal women's prisons alone, over 1,750 women have contracted the virus, and at least 103 have died from it.⁶ And as of mid-February 2021, 12 women have died of COVID just in Texas state prisons.⁷ In other correctional facilities around the country, women have suffered similar outcomes.

Women's facilities started experiencing major outbreaks early on in the pandemic and, like other correctional facilities, they became hotspots for the virus. By May 2020, over 85% of women at the Elayn Hunt Correctional Center in Louisiana had already tested positive for COVID-19,⁸ and at the Lane Murray Unit in Texas, 68 women and 20 employees had contracted the virus.⁹ By the fall of 2020, at least 721 women had tested

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- 1 Martial L. Ndeffo-Mbah, Vivian S. Vigliotti, Laura A. Skrip, Kate Dolan, and Alison P. Galvani (2018). "Dynamic Models of Infectious Disease Transmission in Prisons and the General Population," *Epidemiologic Review* 40(1): 40-57, p. 40, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5982711/>.
 - 2 Brendan Saloner, Kalind Parish, Julie A. Ward, Grace DiLaura, and Sharon Dolovich (2020). "COVID-19 Cases and Deaths in Federal and State Prisons," *JAMA* 324(6): 602-603, <https://jamanetwork.com/journals/jama/fullarticle/2768249>; Alexandra Sternlicht (July 8, 2020). "Prisoners 550% More Likely To Get Covid-19, 300% More Likely To Die, New Study Shows," *Forbes Magazine*, <https://www.forbes.com/sites/alexandrasternlicht/2020/07/08/prisoners-550-more-likely-to-get-covid-19-300-more-likely-to-die-new-study-shows/>.
 - 3 Kevin Schnepel (December 2020). "Impact Report: COVID-19 and Prisons—December 2020 Update," Simon Fraser University, National Commission on COVID-19 and Criminal Justice, <https://covid19.counciloncj.org/2020/12/06/impact-report-covid-19-and-prisons/>; The New York Times Editorial Board (November 21, 2020). "America is Letting Coronavirus Rage Through Its Prisons," *The New York Times*, <https://www.nytimes.com/2020/11/21/opinion/sunday/coronavirus-prisons-jails.html>, noting that these are the reported cases. The real numbers are assumed to be higher due to underreporting.
 - 4 Equal Justice Initiative, "COVID-19's Impact on People in Prisons," accessed March 6, 2021, <https://eji.org/news/covid-19s-impact-on-people-in-prison/>.
 - 5 Michele Deitch and William Bucknall (March 2021). "Hidden Figures: Rating the COVID Data Transparency of Prisons, Jails, and Juvenile Agencies," Lyndon B. Johnson School of Public Affairs, <https://repositories.lib.utexas.edu/handle/2152/85094>.
 - 6 Federal Bureau of Prisons, "COVID-19 Coronavirus Dashboard," accessed December 2, 2020, <https://www.bop.gov/coronavirus/>.
 - 7 Texas Justice Initiative, "COVID-19 fatalities in Texas prisons and jails," accessed March 11, 2021, <https://texasjusticeinitiative.org/publications/covid-deaths-in-texas>.
 - 8 Lea Skene (May 6, 2020). "85% of inmates in St. Gabriel women's prison got coronavirus—But most showed no symptoms," *The Advocate*, https://www.theadvocate.com/baton_rouge/news/coronavirus/article_2c551b72-8fbb-11ea-849a-e390bbc57059.html
 - 9 Brooke Crum (May 16, 2020). "Gatesville Inmates Fear For Their Lives, As Prison Officials Ramp Up COVID-19 Testing," *Waco Tribune-Herald*, https://wacotrib.com/news/local/gatesville-inmates-fear-for-their-lives-as-prison-officials-ramp-up-covid-19-testing/article_f8386244-ad72-5183-a00d-5529be30ae36.html.

positive at the Eddie Warrior Correctional Facility in Oklahoma—representing 90% of the entire facility’s population¹⁰—and 216 women at the South Dakota Women’s Prison had tested positive.¹¹ These outbreaks have continued even in facilities that had managed to keep the virus at bay through most of the pandemic. During the last week of December 2020, the Hiland Mountain Correctional Center, a women’s prison in Alaska, reported 109 active cases of the virus, or 25% of its total capacity; the week before, the facility had only three individuals who were infected.¹²

At the start of the pandemic, public health experts recommended a variety of changes to agency practices and protocols to prevent the spread of COVID-19 inside facilities. These measures include restricted in-person visits, reduced movement and interpersonal contact within facilities, limiting transfers of people in custody and staff between facilities, testing protocols, and physical distancing. Corrections agencies implemented these recommendations to varying degrees—many corrections agencies increased the use of cell restriction in order to keep people in custody physically distant from one another, and with new restrictions limiting anyone but staff from entering facilities, many agencies were unable to provide programs and services.

These COVID safety measures—many of which significantly increase separation and isolation—raise questions about how people in custody are coping under these challenging circumstances. And, given the differences between women in custody and their male counterparts, as well as differences in the ways women experienced incarceration even before the pandemic, are women experiencing particular harms from these measures? If so, what can and should be done to address or reduce these harms?

Even before the pandemic, prisons and jails overlooked factors that differentially affect the experience of women in custody. Correctional

facilities were not designed and are not administered with the needs of women in mind, and the lack of attention to these needs cause women to experience particular harms as a result. These harms have been exacerbated during the COVID-19 pandemic, with the implementation of strategies for mitigating the spread of the disease. For example, many incarcerated women are the primary caregivers of their children on the outside, and restricted visitation and limited communication can have substantial impacts on the well-being of the women themselves as well as that of their children and families.

While the institutional responses to COVID may have been necessary in order to protect individuals in custody and staff from contracting the virus, little attention was paid to how these measures might be particularly problematic for women.

This report examines the particular challenges faced by incarcerated women during the pandemic, and asks how prisons and jails can mitigate the harm caused by policies meant to reduce the spread of COVID-19 in these facilities. The report begins by considering the challenges that have defined women’s facilities since even before the pandemic began. It discusses women’s pathways to incarceration, describes how women experience incarceration differently than men, and highlights sources that explore more effective practices in the corrections context that are tailored to this population.

Next, it provides an overview of how institutional responses to COVID-19 have exacerbated the challenges faced by women in custody. Then, it highlights examples of ways that some agencies and service providers have provided alternatives to in-person programming and services to women during the pandemic. Finally, the report recommends strategies to ameliorate the harms that women in custody experience due to the COVID safety measures. It is important to note that the primary focus of the report is on programmatic and operational policies, rather than on health-related strategies.

10 K. Querry (September 8, 2020). “Protesters demand change as COVID-19 continues to spread at an Oklahoma correctional facility,” KFOR-TV, <https://kfor.com/news/local/protesters-demand-change-as-covid-19-continues-to-spread-at-oklahoma-correctional-facility/>.

11 Danielle Ferguson (October 1, 2020). “Third mass testing at women’s prison finds more cases of COVID-19,” Argus Leader, <https://www.argusleader.com/story/news/crime/2020/10/01/third-mass-testing-womens-prison-finds-more-cases-covid-19/5886787002/>.

12 The Associated Press (December 27, 2020). “Women’s prison in Alaska reports 109-person coronavirus outbreak,” The Seattle Times, <https://www.seattletimes.com/seattle-news/northwest/womens-prison-in-alaska-reports-109-person-virus-outbreak/>.

II. Pre-Pandemic Overview of Women and Incarceration

Profile of women in custody

The number of women in custody has increased by more than 700% over the last four decades; as of the end of 2019, there is a daily average of more than 231,000 women in prisons and jails across the United States.¹³ More women are held in local jails than in state prisons; in fact, a principal driver of the growth of the population of women in correctional facilities is the number of women detained in jail who have yet to be convicted of a criminal offense and who are awaiting trial.¹⁴

Thousands of women arrive in custodial settings each year with needs that prisons and jails are not equipped to address and distinct characteristics that are overlooked:

Women have higher rates of trauma experiences across their lifetime.

Women in custody are more likely than men to have histories involving serious abuse and trauma.¹⁵ Due to these traumatic experiences, many women in custody are in a constant state of fight or flight, causing them to interpret all events and interactions in their environment as potentially unsafe and threatening, and leaving them unable to regain a sense of safety and regulation.¹⁶

Women are disproportionately people of color.

Women of color are overrepresented in prisons and jails compared to both the general population and the total correctional population. Nearly 47% of women

in custody are people of color: 29% are Black, 14% are Hispanic, 2.5% are American Indian and Alaskan Native, 0.9% are Asian, and 0.4% are Native Hawaiian and Pacific Islander.¹⁷ In contrast, White women are underrepresented in prisons and jails: 53% of women in custody are White, which is less than the proportion of White people in the total U.S. population (64%).¹⁸

SNAPSHOT OF WOMEN IN JAILS*

Histories of trauma and abuse:

- 86% have experienced sexual violence
- 77% have experienced partner violence
- 60% have experienced caregiver violence

Pathways to incarceration:

- 32% arrested for property offenses
- 29% arrested for drug offenses
- 21% arrested for public order offenses

Prevalence of health issues:

- 53% have one or more physical health conditions
- 32% have a serious mental illness
- 82% have a substance use disorder

Swavola, Riley, Subramanian, "Overlooked: Women and Jails in an Era of Reform," 2016.

13 Aleks Kajstura (October 29, 2019). "Women's Mass Incarceration: The Whole Pie 2019," Prison Policy Initiative, <https://www.prisonpolicy.org/reports/pie2019women.html>.

14 Ibid.; Elizabeth Swavola, Kristine Riley, and Ram Subramanian (2016). "Overlooked: Women and Jails in an Era of Reform," New York: Vera Institute of Justice, p. 6, <https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf>.

15 Swavola, Riley, and Subramanian (2016), p.11; Sheryl Kubiak, Stephanie Covington, and Carmen Hillier (2017). "Trauma-Informed Corrections," *Social Work in Juvenile and Criminal Justice Systems*, 4th ed., p. 95, <https://www.centerforgenderandjustice.org/assets/files/soical-work-chapter-7-trauma-informed-corrections-final.pdf>; Shannon M. Lynch, Dana D. DeHart, Joanne Belknap, and Bonnie L. Green (2012). "Women's Pathways to Jail: The Roles & Intersections of Serious Mental Illness and Trauma," U.S. Department of Justice, Bureau of Justice Assistance, p. 24, <https://nicic.gov/womens-pathways-jail-roles-intersections-serious-mental-illness-trauma-2012>.

16 Kubiak, Covington, and Hillier (2017), p. 95; Lynch, DeHart, Belknap, and Green (2012), p. 24.

17 Kajstura, *supra* note 13.

18 Ibid.

Women are disproportionately lower income.

The majority of women in custody, especially Black women, have earned lower incomes than their male counterparts. Prior to their incarceration, Black women received an average annual income of \$12,735, while White women had an average annual income of \$15,480.¹⁹ For women in jail, these lower incomes often contribute to their continued detention, since they frequently are unable to afford bail while they await trial.

Women have higher rates of unaddressed health challenges.

Even when accounting for race and income levels, women in custody have a higher prevalence of chronic health conditions than their male counterparts and the general public, including physical health issues (e.g., cardiovascular disease, obesity, cancer, STIs), mental health challenges, and substance use.²⁰ Women also have reproductive health care needs, including pregnancy testing, prenatal care, and preventive care such as pap smears.²¹

The majority of women in custody are mothers.

Nearly 80% of women in jails are mothers, and the vast majority of those women are single parents who are solely responsible for their young children.²² Many women try to maintain their parenting responsibilities while in custody, and many plan to reunite with one or more of their children upon release.²³ Another 5% are pregnant when they are incarcerated.²⁴ Most women in custody who are pregnant have not received proper medical care or have experienced abuse or used substances prior to their incarceration and need access to health care services as well as emotional support to assist with planning after her child's birth.

The majority of women are nonviolent and present minimal risk to public safety.

Most women are charged with lower-level offenses, mostly property and drug-related offenses, which are often economically driven, motivated by poverty and/or substance use. Women are far less likely to be convicted of a violent offense, and they tend to have less extensive criminal histories than their male counterparts, meaning that they pose less of a safety risk to the community.²⁵ The most frequently reported convictions of violent offenses for women are linked to intimate partner violence.²⁶

19 Swavola, Riley, and Subramanian (2016), p. 10.

20 Barbara Bloom, Barbara Owen, and Stephanie Covington (2002). "A Theoretical Basis for Gender-Responsive Strategies in Criminal Justice," *American Society of Criminology*, pp. 1-2, <https://www.semanticscholar.org/paper/A-Theoretical-Basis-for-Gender-Responsive-in-Bloom-Owen/747445ae37f8a291e7abfba8229ba4a28133045c>; Lynch, DeHart, Belknap, and Green (2012), p. 8.

21 Wendy Sawyer (January 9, 2018). "The Gender Divide: Tracking Women's State Prison Growth," Prison Policy Initiative, https://www.prisonpolicy.org/reports/women_overtime.html.

22 Swavola, Riley, and Subramanian, *supra* note 19, at p. 7; Susan W. McCampbell (2005). "The Gender-Responsive Strategies Project: Jail Applications," U.S. Department of Justice, National Institute of Corrections, p. 4, <https://nicic.gov/gender-responsive-strategies-project-jail-applications>.

23 Barbara Bloom, Barbara Owen, and Stephanie Covington (2003). "Gender-Responsive Strategies: Research, Practice, Guiding Principles Women Offenders," National Institute of Corrections, p.83, <https://nicic.gov/gender-responsive-strategies-research-practice-and-guiding-principles-women-offenders>.

24 Swavola, Riley, and Subramanian, *supra* note 19, at p. 12; McCampbell (2005), p. 4.

25 Swavola, Riley, and Subramanian, *supra* note 19, at p. 9, p. 13; Patricia J. Kelly, Esther Peralez-Dieckmann, An-Lin Cheng, and Carla Collins (2010). "Profile of women in a county jail," *Journal of Psychosocial Nursing and Mental Health Services*, 48(4): 38-45, <https://pubmed.ncbi.nlm.nih.gov/20349890/>.

26 Suzanne Swan, Laura J. Gambone, Jennifer E. Caldwell, Tami P. Sullivan, and David L. Snow (2008). "A Review of Research on Women's Use of Violence With Male Intimate Partners," *Violence and Victims*, 23(3): 301-314, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2968709/>; Marilyn Van Dieten, Natalie J. Jones, and Monica Rondon (2014). "Working with Women Who Perpetrate Violence: A Practical Guide," National Resource Center on Justice Involved Women, <https://cjinvolwedwomen.org/wp-content/uploads/2015/09/Working-With-Women-Who-Perpetrate-Violence-A-Practice-Guide6-23.pdf>.

Women experience prison and jail differently than men

Even before the pandemic, women in custody were differentially harmed by the experience of incarceration. They are too often overlooked in correctional facilities that were not designed for them.²⁷ As a result, prisons and jails exacerbate the factors that contribute to women's initial involvement in the justice system.

Prisons and jails lack programs and services that respond to women's distinct needs.

Most correctional agencies either completely lack or offer only limited programs and services that are designed to address women's distinct needs, including mental, physical, and reproductive healthcare; education; vocational skills and training; opportunities for repairing and strengthening family relationships; life skills training; and other resources women need to successfully reintegrate into the community upon release from prison or jail. Without programs and services that address their specific needs, women are at a heightened risk of recidivism, compromising the safety and health of their community.

Women are over-classified and assigned to unnecessarily high security levels.

Classification instruments that corrections officials use to determine housing assignments, custody levels, and time earning status have been validated only for use on men and over-emphasize the nature of the person's crime as a predictor of risk to the facility's safety and security. Without considering

that few women are likely to engage in serious institutional misconduct such as escapes or violent behavior, assessments with these instruments result in many women being held in unnecessarily restrictive security settings.²⁸

Women are traumatized by their incarceration experience.

Women are far more likely than men to be sexually victimized during their incarceration by their peers and by staff.²⁹ Because of their extensive history of trauma, routine correctional operations can also be traumatizing experiences for women—body searches, supervision by male staff, the lack of privacy during showers or toileting, loud voices, banging doors, authoritarian orders by staff, and isolation can all be triggering events for women who have traumatic histories of physical or sexual abuse.³⁰ These dynamics keep women in a state of emotional distress and prevent them from feeling safe or relaxed in this environment. As a result, they are more likely to exhibit behaviors that violate facility rules and result in disciplinary sanctions that can further exacerbate trauma symptoms.³¹

Women are disciplined more frequently and given more severe sanctions.

Research shows that behavior differences between women and men in custody stem from women's attempts to cope with the lingering effects of trauma in an environment that exacerbates it, yet the majority of corrections agencies have not changed their discipline systems to account for these differences.³² As a result, although women in custody are less likely than men to act out

27 Michele Deitch, Alycia Welch, et al. (2018). "Designing and Planning a New Women's Jail Facility for Travis County: A Roadmap for Reform," Travis County Sheriff's Office Women's Jail Advisory Committee, p. 11, <https://law.utexas.edu/faculty/publications/2018-designing-and-planning-a-new-womens-jail-facility-for-travis-county-a-roadmap-for-reform>.

28 Swavola, Riley, and Subramanian, *supra* note 19, at p. 13.

29 *Ibid.*

30 *Ibid.*; Stacy L. Mallicoat (2015). "The Incarceration of Women," *Women and Crime: A Text/Reader*, Fullerton, CA: SAGE Publications, p. 461, p. 482, [https://www.sagepub.com/sites/default/files/upm-binaries/44337_10_\(final\).pdf](https://www.sagepub.com/sites/default/files/upm-binaries/44337_10_(final).pdf); Kim Shayo Buchanan (2007). "Impunity: Sexual Abuse in Women's Prisons," *Harvard Civil Rights-Civil Liberties Law Review*, 42(1), <https://www.prearesourcecenter.org/sites/default/files/library/108-impunity-sexualabuseinwomensprisons2007.pdf>.

31 Alyssa Benedict (2015). "Section 1 Overview: The Rationale for Revising Discipline and Sanctions for Women Inmates," National Resource Center on Justice Involved Women, <https://cjincludedwomen.org/wp-content/uploads/2015/09/DisciplineGuideSection1Overview.pdf>.

32 Bloom, Owen, and Covington, *supra* note 23; Jessica Pupovac and Kari Lydersen (October 14, 2018). "Women in prison punished more harshly than men around the country," Chicago Reporter, <https://www.chicagoreporter.com/women-in-prison-punished-more-harshly-than-men-around-the-country/>.

violently in prison, they receive more disciplinary tickets for minor infractions such as “making a derogatory comment,” “disrespect without potential for violence,” and “habitual rule violator.”³³ The punishments given to women are also often more severe than those given to men, including more time in solitary confinement, harsher restrictions during family visits, and restrictions on making phone calls.³⁴ Sanctions can limit a woman’s ability to participate in programming, receive a positive parole review, or become eligible for early release.³⁵

Limited health care resources take a toll on the health of women in custody.

The limited health care resources in most prisons and jails mean that women’s routine and preventive health care needs often go unaddressed, leading to worsened health conditions.³⁶ This is particularly concerning in the case of pregnant women, who receive limited prenatal care, may not see an obstetrician, may not be able to access abortion services, and usually do not have healthy food options available to them, all of which may have life-long health consequences for the women and their children.³⁷

Many prisons and jails lack sufficient quantities and decent quality of gender-specific necessities.

Many agencies fail to provide women with sufficient quantities of feminine hygiene supplies, let alone supplies of decent quality.³⁸ Some agencies permit women to purchase feminine hygiene supplies from a commissary, but the majority of women are unable to afford them.³⁹ The vast majority of women have access only to what the agency provides. A lack of hygiene products can be humiliating and degrading for women, and it forces women to use unsanitary measures to manage their menstruation or simply go without protection, increasing their health risks.⁴⁰ Compounding this issue, many agencies provide women in custody with only a limited supply of flimsy bras and underwear, adding to their humiliation and discomfort.⁴¹

Incarceration strains relationships between women and their families, including their children.

Women experience particular stressors from being separated from their children. Because so many are single mothers, women in custody are concerned about their children’s well-being, yet struggle to find a temporary caregiver and have limited financial means to support their children during their incarceration. Women whose incarceration may be prolonged face the possibility that their children will be permanently removed from their custody.⁴² Visitation presents

33 Pupovac and Lydersen (October 14, 2018). “Women in prison punished more harshly.”

34 Ibid.

35 Benedict, *supra* note 31.

36 Swavola, Riley, and Subramanian, *supra* note 19, at pp. 15-17.

37 Ibid.

38 Ibid.; Emily Foxhall (May 19, 2017). “Jails struggle with hygiene for some female inmates,” Houston Chronicle, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Jailsstruggle-with-hygiene-for-some-women-inmates-11142604.php>.

39 Erin Polka (September 4, 2018). “The Monthly Shaming of Women in State Prisons,” Public Health Post, <https://www.publichealthpost.org/news/sanitary-products-women-state-prisons/>.

40 University of the District of Columbia School of Law Legislation Clinic (2018). “Periods, Poverty, and the Need for Policy: A Report on Menstrual Inequity in the United States,” University of the District of Columbia School of Law Legislation Clinic and Bringing Resources to Aid Women’s Shelters (BRAWS), https://cdn.ymaws.com/www.law.udc.edu/resource/resmgr/LegClinic/2018_periods_policy_report.pdf.

41 Keri Blakinger (October 28, 2019). “Can We Build a Better Women’s Prison?” The Washington Post Magazine, <https://www.washingtonpost.com/magazine/2019/10/28/prisons-jails-are-designed-men-can-we-build-better-womens-prison/?arc404=true>.

42 Eli Hagar and Anna Flagg (December 3, 2018). “How Incarcerated Parents Are Losing Their Children Forever,” The Marshall Project, https://www.themarshallproject.org/2018/12/03/how-incarcerated-parents-arelosing-their-children-forever?utm_medium=email&utm_campaign=newsletter&utm_source=openingstatement&utm_term=newsletter-20181203-1197.

its own challenges, due to limited visiting hours, difficulties in arranging transportation (especially to facilities located in remote areas), long waits for visitors, unpleasant conditions in the visiting area, and restrictions on physical contact. The high cost of phone and video calls, and the poor quality of video connections, make routine communication challenging between women and their children, as well as with their children's caretakers.

Gender-responsive prisons and jails

In light of the differential impact of incarceration on women, experts have recommended that women's prisons and jails be trauma-informed and family-centered, and that they provide access to gender-responsive programming that meets women's extensive needs. The term "gender-responsive" refers to the design of a program, practice, or policy that addresses the specific circumstances of women's lives and their particular risks and need factors, and that incorporates what we know works based on research conducted with women.⁴³

"Gender-responsive" is the design of a program, practice, or policy that addresses the specific circumstances of women's lives and their particular risks and need factors, and that incorporates what we know works based on research conducted with women.

Source: "Gender-Responsive Strategies,"
Bloom, Owen, and Covington, 2003.

Describing what gender-responsive and trauma-informed facilities should look like is beyond the scope of this report, but more details and specific guidance can be found in the following sources:

- "[United Nations Rules for the Treatment of Women Prisoners \(Bangkok Rules\)](#)"⁴⁴
- "[Using Trauma-Informed Practices to Enhance Safety and Security in Women's Correctional Facilities](#)," Alyssa Benedict, National Resource Center on Justice Involved Women⁴⁵
- "[Gender Responsive Discipline and Sanctions Guide for Women's Facilities](#)," Alyssa Benedict, National Resource Center on Justice Involved Women⁴⁶
- "[Designing and Planning A New Women's Jail Facility for Travis County: A Roadmap for Reform](#)." Michele Deitch, et al., Travis County Sheriff's Office Women's Jail Advisory Committee⁴⁷
- "[Adapting Custodial Practices to Reduce Trauma for Incarcerated Women](#)," Urban Institute⁴⁸

43 Bloom, Owen, and Covington, supra [note 23](#), at p. v; Barbara Bloom and Stephanie Covington (2000). "Gendered Justice: Programming for Women in Correctional Settings," Paper presented at the 52nd Annual Meeting of the American Society of Criminology, San Francisco, CA, p. 11, <https://www.stephaniecovington.com/assets/files/11.pdf>.

44 United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules), 2010, http://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

45 Alyssa Benedict (2014). "Using Trauma-Informed Practices to Enhance Safety and Security in Women's Correctional Facilities," National Resource Center on Justice Involved Women, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/NRCJIV-UsingTraumaInformedPractices.pdf>.

46 Alyssa Benedict (2018). "Gender Responsive Discipline and Sanctions Guide for Women's Facilities," National Resource Center on Justice Involved Women, <https://cjinvolwedwomen.org/discipline-guide/>.

47 Deitch, Welch, et al., supra [note 27](#).

48 Evelyn McCoy, Melanie Langness, Jahnvi Jagannath, Janeen Buck Willison, Janine M. Zweig, Becki Ney, Wayne Choinski (2020). "Adapting Custodial Practices to Reduce Trauma for Incarcerated Women," Urban Institute, <https://www.urban.org/research/publication/adapting-custodial-practices-reduce-trauma-incarcerated-women>.

III. How the Pandemic Response Has Affected Women Who Are Incarcerated

Weeks before the first cases of COVID-19 in prisons and jails were reported, correctional healthcare experts warned that all the distinctive aspects of correctional facilities—confined spaces, poor ventilation, overcrowding, lack of protective equipment, limited space to quarantine, restricted access to healthy foods, populations with underlying health issues, the constant flow of people in and out of facilities, and regular transfers of people in custody—would make these facilities, and their surrounding communities, vulnerable to outbreaks. These concerns have been particularly troubling in women’s units, given that the vast majority of women enter prison and jails with acute health challenges and share other characteristics that public health experts agree put them at risk of experiencing the worst outcomes from COVID.

Heeding these calls, corrections agencies developed strategies to try to mitigate the spread of the virus, including the suspension of visitation, the suspension of programming, restrictions on volunteers entering the facility, lockdowns, and the use of medical isolation. While these mitigation strategies introduced new challenges for everyone who is incarcerated, some of the measures have had a particularly insidious impact on women. This part of the report highlights how this institutional response to COVID has exacerbated the harms that women experience while incarcerated.

Women have remained incarcerated during a time of great risk

Since the onset of the COVID-19 pandemic, correctional health experts have urged prisons, jails, and other government authorities to make every effort to depopulate facilities by releasing low-risk and medically vulnerable people as a high priority. Reducing the population helps protect the people who are released while simultaneously

creating smaller populations within correctional institutions, which increases the potential for social distancing in otherwise densely populated spaces. Given that the majority of women in custody have acute pre-existing physical health conditions and that they present a low risk to public safety, women should have been prioritized for release since the start of the pandemic.

“After every female death, corrections officials have highlighted pre-existing medical conditions that made the women easier targets for the virus. But few prison officials appear to be considering those same risk factors and actually releasing many women before an outbreak.”

Source: “What women dying in prison from COVID-19 tell us about female incarceration,” The Marshall Project, May 14, 2020.

Depopulating facilities

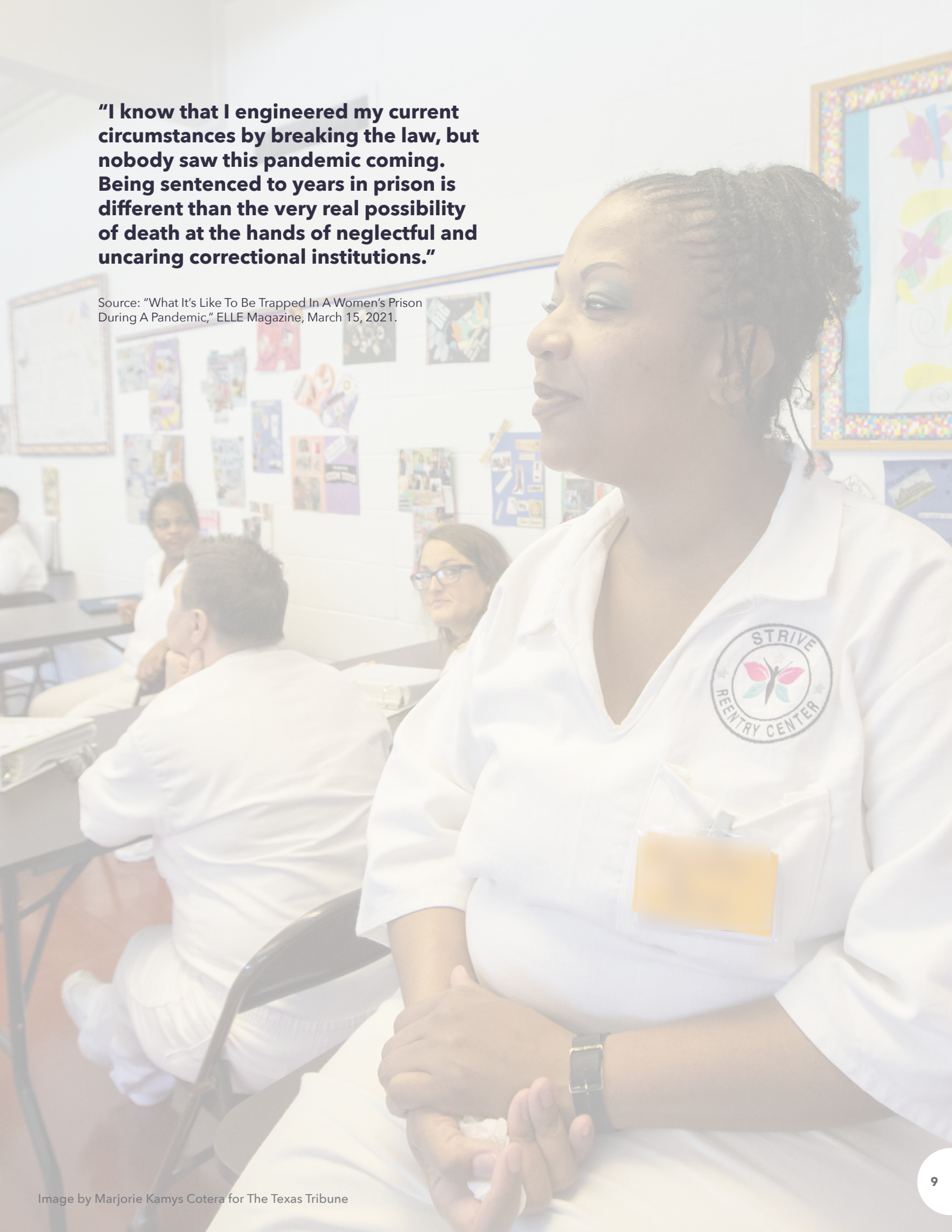
Despite correctional health experts’ guidance, officials have failed to depopulate correctional facilities. Despite the early guidance of public health officials and correctional health care experts to release people in custody in order to limit the risk of spread of COVID-19 in prisons and jails, few agencies have done so in a sustained way. Since the pandemic began, prison populations have been reduced by only about 5% nationally even though correctional facilities have been the sites of the largest outbreaks across the country.⁴⁹ While state prison populations have slowly declined from pre-pandemic levels, the pace of these reductions has slowed since spring, even as national infection rates continue to rise.⁵⁰ Jail populations decreased by 31% in the early weeks of the pandemic,

49 The New York Times, “Coronavirus in the U.S.: Latest Map and Case Count,” accessed March 6, 2021, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

50 Emily Widra (December 2, 2020). “As COVID-19 continues to spread rapidly, state prisons and local jails have failed to mitigate the risk of infection behind bars,” Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/12/02/jail-and-prison-covid-populations/>.

"I know that I engineered my current circumstances by breaking the law, but nobody saw this pandemic coming. Being sentenced to years in prison is different than the very real possibility of death at the hands of neglectful and uncaring correctional institutions."

Source: "What It's Like To Be Trapped In A Women's Prison During A Pandemic," ELLE Magazine, March 15, 2021.



but since May 2020, they have increased. As of November 2020, jail populations are approaching pre-pandemic levels.⁵¹ As a result of the failure to consistently bring down prison and jail populations, facilities are crowded, making it difficult for agencies to implement measures such as social distancing, testing, and isolating and treating people who test positive.

Pregnant women

Pregnant women have not been prioritized for release, even though they are especially vulnerable to the worst outcomes from COVID-19. Despite their status as a high-risk group that is vulnerable to serious illness if they contract the virus, few pregnant women have been released since the onset of the pandemic.⁵² Between March and May 2020, only North Dakota had released all the pregnant women from its state prisons (a total of seven).⁵³ Another nine states released 60 pregnant women, collectively, over the same period. However, given that nearly 4,000 pregnant women are admitted to state prisons annually, these releases make up only a small fraction of pregnant women in custody.⁵⁴ Even states that prioritized pregnant women for release were not able to achieve large-scale releases because other eligibility criteria were too restrictive, a concern that will be explored more in the next subsection.

Agencies continued to let pregnant women languish in prisons and jails even after the Centers for Disease Control and Prevention (CDC) warned that pregnancy increased women's risk for severe illness from COVID-19 and adverse pregnancy outcomes, such as preterm birth.⁵⁵ For pregnant women in custody, these risks are even more acute, since health care—especially prenatal care—in prisons and jails has always been variable and often inadequate, even before the pandemic. COVID-19 has created an additional strain on correctional healthcare systems, placing pregnant women at higher risk for complications to their pregnancy.⁵⁶

Even when agencies choose to release individuals on a case-by-case basis, they overlook women who could easily be released and have their needs better met in their communities. For example, Andrea High Bear was seven months pregnant with her sixth child when she began serving a sentence for a nonviolent drug offense. She tested positive for COVID days after she was transferred from a county jail in South Dakota to a federal facility in Texas. Shortly thereafter, she went into labor, and gave birth to her preterm baby via cesarean section while on a ventilator.⁵⁷ Less than a month later, she died in the custody of the Federal Bureau of Prisons.⁵⁸

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- 51 Anna Harvey, Orion Taylor, and Andrea Wang (December 2020). "COVID-19, Jails, and Public Safety: December 2020 Update," New York University, National Commission on COVID-19 and Criminal Justice, <https://covid19.counciloncj.org/2020/12/06/impact-report-covid-19-and-jails/>.
- 52 Centers for Disease Control (CDC) (June 25, 2020). "CDC updates, expands list of people at risk of severe COVID-19 illness," www.cdc.gov/media/releases/2020/p0625-update-expands-covid-19.html; Alexandra Villarreal (May 22, 2020). "Pregnant inmates languish in U.S. prisons despite promises of release," *The Guardian*, <https://www.theguardian.com/us-news/2020/may/22/us-prisons-pregnant-inmates-coronavirus-pandemic-release>.
- 53 Villarreal (May 22, 2020), "Pregnant inmates languish in U.S. prisons."
- 54 Ibid.; Roxanne Daniel (December 5, 2019). "Prisons neglect pregnant women in their healthcare policies," Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/>; Carolyn Sufrin, Lauren Beal, Jennifer Clarke, Rachel Jones, William Mosher (2019). "Pregnancy Outcomes in U.S. Prisons, 2016-2017," *American Journal of Public Health*, <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006>.
- 55 Centers for Disease Control and Prevention (CDC), "Pregnancy, Breastfeeding, and Caring for Newborns," Updated December 28, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html>.
- 56 Jennifer Bronson and Carolyn Sufrin (2019). "Pregnant Women in Prison and Jail Don't Count: Data Gaps on Maternal Health and Incarceration," *Public Health Reports*, 134(1_suppl): 57S-62S, p. 57S, <https://journals.sagepub.com/doi/full/10.1177/0033354918812088>.
- 57 Arielle Zionts (April 30, 2020). "Eagle Butte woman who died of COVID-19 was a loving mother," *Rapid City Journal*, https://rapidcityjournal.com/news/local/eagle-butte-woman-who-died-of-covid-19-was-a-loving-mother/article_37f4988c-4a42-58a2-8601-1f61d5875372.html; Diana D'Abruzzo (May 28, 2020). "Could Andrea High Bear's Death Have Been Prevented?" *Arnold Ventures*, <https://www.arnoldventures.org/stories/could-andrea-high-bears-death-been-prevented/>.
- 58 Ibid.

“ Our rights are being violated here. What happens if my kids will be left without a mother and a father? I think about it all the time. ”

Source: “Governor, let me see my kids before I die,” The Guardian, June 3, 2020.



Criteria for release

The eligibility criteria that agencies have used to determine who should be released is too restrictive. While the vast majority of women in custody are serving sentences for nonviolent offenses and present a low-risk to public safety, agencies have not prioritized women for large-scale releases due to additional eligibility criteria that prevent most from being released. More often, when public officials have granted early releases, it has typically been only for people who were serving sentences for certain nonviolent offenses and who were nearing their release date.⁵⁹ Such stringent criteria have resulted in agencies excluding a large number of women from early release. For example, when New York Governor Andrew Cuomo indicated in May 2020 that the state would release pregnant women from prison in response to the COVID crisis, only eight women were ultimately released.⁶⁰ The eligibility criteria the governor included in his instructions prevented the state from releasing more pregnant women: the only ones eligible for release were pregnant women with fewer than six months left on their sentences for nonviolent offenses, leaving three additional pregnant women who otherwise met the governor's eligibility criteria but remained in prison because standing law prevented their release.⁶¹ One pregnant woman had a court-mandated program that she was required to complete before release, one had an outstanding warrant, and one had a concurrent sentence with time to be served beyond her projected release date.⁶²

Over-classification

Because women in custody are over-classified, they are not accurately recognized as presenting a low risk to public safety. As discussed earlier, because correctional agencies use classification instruments

that have been validated only for men, women are often over-classified and placed in higher security settings than necessary for the risks they present. Housing women in overly restrictive settings gives the false impression that they are likely to engage in serious institutional misconduct, which can affect women's access to programs and services during their incarceration. Since most agencies have set early release eligibility and prioritization based on the risk individuals pose to public safety, over-classification can also compromise women's chances at early release.

Moreover, people assigned to high security do not earn good time credits at the same rate as their peers who are assigned to lower security levels. "Good time credits" vary by state, but generally provide individuals in custody with a sentence reduction based on their conduct during their incarceration. Earning fewer credits slows their progress towards parole eligibility or discharge, and reduces the likelihood that they will be eligible for early release options that target people who are closer to their projected release date.

The impact of correctional COVID responses on women who remain incarcerated in prisons and jails exacerbates harm

While COVID-19 continues to represent a threat to the physical health of people in prisons and jails, the agencies' safety measures are making the incarceration experience even harsher for women. This section outlines some of the key measures that corrections agencies are implementing to prevent the spread of COVID-19 in prisons and jails, and the impact of these measures on incarcerated women, their families, and their communities.

59 Justine van der Leun (October 8, 2020). "Confinement and Contagion: How coronavirus has made those in women's prisons more vulnerable," The New York Review, https://www.nybooks.com/articles/2020/10/08/confinement-and-contagion/?p_txn_id=1012949.

60 Justin Carissimo (May 6, 2020). "8 pregnant women to be released from New York prison over virus fears," CBS News, <https://www.cbsnews.com/news/coronavirus-new-york-prisons-pregnant-women-freed-covid-19/>.

61 Nick Reisman (May 1, 2020). "New York Moves To Release Pregnant Inmates," Spectrum News, <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2020/04/30/new-york-pregnant-inmate-release>.

62 Carissimo, *supra* note 60.

“We could have saved her life and instead we sent her to the deadliest place on earth right now: an American prison.”

– Holly Harris, President, Justice Action Network, speaking about Andrea High Bear, who died of COVID on a ventilator in a federal prison when she was seven months pregnant

Source: “Could Andrea High Bear’s Death Have Been Prevented?” Arnold Ventures, May 28, 2020.



Visitation

Restricting visitation, without access to alternative and affordable methods of communication, impedes women's ability to maintain relationships with family and other sources of support, and impacts the mental health of both women and their children.

The vast majority of correctional agencies suspended in-person family visitation.

Most correctional agencies decided to drastically reduce or completely eliminate in-person visitation. While this restriction helped reduce the risk of families bringing the virus into facilities and from contracting the virus during the visit, the lack of in-person contact with their children and loved ones has reverberating consequences for women in custody and their families. Support from family and friends is a major predictor of whether women will achieve their goals and successfully reintegrate or whether they will return to custody, and the risk of recidivism increases among women who were unable to visit with their family during their incarceration.⁶³ Moreover, disrupting the parent-child relationship can have long-term effects on children, leading to antisocial behavior, poor school performance, and physical and mental health problems.⁶⁴

Most correctional agencies did not compensate for the suspension of in-person visits by offering alternative and affordable methods of communication.

To reduce the risk of spreading the virus, some agencies also restricted women's access to alternative methods of communication, such as phone calls, video conferencing, or e-mail. In some facilities, the placement and location of phones and email booths (kiosks) do not allow women to maintain physical distancing guidelines, while in other facilities, women were not provided adequate sanitation supplies to keep these areas disinfected.⁶⁵

But even when women have access to phones or email kiosks, they often cannot afford the user fees.⁶⁶ In New York, for example, sending one email costs 35 cents, which equals 3.5 hours of work for someone who is incarcerated.⁶⁷ And in some states, a 15-minute phone call costs over 20 dollars. While high prices have always made consistent communication difficult, especially for low-income families, charging fees during a pandemic when telecommunication is the only method of contact is particularly insidious. Recognizing this problem, at the beginning of the pandemic, many agencies, like the Texas Department of Criminal Justice and the Harris County Sheriff's Office, started offering men and women in custody free phone calls,⁶⁸ but some have again started charging for calls, even though facilities remain closed to outsiders and families are still unable to visit in-person.⁶⁹

Moreover, the quality of this technology is not always reliable. Across the country, family members report that connection problems result in their video calls freezing, yet they are still charged for the call.⁷⁰

63 Bernadette Rabury and Peter Wagner (2015). "Screening Out Family Time: The for-profit video visitation industry in prisons and jails," Prison Policy Initiative, <https://www.prisonpolicy.org/visitation/report.html>.

64 Lindsey Cramer, Margaret Goff, Bryce Peterson, Heather Sandstrom (2017). "Parent-Child Visiting Practices in Prisons and Jails," Urban Institute, <https://www.urban.org/research/publication/parent-child-visiting-practices-prisons-and-jails>.

65 The Office of the Correctional Ombuds (OCO) of the Washington Department of Corrections (May 2020). "OCO Monitoring Visit to Washington Corrections Center for Women," https://content.govdelivery.com/attachments/WAGO/2020/06/17/file_attachments/1476354/OCO%20Monitoring%20Visit%20to%20WCCW%20with%20DOC%20Response.pdf.

66 Alexi Jones and Peter Wagner (February 2019). "State of Phone Justice: Local jails, state prisons, and private phone providers," Prison Policy Initiative, www.prisonpolicy.org/phones/state_of_phone_justice.html.

67 Diana Kruzman (July 18, 2018). "In U.S. Prisons, Tablets Open Window to the Outside World," Reuters, <https://www.reuters.com/article/us-usa-prisons-computers/in-u-s-prisons-tablets-open-window-to-the-outside-world-idUSKBN1K813D>.

68 Texas Department of Criminal Justice, (March 24, 2020). "Offenders Allowed 2 Free Phone Calls Per Week," Facebook, accessed March 6, 2021, <https://www.facebook.com/watch/?v=204685797623989>; Harris County Sheriff's Office, "Harris County Jail Suspends Inmate Visitation to Prevent Coronavirus Outbreak," accessed March 6, 2021, https://www.harriscountysos.org/jailinfo/inmate_info_inmate_visitation.aspx.

69 Wanda Bertram (September 11, 2020). "Prisons and Jails are Rolling Back Free Phone and Video Calls. They Should be Extending them Instead," Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2020/09/11/free-calls/>.

70 Rabury and Wagner, *supra* note 63.

Compounding these challenges, some agencies had established strict mail policies before the pandemic hit, creating additional barriers to communication with family. For example, in an attempt to prevent contraband from entering its facilities, the Texas Department of Criminal Justice (TDCJ) prohibited people from sending greeting cards, colored paper, postcards, and anything involving paint, glue, or glitter to their loved ones who are incarcerated.⁷¹ The policy represents a significant barrier to meaningful communication between incarcerated women and their families during the pandemic, especially for women with young children.

Lack of information

The lack of information about their incarcerated loved ones increases stress and anxiety among the families of women in custody. Many people who have a loved one in prison or jail have voiced concerns about a lack of transparency during the COVID-19 crisis. Some have indicated that when they have called the facility to check on their loved one, staff and facility administrators were unable to locate that person.⁷² Others who learned that their loved one was hospitalized were not allowed to speak with them or even obtain any information about their loved one's condition.⁷³ In a time of extremely high stress concerning the pandemic, lack of transparency and information can increase anxiety and trauma for women in custody and their loved ones.

Non-compliance with safety protocols

Some staff have not consistently adhered to measures that agencies established to prevent the spread of the virus, and women in custody fear

retaliation for voicing their concerns. Correctional health experts have warned that staff are critical to ensuring everyone who lives and works at the facility adheres to measures agencies have established to mitigate the spread of the virus.⁷⁴ Many women in custody, however, have voiced concern over some staff not consistently adhering to these measures—for example, some have been seen wearing their face masks below their chin.⁷⁵ Moreover, because of their history of trauma, women in custody are afraid that voicing their concerns will result in backlash or retaliation. Violating established protocol increases the risk of the virus spreading, and it erodes trust between staff and women in custody. According to correctional health experts, during a pandemic, those in custody need to feel safe telling staff when they are sick rather than ignoring symptoms, which could increase the risk of transmission.⁷⁶

Communications

Limited access to phones and email along with restrictions on mail inhibit the ability of women to connect with community-based supports and services that could assist them with reintegrating after release. Limiting women's access to the phone or email communication system also prevents women from connecting with community-based service providers that could help prepare them for release and support their reintegration. Restrictive mail policies can also reduce women's ability to establish relationships with reentry service providers on the outside. Transitional housing programs, for example, might mail women applications to complete prior to their release so that the program can determine eligibility, but restrictive mail policies may prevent women from receiving the applications.

71 Keri Blakinger (March 2, 2020). "No Glitter, No Glue, No Meth?," The Marshall Project, <https://www.themarshallproject.org/2020/03/02/no-glitter-no-glue-no-meth>.

72 Luke Barr (May 6, 2020). "Behind bars for 40 Years, Maryland woman seeks release due to COVID-19," ABC News, <https://www.abcnews.go.com/Politics/bars-40-years-maryland-woman-seeks-release-due/story?id=70522653>.

73 Lyra Walsh Fuchs (May 18, 2020). "Isolation, Death, and Grief at a New York Women's Prison," The Appeal, <https://www.theappeal.org/new-york-prison-bedofrd-hills-coronavirus/>.

74 Jennifer Gonnerman (March 14, 2020). "How Prisons and Jails Can Respond to the Coronavirus," The New Yorker, <https://www.newyorker.com/news/q-and-a/how-prisons-and-jails-can-respond-to-the-coronavirus>.

75 Michele Scott (March 15, 2021). "What It's Like To Be Trapped In A Women's Prison During A Pandemic," ELLE Magazine, <https://www.elle.com/culture/career-politics/a35766530/prison-pandemic-story-michele-scott/>.

76 Gonnerman, *supra* note 74.



“I have to go to breakfast to get food. This requires walking between a gauntlet of staff who are clustered on both sides of a narrow sidewalk leading to the chow hall. I note that many of their masks are carelessly dangling off their chin. The institution says we should report any staff not in compliance with COVID mitigation practices but we know that will result in backlash.”

Source: “What It’s Like To Be Trapped In A Women’s Prison During A Pandemic,” ELLE Magazine, March 15, 2021.

Necessities

COVID responses in facilities tend to limit women's access to basic hygiene and sanitary supplies, as well as to other necessities. At the beginning of the pandemic, people in custody lacked access to necessary cleaning and hygiene supplies, such as toilet paper, soap, and cleaning products. Women in custody received even fewer sanitary napkins than the limited supply they received before the pandemic.⁷⁷ For example, as is the case at many women's facilities, the Central California Women's Facility supplies women with a pre-set amount of toilet paper and feminine hygiene products, distributed weekly, which women reported was not enough to meet their needs even before COVID. When the pandemic hit, they received even less.⁷⁸ Some agencies make feminine hygiene products available for purchase through women's commissary accounts, but in some facilities, women's access to the commissary has been limited due to restrictions on movement within facilities.

The failure to meet women's basic needs has been exacerbated during the pandemic in some facilities. Women in custody at the Dallas County Jail in Texas reported that they had not received clean clothes over a 10-day period while they were in quarantine, leaving nearly 30 women in one open-bay dormitory in crusty uniforms, stained with their sweat and dirt.⁷⁹ After submitting multiple complaints to officers, the women staged a "naked protest," taking off their dirty clothes and keeping them off until they received a clean set.⁸⁰ Forcing

women to live in unsanitary conditions conflicts with public health guidelines and compromises women's health and well-being.

People in custody are receiving worse food than usual, and less frequently, at a time when consuming high-nutrient food in adequate portions is more important than ever.

Food in most prisons and jails has always been unhealthy and often inedible. A seminal study on the food experience in prisons found that the food provided to people in custody lacks vital nutrients and is typically high in salt, sugar, and refined carbohydrates.⁸¹ These ingredients provide agencies a low-cost way to achieve the mandated calorie count, but they also increase the risk of type 2 diabetes, hypertension, obesity, and heart disease—conditions people in custody, women in particular, already experience at higher rates than the general public.⁸² Meals made up of low-quality foods also suppress the immune system and may put people at increased risk of experiencing serious illness from viruses, such as COVID-19, and other contagions. Many prisons provide fortified powdered beverage mixes as the primary source of essential nutrients, an inadequate alternative to nutrient-dense whole foods like fresh fruits and vegetables, dairy, whole grains, and high-quality proteins, which are central to a healthy diet.⁸³

Compounding these nutrient deficiencies, people in custody are often fed spoiled food, such as

77 Tyler Hicks (January 4, 2021). "Women in Dallas County Jail Say They Endured Nearly Two Weeks Without Clean Clothes," Dallas Observer, <https://www.dallasobserver.com/news/female-inmates-in-dallas-county-jail-say-they-were-denied-clean-clothes-and-care-11974827>.

78 Madison Pauly (April 3, 2020). "The Officers Were Taking Our Toilet Paper': One Woman's Life in Prison Right Now," Mother Jones, <https://www.motherjones.com/coronavirus-updates/2020/04/stacey-dyer-california-women-prison/>.

79 Hicks, *supra* note 77.

80 Ibid.

81 Leslie Soble, Kathryn Stroud, and Marika Weinstein (2020). "Eating Behind Bars: Ending the Hidden Punishment of Food in Prison," Impact Justice, p.8, <https://impactjustice.org/impact/food-in-prison/#report>.

82 Emily Wang, Nicole Redmond, Cheryl Dennison Himmelfarb, Becky Pettit, Marc Stern, Jue Chen, Susan Shero, Erin Iturriaga, Paul Sorlie, and Ana Diez Roux (2017). "Cardiovascular Disease in Incarcerated Populations," *Journal of the American College of Cardiology*, 69(24): 2967-2976, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6342510/>; Brian Houle (2015). "The Effect of Incarceration on Adult Male BMI Trajectories, United States, 1981-2006," *Journal of Racial and Ethnic Health Disparities*, 1(1): 21-28, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4010134/>.

83 Wendy Sawyer (March 3, 2017). "Food for thought: Prison food is a public health problem," Prison Policy Initiative, <https://www.prisonpolicy.org/blog/2017/03/03/prison-food/>.

“The vegetables they would give us were brown and dirty. The meat smelt old. The muffins had mold on them. The fruit was rotten. They expected us to hold onto the lunch meat unrefrigerated for hours and eat it for dinner.”

Source: “Women at ‘house of horror’ Fort Worth prison say they face COVID, rotten food, abuse,” Fort Worth Star-Telegram, August 31, 2020.



moldy bread, sour milk, rotten meat, slimy bagged salad mix, and canned or packaged products years past their expiration date.⁸⁴ People in custody at prisons in Michigan and Ohio were served food tainted by maggots, rotten meat, food pulled from the garbage, and food on which rats nibbled.⁸⁵ As a result, people in custody are more than six times as likely as the general population to contract foodborne illnesses, which further compromise their immune systems.⁸⁶

Rather than risk illness or more serious health conditions, some people in custody skip meals. Others chose to make alternative meals using food sold through the commissary. However, these items are typically expensive, and also lack nutritional value.⁸⁷

The food experience has worsened during the pandemic. Compared with the provisions they received in spring 2020, people in custody are now receiving, people in custody are receiving fewer meals, smaller portions, lower-quality protein, and more processed foods.⁸⁸ Some prisons and jails have stopped serving hot meals due to the risk of people in custody being in

close contact in the kitchen and dining halls, and instead are providing meals in housing units.⁸⁹ These meals, sometimes delivered in brown paper bags, often include small portions—boiled eggs, dry cereal and raisins for breakfast, and for lunch and dinner, peanut butter sandwiches, or “mystery meat” on thin white bread, and sometimes an apple, orange, or bag of chips.⁹⁰ Not only is this food not filling, many agencies are distributing these meals only twice a day, sometimes more than 12 hours apart, exacerbating hunger. Women in custody at a federal facility in Texas—the same one that housed Andrea High Bear—have reported receiving only one sack of food a day.⁹¹ Because most facilities have also shut down commissary during the pandemic, alternative options, even unhealthy ones, are limited.⁹²

Research shows nutrient deficiencies and hunger conditions exacerbate stress, and contribute to a wide range of mental health and behavioral issues, including anger, depression, aggression, and antisocial behavior.⁹³ And beyond the immediate health and behavior consequences, public health experts have noted the troubling connection

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- 84 Soble, et al., *supra* note 81, at p.9; Nadra Nittle (January 21, 2021). “As COVID-19 Ups the Stakes, Advocates Say Prison Food Needs an Overhaul,” *Civil Eats*, <https://civileats.com/2021/01/21/as-covid-19-ups-the-stakes-advocates-say-prison-food-needs-an-overhaul/>.
- 85 Sawyer, *supra* note 83; Tom Perkins (February 17, 2016). “Something still stinks in Michigan and Ohio’s prison kitchens,” *Metro Times*, <https://www.metrotimes.com/detroit/something-still-stinks-in-michigan-and-ohios-prison-kitchens/Content?oid=2396672#>.
- 86 Mariel Marlow, Ruth Luna-Gierke, Patricia Griffin, and Antonio Vieira (2017). “Foodborne Disease Outbreaks in Correctional Institutions—United States, 1998-2014,” *American Journal of Public Health*, 107(7): 1150-1156, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5463225/>.
- 87 Brianna Bailey (October 20, 2020). “Oklahoma spends less than a dollar a meal feeding prisoners,” *The Frontier*, <https://www.readfrontier.org/stories/oklahoma-spends-less-than-a-dollar-a-meal-feeding-prisoners/>.
- 88 Keri Blakinger (May 11, 2020). “Ewwwww, What Is That? Coronavirus has made Texas prison food even more gross,” *The Marshall Project*, <https://www.themarshallproject.org/2020/05/11/ewwww-what-is-that>; Jennifer Toon (October 9, 2020). “I left my friends in prison in a pandemic. Here’s what it’s like for them,” *The Guardian*, <https://www.theguardian.com/us-news/2020/oct/09/texas-prison-coronavirus-pandemic>.
- 89 Sandy Hausman (June 4, 2020). “Prison Food and Medical Care Suffer During COVID-19 Pandemic,” *WVTF: Virginia’s Public Radio*, <https://www.wvtf.org/post/prison-food-and-medical-care-suffer-during-covid-19-pandemic#stream/0>.
- 90 Kaley Johnson (August 31, 2020). “Women at ‘house of horror’ Fort Worth prison say they face COVID, rotten food, abuse,” *Fort Worth Star-Telegram*, <https://www.star-telegram.com/news/coronavirus/article245306760.html>; Blakinger (May 11, 2020), “Ewwwww, What Is That?”
- 91 Johnson (August 31, 2020), “Women at ‘house of horror.’”
- 92 Blakinger (May 11, 2020), “Ewwwww, What Is That?”; Bailey, *supra* note 87.
- 93 Fernando Gómez-Pinilla (2008). “Brain foods: The effects of nutrients on brain function,” *Nature Reviews Neuroscience*, 9(7): 568-78, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2805706/>.

between abysmal food conditions and reentry outcomes. Lifestyle changes, including diet, are necessary for combating chronic health conditions, yet people in custody do not learn healthy eating skills or food choices that could improve their health outcomes even after release.⁹⁴

Medical and mental health care

Women's access to routine medical and mental health care has been reduced. Even before the pandemic, health care professionals and criminal justice experts sought to improve women's access to health care in prisons and jails. The pandemic has amplified concerns about that access. Correctional healthcare systems are typically understaffed, with few ways to cover for employees who are out on sick leave and little ability to handle a surge in clinical needs.⁹⁵ This gap in care disproportionately affects women, since most correctional facilities already had a shortage of gynecologists and obstetricians.⁹⁶

Compounding this gap, the COVID crisis has required correctional health care staff to focus on the needs of people with the virus, reducing medical staff's ability to provide important preventive care for women in custody. The competing demands on health care staff have also had an impact on the delivery of preventive and chronic health care, with some correctional healthcare providers, like the Maryland Department of Public Safety and Correctional Services' health care provider, Corizon Health, halting preventive care altogether so that

the medical team could prioritize those with urgent health problems.⁹⁷ COVID's impact on healthcare in correctional facilities raises serious concerns for women in custody since so many have chronic health problems that require consistent treatment. Many of these chronic illnesses make women particularly vulnerable to fatal outcomes if they contract the virus.⁹⁸

COVID safety measures have also impacted the provision of mental health care in correctional facilities. Due to facility restrictions preventing anyone other than jail staff from entering the facility, many mental health providers are no longer able to meet with women in person. At the same time, facility lockdowns, limited programming, restricted family contact, and fears about the virus are creating significant stress for the women, which can exacerbate trauma symptoms and increase their risk of adverse mental health outcomes.

Attempts to provide alternative options to in-person mental health care have also been woefully inadequate. After witnessing a suicide attempt on their unit, women at the California Institution for Women (CIW) requested mental health support, but never saw a counselor. Instead, they received suggested yoga poses, crossword puzzles, coloring pages, and handouts about ways to manage anxiety.⁹⁹ While everyone in custody should be provided activities during lockdowns to keep them busy, in no way can these activities be considered an adequate substitute

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- 94 Patricia Leigh Brown (March 2, 2021). "The 'Hidden Punishment' of Prison Food," The New York Times, <https://www.nytimes.com/2021/03/02/opinion/prison-food-farming-health.html>.
- 95 Brie Williams, Cyrus Ahalt, David Cloud, Dallas Augustine, Leah Rorvig, and David Sears (March 26, 2020). "Correctional Facilities In The Shadow of COVID-19: Unique Challenges And Proposed Solutions," Health Affairs, <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.
- 96 American College of Obstetricians and Gynecologists Committee on Health Care for Underserved Women (August 2012). "Reproductive Health Care for Incarcerated Women and Adolescent Females," (Committee Opinion No. 535), p. 2, <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Reproductive-Health-Care-for-Incarcerated-Women-and-Adolescent-Females>.
- 97 Hannah Gaskill (July 13, 2020). "Advocates: Critical Medical Care Is Lacking in State Prisons During Pandemic," Maryland Matters, <https://www.marylandmatters.org/2020/07/13/advocates-critical-medical-care-is-lacking-in-state-prisons-during-pandemic/>.
- 98 Laura M. Maruschak, Marcus Berzofsky, and Jennifer Unangst (2015). "Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-2012," United States Department of Justice, Bureau of Justice Statistics, p.5, <https://bjs.gov/content/pub/pdf/mpsfjji1112.pdf>.
- 99 Eileen Guo (July 26, 2020). "Inmates witnessed a suicide attempt. They received coloring pages instead of counseling," Washington Post, www.washingtonpost.com/national/they-witnessed-a-suicide-attempt-they-received-coloring-books-instead-of-counseling/2020/07/25/e4490bfe-cdbd-11ea-bc6a-6841b28d9093_story.html?mc_cid=b2a968cae6.

for necessary mental health care.¹⁰⁰ Without access to care, research shows that stress can exacerbate mental health challenges and can also cause the immune system to deteriorate, leading to worse outcomes for those who are infected with COVID.

Pregnant women

Pregnant women in custody are at increased risk of adverse physical and psychological health outcomes. Adequate reproductive health care is typically limited under the best of circumstances for people who are incarcerated, and decreased access to medical care due to COVID-19 further limits access to prenatal care for pregnant women. In its recent examination of the experiences of women in prison, the U.S. Commission on Civil Rights determined that there is a lack of standardization among prison systems regarding the provision of female-specific health care, specifically gynecological and prenatal care, contributing to a lack of adequate care for pregnant women in some prisons.¹⁰¹ As recently as the summer of 2019, a number of complaints by women in prisons and jails revealed there has been inadequate attention paid to pregnant women's basic needs.¹⁰²

During COVID, the demands on correctional health care have further limited pregnant women's access to adequate care.¹⁰³ This includes access to the medical services necessary to terminate a pregnancy. Some states have limited abortion access for all women—not just those in custody—during the COVID-19 pandemic, further impeding access to these services for people in custody.

Moreover, most women who give birth while in custody are almost immediately separated from their newborns, which is traumatizing for both mother and child.¹⁰⁴ Due to increased restrictions during the pandemic, this separation is likely to occur soon after birth. Separation inhibits bonding, which is crucial for attachment and infant development.¹⁰⁵ Children who are separated from their mother at birth can suffer from severe emotional and behavioral problems.¹⁰⁶ Separation leads to higher rates of postpartum depression for incarcerated people, and research focusing on newborns and incarcerated mothers who are separated at birth has shown that the emotional trauma of separation can increase a mother's likelihood of recidivism.¹⁰⁷

100 Jason Fagone (June 12, 2020). "Women's prison journal: State inmate's daily diary during pandemic," San Francisco Chronicle, www.sfchronicle.com/bayarea/article/Woman-s-prison-journal-State-inmate-s-daily-15334701.php.

101 United States Commission on Civil Rights (February 2020). "Women in Prison: Seeking Justice Behind Bars," p.242, <https://www.usccr.gov/pubs/briefing-reports/2020-02-26-Women-in-Prison.php>.

102 Daniel (December 5, 2019), citing as examples: David K. Li (August 29, 2019). "Video allegedly shows woman giving birth in denver jail cell alone, with no assistance," NBC News, <https://www.nbcnews.com/news/us-news/woman-had-give-birth-denver-jail-cell-alone-no-assistance-n1047766>; Elliott C. McLaughlin (May 6, 2019). "Pregnant woman asked jail staff for help, lawyers say. Hours later, she was alone in a cell, holding her newborn," CNN, <https://www.cnn.com/2019/05/06/us/woman-gives-birth-jail-cell-broward-florida/index.html>; Sarah McCammon (June 16, 2019). "Pregnant, Locked Up, and Alone," NPR, <https://www.npr.org/2019/06/16/732109546/pregnant-locked-up-and-alone>; Zoe Schlanger (April 6, 2019). "Should a pregnant person ever go to prison?" Quartz, <https://qz.com/1587102/what-its-like-to-give-birth-in-a-us-prison/>.

103 Carolyn Sufrin and Laren Kuhlik (May 9, 2020). "During COVID-19 crisis, prioritize release of pregnant inmates," USA Today, <https://www.usatoday.com/story/opinion/policing/2020/05/09/during-covid-19-crisis-prioritize-release-pregnant-inmates/3098043001/>.

104 Lauren Kuhlik and Carolyn Sufrin (May 12, 2020). "During COVID-19 Crisis, We Must Prioritize the Release of Pregnant People," American Civil Liberties Union, www.aclu.org/news/prisoners-rights/during-covid-19-crisis-we-must-prioritize-the-release-of-pregnant-people/.

105 Danya Ziazadeh (May 30, 2019). "Inadequate Health Care: A Significant Problem Affecting Incarcerated Women" The Pursuit: University of Michigan School of Public Health Advocacy, <https://sph.umich.edu/pursuit/2019posts/inadequate-healthcare-a-significant-problem-affecting-incarcerated-women.html>; Jonathan Lambert (March 21 2019). "Pregnant Behind Bars: What We Do and Don't Know About Pregnancy and Incarceration," NPR, www.npr.org/sections/health-shots/2019/03/21/705587775/pregnant-behind-bars-what-we-do-and-dont-know-about-pregnancy-and-incarceration.

106 Jennifer G. Clarke and Rachel E. Simon (2013). "Shackling and Separation: Motherhood in Prison," *AMA Journal of Ethics Policy Forum*, 15(9): 779-785, p. 779, 781, <https://journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09>; Lambert (March 21, 2019), "Pregnant Behind Bars."

107 Ziazadeh (May 30, 2019). "Inadequate Health Care."

“My friend is generally a bright breath of happy and joyful energy, but the day and the oppressive mood of her coworkers had taken a toll. Once she stepped into the calm and safety of my room, she cracked. Her voice was shaky and strained as she told me she couldn’t take it, she had tried to be strong and support the other women all day but it was too much; her head dropped and the tears came. She was broken.”

Source: “What It’s Like To Be Trapped In A Women’s Prison During A Pandemic,” ELLE Magazine, March 15, 2021.



Social distancing and cell restriction

Social distancing and cell restriction increase social isolation, which can be particularly traumatizing for women. COVID-related lockdowns of facilities or individual units within a facility may be especially challenging for women in custody. Psychological research shows that women depend on their connections with others to develop a sense of self and self-worth.¹⁰⁸ Women develop communities and depend on one another for support while incarcerated, sometimes arranging themselves into family structures. Increased isolation due to lockdowns can sever these important bonds at a time when the need for such emotional connections is especially critical. This disconnection from supportive relationships behind prison and jail walls can also retraumatize women who are survivors of abuse and other forms of trauma.¹⁰⁹

Medical Isolation

At many facilities, medical isolation has become synonymous with solitary confinement. Responding to the need to isolate people with symptoms or those who have been exposed to COVID, many agencies have created medical isolation areas. Those who are infected or believed to be infected are typically placed in isolation units or grouped with others who are ill.¹¹⁰

However, in some facilities, the only cells with solid doors for quarantine are administrative segregation cells, which house people placed in solitary confinement.¹¹¹ Moving people suspected of contracting COVID-19 may help prevent the

spread of the virus, but the harm from solitary confinement to women's physical and mental health creates a disincentive for women to report their symptoms and seek care.¹¹² Because administrative segregation cells are typically used to punish people in custody, medically isolating someone in those conditions may cause them substantial psychological trauma and distress and deter others from reporting symptoms or seeking medical attention. Moreover, women in medical isolation are not permitted to access common areas in the facility, and while this restriction helps to prevent the spread of the virus throughout the facility, it means that the women have limited access to showers, phone calls, hot meals, fresh air, and exercise.¹¹³ For these reasons, correctional healthcare experts believe that an effective prevention, mitigation, and treatment response to COVID-19 cannot rely upon punitive conditions.¹¹⁴

Suspension of programs and services

The suspension of on-site programs and services reduces women's chances for successful reentry.

Gender-responsive programs and services are not available to women, leaving their needs unaddressed and increasing idle time.

COVID safety measures restricted volunteers and other non-staff service providers from entering prisons and jails in most facilities. While these strategies helped prevent the transmission of the virus inside facilities and helped prevent community spread, it also restricted women's

108 Bloom, Owen, and Covington, *supra* note 20.

109 *Ibid.*; Guo, *supra* note 92; National Resource Center on Justice Involved Women (2016). "Fact Sheet on Justice Involved Women in 2016," <https://cjincludedwomen.org/wp-content/uploads/2016/06/Fact-Sheet.pdf>.

110 Emily A. Wang, Bruce Western, Emily P. Backes, and Julie Schuck (2020). "Decarcerating Correctional Facilities During COVID-19: Advancing Health, Equity, and Safety," National Academy of Sciences, Engineering, and Medicine, Washington, DC: The National Academies Press. <https://www.nap.edu/catalog/25945/decarcerating-correctional-facilities-during-covid-19-advancing-health-equity-and>; Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95.

111 Homer Venters (November 24, 2020). "How the CDC can get serious about the health of incarcerated people," The Hill, <https://thehill.com/opinion/criminal-justice/527115-how-the-cdc-can-get-serious-about-the-health-of-incarcerated-people?rl=1>.

112 Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95.

113 Maura Turcotte and Libby Seline (October 1, 2020). "Federal Prisons Will Let Inmates Have Visitors During Pandemic," The New York Times, <https://www.nytimes.com/2020/10/01/us/federal-prisons-visits-coronavirus.html>; Ko Bragg and Kate Sosin (October 11, 2020). "503: Inside the COVID unit at the world's largest women's prison," The 19th, <https://19thnews.org/2020/10/503-inside-the-covid-unit-at-the-worlds-largest-womens-prison/>.

114 Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95.

access to important programs and services.¹¹⁵ The lack of programming, including substance use programs and educational services, means that women will exit prison or jail with the same needs that contributed to their justice system involvement, increasing the likelihood that they will be rearrested.¹¹⁶ The lack of programs and services also leaves women with more idle time, which contributes to disruptive behavior and rule violations, and to the subsequent disciplinary measures.

Some women are unable to complete programs that are required in order to be released on parole, thereby prolonging their incarceration unnecessarily.

Some parole boards approve people for parole release contingent upon completion of on-site programming, such as drug treatment programs. However, program suspensions due to COVID-19 mean that women cannot access or complete these programs in order to be released. The slowed pace of releases can have devastating consequences for people awaiting release on parole. For example, as of early October 2020, nine people in Texas prisons died in that interim period between parole approval and eventual release.¹¹⁷

Community restrictions during the pandemic have created additional barriers for women accessing critical services during reentry.¹¹⁸

The vast majority of women are not in a position to secure independent housing immediately after their release from custody, and need alternative safe, supportive housing options. Yet it has always been challenging for women to secure other options, primarily due to a lack of housing in communities for people with a criminal history. These challenges have been exacerbated during the pandemic. Because correctional facilities have become COVID hotspots, many housing providers are requiring individuals leaving prisons and jails to complete a 14-day quarantine period before they can secure housing. However, families and loved ones may not be able to support women immediately after release either, especially if they have a health condition that could make them more susceptible to infection. As a result, many women leaving jails and prisons have nowhere to stay during the 14-day quarantine period.¹¹⁹

Even beyond the challenges with finding a safe option for quarantining, women have limited housing options. While there are some promising transitional housing models for women, there are only a handful of programs in urban centers across the country and those programs lack the funding and capacity needed to serve all of the women that need the services.¹²⁰ Women who are unable to secure safe housing alternatives may return to abusive partners or unhealthy family situations.¹²¹ This situation is especially problematic since intimate partner violence has increased during the pandemic.¹²²

115 Jessica Priest, Katie Hall, and Andrea Ball (June 10, 2020). "Let Them out: Advocates want inmates granted parole freed as COVID-19 stalks prisons," USA Today, <https://www.azcentral.com/story/news/investigations/2020/06/10/coronavirus-advocates-want-prison-inmates-granted-parole-freed-now/5327750002/>.

116 Krista Gehring and Ashley Bauman (2008). "Gender-Responsive Programming: Promising Approaches," University of Cincinnati, p.1, <https://www.semanticscholar.org/paper/Gender-Responsive-Programming-%3A-Promising-Gehring-S./7b73f007deaa1d525ba05f1151296dc266192f04>.

117 Michele Deitch, Alycia Welch, William Bucknall, and Destiny Moreno (November 2020). "COVID and Corrections: A Profile of COVID Deaths in Custody in Texas," Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, <https://repositories.lib.utexas.edu/handle/2152/83635>.

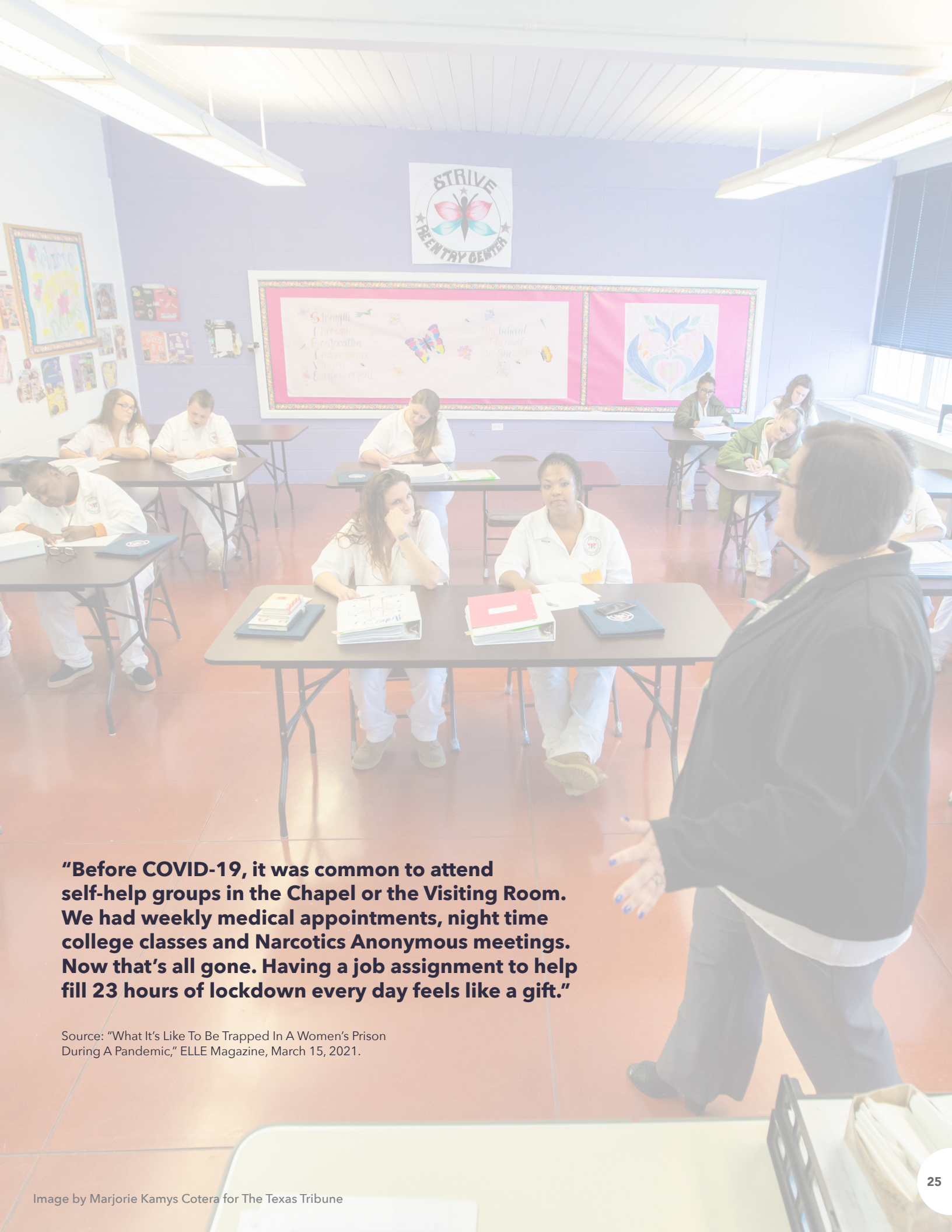
118 Wendy Sawyer (July 19, 2019). "Who's helping the 1.9 million women released from prisons and jails each year?" Prison Policy Initiative, www.prisonpolicy.org/blog/2019/07/19/reentry/.

119 Kelsey Hammon (May 6, 2020). "Referrals to Longmont's The Reentry Initiative spikes by 500% due to early inmate release during pandemic," Longmont Times-Call, www.timescall.com/2020/05/06/referrals-to-longmonts-the-reentry-initiative-spikes-by-500-due-to-early-inmate-release-during-pandemic/.

120 Sawyer, *supra* note 118.

121 Ibid.; Marilyn Brown and Barbara Bloom (2009). "Reentry and Renegotiating Motherhood: Maternal Identity and Success on Parole," *Crime & Delinquency*, 55(2): 313-336, p. 328, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.872.8927&rep=rep1&type=pdf#page=16>.

122 Megan Evans, Margo Lindauer, and Maureen Farrell (December 10, 2020). "A Pandemic within a Pandemic—Intimate Partner Violence during Covid-19," *The New England Journal of Medicine*, 383: 2302-2304, <https://www.nejm.org/doi/full/10.1056/NEJMp2024046>.



“Before COVID-19, it was common to attend self-help groups in the Chapel or the Visiting Room. We had weekly medical appointments, night time college classes and Narcotics Anonymous meetings. Now that’s all gone. Having a job assignment to help fill 23 hours of lockdown every day feels like a gift.”

Source: “What It’s Like To Be Trapped In A Women’s Prison During A Pandemic,” ELLE Magazine, March 15, 2021.

Women are also less likely to secure employment or access any of the other resources they need to successfully reintegrate. High unemployment rates during the pandemic mean women in custody are returning to a more competitive job market, often without the skills and training they need to be viable job candidates.¹²³ And due to the increased demand for medical services in the community during COVID, primary care is also more difficult to secure for new patients.

Compounding all of these challenges, women in custody are returning to a community that fully depends on technology to do everything, including buying groceries, talking with friends, setting appointments, applying for a job and housing, holding meetings with parole officers, and so much more. Yet many women in custody exit prison or jail without the technological literacy skills they need to reintegrate.¹²⁴

123 Allison Keys (June 8, 2020). "Crossroads for Women Strives to Empower Women Emerging from Incarceration," KRQE News 13 Albuquerque - Santa Fe, www.krqe.com/news/albuquerque-metro/crossroads-for-women-strives-to-empower-women-emerging-from-incarceration/.

124 Ibid.

IV. Discussion

Limited gender-responsive approaches during the pandemic

As explained above, when corrections agencies and criminal justice officials have implemented measures to prevent and address the spread of COVID-19 in prisons and jails—including mandatory lockdowns, restrictions on movement, social distancing, and limited access to facilities for nonessential workers—many have done so without accounting for the distinct impact these measures would have on women in custody and their children. The special needs of this population have been overlooked, as has usually been the case for women in the corrections context.

That is not to say some women have not benefited from the gender-neutral steps that some agencies and officials have taken to align with experts' guidance for protecting people in custody from infection. Some agencies, for example, have provided individuals in custody and their families with free phone calls and emails, a welcome measure that has allowed incarcerated people to remain in contact with their loved ones, regardless of their ability to pay. Some agencies have provided individuals in custody with computer tablets they can use for phone or video calls, allowing them to make calls without needing to use a shared phone, which may not be properly sanitized between uses. While these measures have benefited some women, they have not been intentionally designed to address the differential impact that COVID safety measures have had on this vulnerable segment of the incarcerated population.

Even where agencies and officials have targeted women in custody for relief, the impact has been negligible, as too few women have actually benefited from these measures. As noted in the previous section, governors' executive orders in New York and North Carolina directing agencies to grant pregnant women early release resulted in the release of only eight women in each state.

Other eligibility criteria, such as the time remaining on their sentence or the nature of their offense, prevented agencies from releasing more women.

According to the National Commission on COVID and Criminal Justice, which was established by the Council on Criminal Justice to assess the impact of the coronavirus pandemic on the justice system and is chaired by two former U.S. Attorneys General, criminal justice agencies need to identify, disseminate, and encourage the adoption of shared standards and best practices in preparing for and responding to public health emergencies like the coronavirus pandemic.¹²⁵ Standards and best practices should also be developed that can help mitigate the harms women have experienced during the pandemic. To date, we are not aware of any agency that has developed a gender-responsive approach to COVID safety measures, one that responds appropriately to the risks of the virus without exacerbating the harms women experience from incarceration.

Some agencies and service providers have adapted by offering remote programming and reentry services

Nevertheless, we identified some examples, highlighted here, of ways that some program and service providers and correctional agencies have adapted their practices so as to continue providing services to women in custody during the pandemic. To be clear, many of these adaptations were born from necessity and are neither a replacement for nor an improvement over in-person programming. But they allow for continued engagement with the women who would otherwise lack meaningful and necessary activities while incarcerated.

Truth Be Told (Texas)

Truth Be Told is a community-based organization providing empowerment programming for women who are currently or formerly

125 National Commission on COVID-19 and Criminal Justice (December 2020). "Experience to Action: Reshaping Criminal Justice After COVID-19," Washington, DC: Council on Criminal Justice, <https://counciloncj.foleon.com/covid19/experience-to-action/welcome/>.

incarcerated.¹²⁶ Before the pandemic, one or two of the organization's staff or volunteers would hold in-person group sessions with up to 15 participants over a 16-week period.¹²⁷ After the Texas Department of Criminal Justice (TDCJ) suspended all visitation and programming in its facilities, the organization shifted to written correspondence programming, and staff and volunteers send readings, activities, and exercises by mail to their program participants, along with messages of hope and encouragement.¹²⁸

The Women's Storybook Project (Texas)

Under normal conditions, the Women's Storybook Project of Texas helps women in custody remain connected to their children by audio-recording mothers reading children's books and then mailing the recording to the women's children along with a brand new copy of the book.¹²⁹ During the pandemic, the organization forgoes the in-person recording, but staff write to women in prison requesting book recommendations for the women's children, and then they mail the children the books with a note on the inside cover from their mothers.¹³⁰

Minnesota Prison Doula Project (Minnesota)

The Minnesota Prison Doula Project provides pregnancy and parenting support for parents who are incarcerated, such as doula support for pregnant women, group education, individual counseling, and supportive visitation.¹³¹ Staff also provides post-pregnancy services, including breastfeeding support. Mothers are able to pump breastmilk at the prison, and the project's staff

deliver mothers' breast milk to their babies, a service that staff has been able to continue during the pandemic.¹³² Project staff members were able to continue providing all other services after COVID hit through written correspondence and by mailing women the curriculum they would otherwise provide in-person. Staff also sent Mother's Day cards to women with children.

Freedom Education Project Puget Sound (FEPPS) (Washington)

FEPPS provides college courses to women, transgender, and gender-nonconforming people in custody at the Washington Corrections Center for Women (WCCW), and supports their access to education after release.¹³³ Even before the pandemic, FEPPS operated through a partnership with a local community college, the state corrections agency, and WCCW's administration, and this partnership was critical in supporting their continued work during the pandemic. The WCCW, like most facilities when COVID hit, restricted non-essential staff from entering the facility, but the administration considered educational programming to be an essential service. As contracted education staff, FEPPS professors were allowed to continue teaching in person, as long as they adhered to all other COVID precautions (i.e. using face masks, physical distancing, etc.). While some professors taught in-person, the majority began teaching through the prison's electronic messaging and paper mail systems. To stay connected and help motivate students, professors also began sending poetry, stories, and notes to students each week.¹³⁴

126 Truth Be Told, accessed January 21, 2021, www.truth-be-told.org/.

127 Truth Be Told, "Talk to Me Series," accessed January 21, 2021, <https://www.truth-be-told.org/programs/talk-to-me-series/>.

128 Truth Be Told (May 12, 2020). "Truth Be Told continues to fulfill its mission amidst a pandemic," <https://www.truth-be-told.org/truth-be-told-continues-to-fulfill-its-mission-amidst-a-pandemic/>.

129 Women's Storybook Project of Texas, "Our Story," <https://www.storybookproject.org/our-story/>, accessed January 21, 2021.

130 Lydia Pyne (June 25, 2020). "Amid coronavirus, WSP continues to connect incarcerated mothers with their children (and caregivers) in letter-writing campaign," Women's Storybook Project, <https://www.storybookproject.org/amid-coronavirus-wsp-continues-to-connect-incarcerated-mothers-with-their-children-and-caregivers-in-letter-writing-campaign/>.

131 Minnesota Prison Doula Project, accessed January 21, 2021, <https://www.mnprisondoula.org/>.

132 Ibid.

133 Freedom Education Project Puget Sound (FEPPS), "COVID-19 Response and Program Updates," accessed March 6, 2021, <https://www.fepps.org/covid-19-response/>.

134 Ibid.

Alabama Prison Birth Project (Alabama)

The Alabama Prison Birth Project typically provides in-person doula support, offers group education, and serves a nutritious meal to pregnant women in custody at the Julia Tutwiler Prison for Women. While the Project is not able to provide in-person doula support during the pandemic, doulas continue to offer their weekly groups and classes through Zoom, a video conferencing platform.¹³⁵ Even during the pandemic, the Project staff have continued their efforts to facilitate the shipment of breast milk from incarcerated mothers to their infants' caregivers.¹³⁶ Also, now that the women at Tutwiler have Zoom access, the Project's staff have been able to record mothers reading a book to their babies.¹³⁷ The Project delivers the recording, a hard copy of the book, and breast milk to their infant's caregiver. Staff have been able to continue communicating with women in custody via mail, sending lessons and other activities.

The Residential Parenting Program at the Washington Corrections Center for Women (Washington State)

During the COVID-19 pandemic, the Residential Parenting Program has continued allowing babies to stay with their mothers who are incarcerated at the Washington Corrections Center for Women (WCCW).¹³⁸ Normally, the facility offers an on-site licensed day care and Early Head Start pre-school where program participants can drop off their children while they attend classes or work at their jobs, and their peers serve as the children's caregivers. When COVID hit, resulting in the curtailing of classes and work, these services were no longer needed. Worried that women would feel

isolated under pandemic restrictions, the program began a weekly in-person mothers' support group. The group carefully adheres to all public health guidelines—women gather with their children in a multi-purpose room and they sit on gym mats that are cleaned and sanitized between uses and placed in designated spots that allow for adequate physical distancing. Licensed social workers facilitate group discussions where women can share their fears and anxieties, receive therapeutic interventions, and play with their children in a safe environment.¹³⁹ Each week, women also participate in yoga and low impact wellness exercises that help relieve their stress.

Just Detention International

After the California Institution for Women (CIW) cancelled all in-person programs, Just Detention International created virtual programming so that its team of experienced staff and interns could continue to provide counseling to survivors of sexual abuse, support and training to sexual abuse prevention peer educators, and wellness programs to incarcerated survivors—a series of workshops that help survivors heal from trauma.¹⁴⁰ The virtual platform also allows JDI's Mental Health Program Director to continue to meet with the Council on Wellness, a group of women in custody at CIW receiving JDI services, to ensure the programs JDI offers continue to respond to women's needs and interests.¹⁴¹ JDI also developed pre-recorded art workshops that guide women as they create art to express and release painful feelings.¹⁴² The model for these workshops are based, in part, on virtual workshops JDI conducts live for people in custody in New York, which allow direct interaction with

135 Central Alabama Community Foundation, "Community COVID-19 United Relief Fund: Round 3 Announcement," accessed March 6, 2021, <https://www.cacinfo.org/community-covid-19-united-relief-fund-round-3-announcement/>.

136 Alabama Prison Birth Project (November 11, 2020), Facebook, accessed March 6, 2021, <https://www.facebook.com/prisonbirth/>.

137 Ibid.

138 Rachel Friederich (May 14, 2020). "Supporting Incarcerated Moms," Washington State Department of Corrections, www.doc.wa.gov/news/2020/05142020.htm.

139 Ibid.

140 Just Detention International (March 2021). "Our Commitment to Survivors," Action Update.

141 Ibid.

142 Ibid.

staff. In addition to offering virtual services, JDI sends monthly updates to women in custody at CIW with guidance on ways to cope with difficult feelings, and staff provide individual support to women through written correspondence.¹⁴³

Crossroads for Women (New Mexico)

Crossroads provides housing and services for women leaving incarceration and returning to Albuquerque.¹⁴⁴ During the COVID-19 crisis, Crossroads has been trying to meet increased demand for services while navigating a housing market where staff members are not able to visit potential apartments in person.¹⁴⁵ In response to COVID-19, the organization has focused its efforts on expanding intakes so that staff are able to help more women find housing where they can safely quarantine or isolate. The organization is also offering food boxes for families and has assembled self-care and boredom kits, recognizing that boredom can exacerbate stress and anxiety.

A New Way of Life Reentry Project (California)

A New Way of Life (ANWOL) provides housing, pro bono legal services, advocacy, leadership development, and case management for women leaving prison in California.¹⁴⁶ Children are also able to live with their mothers at ANWOL homes.¹⁴⁷ Each woman who moves into a house receives an “action plan” with individualized services and goals. ANWOL was founded by award-winning activist Susan Burton, whose own experience in the criminal legal system led her to create communal

houses for women focused on healing. In response to increased demand due to releases during the pandemic, ANWOL opened two new housing facilities for women in South Los Angeles.¹⁴⁸ As of November 2020, the Project has ten houses in the Los Angeles area, averaging seven women per house.¹⁴⁹ ANWOL also trains other organizations to open similar facilities.

The Reentry Initiative (Colorado)

The Reentry Initiative (TRI) typically offers a pre-release program in a women’s facility, coupled with wraparound services for both men and women after release.¹⁵⁰ During the pandemic, TRI has been remotely connecting people with a case manager as well as mechanisms for employment, mental health care, transportation, and housing. TRI is also continuing to offer “welcome back” packs, which consist of a backpack filled with toiletries, clothes, gift cards, and other supplies.

The Center for Women in Transition (Missouri)

The Center for Women in Transition (CWIT) provides comprehensive wraparound services for women reentering the St. Louis community from jail or prison, including transitional housing, mentoring, basic necessities, case management, vocational services, and life skills classes.¹⁵¹ CWIT staff are ensuring that program participants have food, medical care, counseling, and social support during the pandemic, and are following all public health guidelines to prevent the spread of the virus. Participants and staff are required to follow

143 Ibid.

144 Keys, *supra* note 123.

145 Ibid.

146 A New Way of Life Reentry Project, accessed March 6, 2021, <https://www.anewwayoflife.org/>.

147 Patricia Leigh Brown (August 7, 2020). “Leaving Gun Towers and Barbed Wire for a Healing House,” The New York Times, www.nytimes.com/2020/08/07/arts/design/susan-burton-reentry-project-prisons-virus.html.

148 Jovana Lara (November 3, 2020). “After prison, women turn lives around with help from SoCal ‘New Way of Life’ program,” ABC7, <https://abc7.com/covid-19-virus-prisons-jails/7584327/>.

149 Carey L. Biron (June 29, 2020). “U.S. Pandemic Prison Releases Prompt Housing Concerns,” Thomson Reuters Foundation, <https://www.news.trust.org/item/20200629091519-8i41c/>; Brown, *supra* note 147.

150 The Reentry Initiative, accessed March 6, 2021, www.reentryinitiative.org/; Hammon, *supra* note 119.

151 The Center for Women in Transition, accessed March 6, 2021, <https://www.cwistl.org/store/c1/Home>.

stringent social distancing practices, individual counseling sessions are done by phone or during outdoor walks, and all programs and services have adapted to virtual platforms and are provided through Zoom.¹⁵²

While these examples show that it is still possible to deliver programs and services that women need even in the midst of a pandemic, we find the overall landscape of gender-response approaches in the correctional context very bleak at the present time.

The harms that women routinely experience while incarcerated have been magnified by the isolation resulting from COVID safety measures, presenting a risk to the women's mental health, to their family relationships, and to their chances of success upon reentry. The recommendations detailed below highlight a better way for corrections agencies and service providers to address the needs of women during COVID-19 and beyond.

152 Ibid.

V. Recommendations

Recommendations for Reducing the Number of Women in Prisons and Jails

Recommendation 1: Accelerate the release of more women from prisons and jails.

Recommendation 2: Reduce the number of women entering correctional facilities through diversion efforts.

Recommendations for Reducing Harm to Women in Custody

Recommendation 3: Develop innovative strategies for maintaining communication between women in custody and their children and families.

Recommendation 4: Develop innovative ways to deliver programs and re-entry services to women in custody.

Recommendation 5: Provide women in custody access to gender-specific health services that support positive physical, behavioral, and reproductive health outcomes.

Recommendation 6: Create small cohorts, or “mini-communities,” in correctional facilities to reduce the isolation caused by social distancing during the pandemic.

Recommendation 7: Ensure that medical isolation and quarantine are separate and distinct from solitary confinement and that they align with community standards of care.

Recommendation 8: Staff interactions with women in custody should be respectful, helpful, and trauma-informed.

The heightened vulnerability of women in custody during the pandemic calls for a gender-responsive approach to this crisis. This section provides policy makers and corrections agencies with recommendations for protecting the health and safety of women in custody while reducing the harm they are experiencing during the pandemic.

Our recommendations track the early guidelines promoted by the Centers for Disease Control and other correctional healthcare experts, and add

gender-responsive elements to help address the harms that women in custody have experienced during the pandemic. The recommendations are two-pronged: 1) reduce facility density to ease crowding conditions and protect especially vulnerable women, and 2) take steps to reduce harm from precautionary restrictions for those women who remain incarcerated.

While it is important for agencies to think about immediate next steps to better protect women

during the pandemic, corrections officials should also be thinking about how to make some of these reforms more sustainable over the long-term so as to better meet the needs of women in custody. As the National Commission on COVID and Criminal Justice highlighted in its recent report, the virus is shining a spotlight on the existing challenges in our criminal justice system. Public officials need to respond to these challenges by examining and addressing each failure in the short-term, while simultaneously preparing for the next public health crisis.¹⁵³ With this in mind, each of our recommendations offers both short-term measures that can be taken to respond to the immediate COVID crisis, and longer-term actions that can help reduce the harm women experience during incarceration even after the virus subsides.

Recommendations for reducing the number of women in prisons and jails

More women should be released from prison and jail, pursuant to the recommendations of correctional health care experts, public health professionals, and criminal justice experts to depopulate facilities and get the most vulnerable people out of harm's way.¹⁵⁴ As shown in this report, some women are at especially high-risk of serious consequences from COVID-19 due to their health conditions, and many women also face particular harm from the measures put in place to prevent the spread of the virus. In order to protect these women, and since women present relatively low risks to the community, they are an ideal population to target for release.¹⁵⁵

RECOMMENDATION 1: ACCELERATE THE RELEASE OF MORE WOMEN FROM PRISONS AND JAILS.

Immediate Steps

Accelerate the release of women held pre-trial in local jails.

More women are held in jails than in state prisons and most women in jails have not been convicted of a crime, making jails a critical focal point for efforts to reduce the number of incarcerated women.¹⁵⁶ Toward that end, officials should:

- **Release more women from jail on personal recognizance bonds:** When feasible, judges should prioritize releasing women who are in jail pretrial on their own recognizance pursuant to their promise to appear for the next hearing. Because the majority of women are held in local jails solely due to their inability to afford cash bail, increasing the use of no-cost personal recognizance bonds could reduce the number of women in custody. This strategy could be especially effective for women, since being jailed even for a few days can impact their employment, housing, and guardianship of their children.
- **Speed up court hearings:** Judges could speed up court hearings by conducting hearings through teleconferences and holding hearings on the weekend to decrease the number of women who arrive on Thursday and are sitting in jail until the following Monday.¹⁵⁷

153 National Commission on COVID-19 and Criminal Justice, *supra* [note 125](#).

154 Matthew J. Akiyama, Anne Spaulding, and Josiah Rich (2020). "Flattening the Curve for Incarcerated Populations – Covid-19 in Jails and Prisons," *New England Journal of Medicine*, 382(22):2075-2077, pp. 2075-2076, <https://www.nejm.org/doi/full/10.1056/NEJMp2005687>.

155 Olivia Rope (June 4, 2020). "Coronavirus and women in detention: A gender-specific approach missing," Penal Reform International, <https://www.penalreform.org/blog/coronavirus-and-women-in-detention-a-gender-specific/>; United Nations News (July 16, 2020). "Rise in women prisoners and COVID Measures, 'making sentences worse,'" United Nations, <https://news.un.org/en/story/2020/07/1068471>; Schnepel (December 2020), "Impact Report;" Alexandria Macmadu, Justin Berk, Eliana Kaplowitz, Marquisele Mercedes, Josiah Rich, Lauren Brinkley-Rubinstein (October 9, 2020). "COVID-19 and mass incarceration: A call for urgent action," *The Lancet*, 5(11): E571-E572, [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(20\)30231-0/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(20)30231-0/fulltext).

156 Kajstura, *supra* [note 13](#).

157 Linda So, Brad Heath, Jason Szep, Ned Parker, and Peter Eisler (October 28, 2020). "Dying Inside: The Hidden Crisis in America's Jails (Part Three)," Reuters, <https://www.reuters.com/investigates/special-report/usa-jails-release/>.

- **Remind women of their court dates to ensure they appear at their hearings:** To reduce the risk of non-appearance, public defenders and court administrators could use text messages to remind women of their upcoming court hearings, a strategy that was already proving to effectively reduce failure to appear rates among defendants across the country.¹⁵⁸
- **Expand the use of pretrial diversion for women:** Prosecutors should use all available pretrial diversion programs for women. Prosecutors should also consider individual and public health needs when making charging decisions to allow more women the option of participating in programs providing alternatives to incarceration.

Release as many pregnant women as possible from prison and jail.

Because pregnant women are considered a high-risk population when it comes to COVID-19 governors, judges, and parole boards should use their discretionary power to prioritize pregnant women for release, regardless of the length of their sentence or time served. For example, officials could make pregnant women eligible for compassionate release—a release mechanism that varies by state but that typically allows people with serious medical conditions to be released before they have completed their sentences.¹⁵⁹ However, because most existing medical-related early release mechanisms have stringent eligibility criteria—applicants often need to be debilitated or incapacitated as a result of their condition—governors should issue an executive order identifying pregnant women in custody as eligible for early release.¹⁶⁰ Pregnant women present a low-risk to public safety, making them ideal candidates to target for releases.

Expand the frequency with which executive clemency is granted to women in prison.

In addition to the use of executive orders, governors could also grant clemency to more women in prison. Clemency, a process by which governors can either erase a conviction (a pardon) or shorten a prisoner's sentence (a commutation), is an ideal vehicle for reducing the number of women incarcerated. It is an unrestricted power given to the executive to bestow mercy, and there has never been a more urgent time for governors to be merciful towards those who are especially vulnerable to the harms caused by COVID and the measures being used to control it inside correctional facilities.

Eliminate offense categories as the primary factor that determines a woman's eligibility for release from prison or jail.

Most incarcerated women are serving sentences or are being detained for a nonviolent offense, and even for those incarcerated for "violent" crimes, surveys suggest the majority were acting in self-defense against an abusive partner or were implicated in a crime committed by a partner.¹⁶¹ For these reasons, women should not automatically be deemed ineligible for release from prison or jail simply because their underlying conviction is classified as "violent." All women should be considered for release, and those who are over the age of 50, who are pregnant, or who have a medical condition that puts them at high risk should be prioritized for release consideration, regardless of the underlying offense.

158 Jason Tashea (July 17, 2018). "Text-message reminders are a cheap and effective way to reduce pretrial detention," *American Bar Association Journal*, https://www.abajournal.com/lawscribbler/article/text_messages_can_keep_people_out_of_jail.

159 Emily Wang, Bruce Western, and Donald Berwick (November 16, 2020). "COVID-19, Decarceration, and the Role of Clinicians, Health Systems, and Payers," *JAMA Network*, <https://jamanetwork.com/journals/jama/fullarticle/2773226>.

160 Kelan Lyons (May 7, 2020). "Inmates seeking compassionate release face laws not built for COVID-19," *The CT Mirror*, <https://ctmirror.org/2020/05/07/inmates-seeking-compassionate-release-face-laws-not-built-for-covid-19/>.

161 Justine van der Leun (December 17, 2020). "No Choice But To Do It," *The Appeal*, <https://theappeal.org/criminalized-survivors-survey/>.

Pair releases from prisons and jails with coordinated, supportive reentry planning and services.

To support women's successful reintegration, corrections agencies should pair releases with coordinated, supportive reentry services. Planning for reentry and the provision of services, focusing especially on the first few weeks following release, can help promote the health and safety of women, their families and loved ones, and their communities.¹⁶² The challenges returning citizens face in navigating access to services during COVID make the need for these supports more urgent than ever before.

Effective reentry begins at intake, with the development of a coordinated service plan that matches women's needs with community services and treatment providers.¹⁶³ This process should begin by identifying a woman's needs, especially those that contributed to her system involvement, using a gender-responsive assessment instrument. Corrections agencies should use the information gathered during the assessment process to identify resources in the community that could address each woman's particular needs and that will facilitate her effective reentry.

To assist with identifying those resources, corrections agencies should partner with community-based service providers familiar with resources available across the multiple agencies and systems women need to access to successfully reintegrate, including health care, housing, public assistance, and child welfare.¹⁶⁴ Linking women to providers well before their release can make reintegration a fluid process with as little disturbance to supports and services as possible. At a time when communities have been transformed by social

distancing, face mask requirements, temperature screenings, and more, providers can also help women identify and adapt to new processes for accessing these services.

Screen and test for COVID at the point of release, and work with local officials to develop safe quarantine options for women in the community.

Corrections agencies should screen and test women for COVID at the time of release and determine how the results will impact their reentry plans—where they will live, how they will get there, and how they will access other support services. To reduce the risk of community spread of the virus, everyone who is released from prison or jail should be offered a safe place in the community to voluntarily quarantine for 14 days, in accordance with public health guidelines, regardless of whether they tested positive at release, since the virus can take that long to incubate after someone is exposed.

After release, many women live with their partners or family members. To reduce the risk of unknowingly exposing others to the virus, women should not rely on family members' homes for quarantining after release, especially if members of the household are elderly or have other health conditions that increase their risk of experiencing the worst outcomes from COVID.

Finding safe housing options has always been a particular challenge for women after their release, so corrections agencies should work with other local officials to identify safe quarantine options and address any barriers to accessing those options. For example, Denver city officials provide emergency housing vouchers to people who need them and help to connect people exiting jail with a hotel or halfway house, regardless of whether

162 Wang, Western, Backes, and Schuck, *supra* note 110.

163 Emily Salisbury, Patricia VanVoorhis, Emily Wright, and Ashley Bauman (2009). "Changing Probation Experiences for Female Offenders: Findings from the Women's Needs and Risk Assessment Project," *Women, Girls & Criminal Justice*, (10) 6: 81-96, p.83, https://www.researchgate.net/publication/308727319_Changing_the_Probation_Experience_for_Women_Offenders_Findings_from_the_Women's_Needs_and_Risk_Assessment_Project.

164 Stephanie Covington and Barbara Bloom (2003). "Gendered Justice: Women in the Criminal Justice System," *Gendered Justice: Addressing Female Offenders*, Durham, NC: Carolina Academic Press, p.8, <https://www.stephaniecovington.com/assets/files/4.pdf>.

they have COVID-19 symptoms.¹⁶⁵ In July 2020, North Carolina’s Department of Public Safety began a 90-day contract with a Quality Inn & Suites in Durham, enabling the agency to offer a place to quarantine people who have completed their sentences and are being released.¹⁶⁶ In Denver and North Carolina, this process is open to men and women, but in recognition of the particular risks faced by women without a safe home to return to, local or state officials in other jurisdictions could specifically dedicate housing vouchers to women upon their release. Agencies could also work with local officials to identify short-term housing options set up in temporarily closed community centers, hotels, or schools.

Long-term Actions

Partner with community-based programs to develop sustainable approaches to keep women out of correctional facilities and in the community.

Beyond the immediate release of women from prisons and jails, state and local justice systems need to develop sustainable approaches to keep women out of correctional facilities and in the community. Research shows that few women in custody present a substantial public safety risk, given their pathways to incarceration and their responsibilities as caregivers, and that their removal from society has damaging ripple effects on families and neighborhoods.¹⁶⁷ These and other compelling data on the adverse impacts of unnecessarily incarcerating women were already inspiring decarceration efforts across the country, even before the pandemic. These efforts could

serve as inspiration for developing long-term strategies that could sustain the reduced number of women in prisons and jails.

In 2018, CORE Associates and the Women’s Justice Institute (WJI)—experts in gender-responsive approaches to corrections—convened a 100-member task force to lead ambitious decarceration efforts in Illinois to reduce the number of women in state prisons by 50% over seven years.¹⁶⁸ The task force, which includes officials from the Illinois Department of Corrections, formerly incarcerated women, staff from jails, an Illinois Supreme Court Justice, and the Cook County State’s Attorney, pursued a variety of options, which included developing community-based holistic services that are more responsive to women’s needs. These services were structured to support women after their release and could also serve as an alternative to incarceration.

Developing sustainable approaches to keeping women in the community after release will require corrections agencies to develop collaborative partnerships with community organizations that can address the factors contributing to their justice system involvement in the first place. For example, the Washington State Department of Corrections partnered with the Seattle Police Department’s “IF Project” and community social service agencies to establish Seattle Women’s Reentry (SWR), an initiative that addresses the needs of women leaving the Washington Corrections Center for Women.¹⁶⁹ SWR provides writing workshops, holistic health and wellness classes, and reentry planning services for women that address their comprehensive needs while

165 David Sachs (April 20, 2020). “Denver’s jail population is drastically shrinking, but that alone can’t stop deputies and inmates from getting coronavirus,” *Denverite*, <https://denverite.com/2020/04/20/denvers-jail-population-is-dramatically-shrinking-but-inmates-and-deputies-are-far-from-immune-to-coronavirus/>.

166 Charlie Innis (July 7, 2020). “NC prisons to quarantine COVID-19 exposed inmates at Durham hotel before release home,” *The News & Observer*, <https://www.newsobserver.com/news/local/counties/durham-county/article244045942.html>.

167 Annie Sweeney (July 18, 2018). “‘Prison is not where women need to be’: All-female task force wants to cut Illinois’ female prison population in half,” *Chicago Tribune*, <https://www.chicagotribune.com/news/breaking/ct-met-women-prison-population-20180711-story.html>.

168 Ibid.

169 The IF Project, accessed February 5, 2021, <https://www.theifproject.org/#our-story>. The name of “The IF Project” was coined after the executive director’s initial visit to the Washington Corrections Center for Women in which she met with women and asked, “If there was something someone could have said or done to change the path that led you here what would it have been?” Women at WCCW wrote essays answering the director’s “IF” question.

they are still in custody.¹⁷⁰ Research shows that those who participated in SWR's services were less likely to be arrested after their release and were more likely to achieve stability at each stage of the reentry process.¹⁷¹

Similarly, the IF Project in Washington is also working with leaders in the community to develop a community resource center for individuals after their release to provide wraparound services that can ease their transition to the community. Various community organizations and government agencies, including the Department of Corrections Reentry Division, will have offices at the center so that individuals can access multiple services at one location.¹⁷² The IF Project will coordinate services for women after release and help women access community-based programs and services that address their specific needs.

Drawing on models like these two initiatives, corrections agencies should partner with community-based programs and services to develop sustainable approaches that are better equipped to address women's needs and keep them in their community. Given that experiences with trauma, substance use disorders, and mental health challenges typically drive women's contact with the criminal justice system, alternatives to incarceration that address these underlying factors are more appropriate than prisons and jails for the vast majority of women.¹⁷³

RECOMMENDATION 2: REDUCE THE NUMBER OF WOMEN ENTERING CORRECTIONAL FACILITIES THROUGH DIVERSION EFFORTS.

Immediate Actions

Reduce the number of women booked into jails.

Given that the vast majority of women are arrested for nonviolent offenses and present a low risk to the community, women should be brought to a jail only as an absolute last resort, absent a clear and compelling risk to public safety. To reduce the number of women booked into jail, law enforcement agencies should issue citations in lieu of making arrests for low-level and nonviolent offenses. "Cite-and-release" policies instruct law enforcement agencies to issue fines or citations in lieu of arrest for certain misdemeanor offenses such as marijuana possession or driving without a valid license. Allowing law enforcement to issue a citation for a perceived infraction still provides the courts a mechanism for holding people accountable without requiring individuals to be booked into jails. Because the vast majority of cite-and-release policies are applicable only to misdemeanor offenses, individuals who receive a citation and are diverted from jails likely present little to no risk to public safety.

Reduce the number of probation and parole revocations issued to women serving a community supervision sentence by establishing alternative responses that do not include incarceration.

To reduce the impact of community supervision on the spread of COVID-19 inside of correctional facilities, agency and department officials, legislators, and governors should adjust supervision requirements to better reflect changes to community conditions during the pandemic. This could be particularly meaningful for women under correctional supervision, the vast majority of whom (75%) are sentenced to probation.¹⁷⁴ To keep women out of prison or jail, officials should:

- **Set realistic terms of community supervision:**
To reduce the likelihood of technical violations,

170 Sara Jean Green (October 24, 2020). "How 5 women are working to turn a Seattle building into a place of healing for people leaving prison," *The Seattle Times*, <https://www.seattletimes.com/seattle-news/how-5-women-are-working-to-turn-a-seattle-building-into-a-place-of-healing-for-people-leaving-prison/>.

171 Jacqueline Helfgott (December 7, 2020). "Gender-Responsive Services for Women Leaving Prison: The IF's Project's Seattle Women's Reentry Initiative," *Taylor & Francis Online*, <https://doi.org/10.1080/23774657.2020.1852136>.

172 Green, *supra* note 170.

173 Sawyer, *supra* note 21.

174 Kajstura, *supra* note 13.

officials should set terms of supervision that adequately account for women's experiences as well as the ways communities have been transformed due to the restrictions many have implemented to prevent COVID outbreaks. For example, because so many jobs were eliminated, officials should remove conditions on parole or probation that require women to apply for or obtain work. In fact, many of the usual conditions of supervision can be particularly onerous under pandemic conditions, when housing is highly insecure, public transportation is challenging, and unemployment is high.¹⁷⁵

Officials should also replace in-person office visits wherever possible with alternative means of supervision through phone call check-ins or video conferencing.¹⁷⁶ The terms of probation and parole should also be considered through a gender-responsive lens. For women, in particular, childcare duties complicate probation requirements, especially for women who are unable to afford a babysitter to attend required activities and meetings.¹⁷⁷ These measures protect women and their families from infection as well as their probation or parole officers.

- **Establish alternative responses to probation and parole violations that do not include incarceration:** Officials should administratively eliminate or greatly limit revocation for technical violations, and should address non-compliance with the rules, such as missing appointments, with responses that do not include incarceration. Concerned over the spread of the virus, in

March 2020, over 50 probation and parole commissioners across the country issued a statement recommending that community supervision agencies suspend incarceration for technical violations.¹⁷⁸

Research has not found an association between technical violations and favorable public safety or rehabilitative outcomes.¹⁷⁹ More often, missing appointments occurred because parole and probation conditions were burdensome and conflicting, for example, requiring people to obtain stable employment yet also requiring them to attend multiple meetings with officers during working hours.¹⁸⁰

Rather than issue an arrest warrant for technical violations, agencies should determine the factors contributing to non-compliance and adjust supervision requirements accordingly. This approach was identified by experts as a best practice even before the pandemic.¹⁸¹ Given that three out of four women under criminal justice system control are on probation, adjusting the penalties for violating burdensome conditions of supervision could keep a significant number of women out of jail.

Long-term Actions

Corrections agencies should analyze the data they have about women in custody to assess the drivers of the population.

A state or local effort to reduce the prison or jail population should be informed by a thorough data-driven analysis of the current population,

175 Wang, Western, Backes, and Schuck, *supra* note 110.

176 EXiT: Executives Transforming Probation & Parole, "Statement from community supervision executives on the importance of using best practices during the COVID-19 crisis," <https://www.exitprobationparole.org/covid19statement>.

177 Kajstura, *supra* note 13.

178 EXiT: Executives Transforming Probation & Parole, *supra* note 176; Vincent Schiraldi (May 2020). "Two months later: Outcomes of the March 27th order to release people jailed for technical violations during the pandemic," Columbia University Justice Lab, p.6, <https://justicelab.columbia.edu/sites/default/files/content/NY%20Two%20Months%20Later%205.27.20%20final.pdf>.

179 EXiT: Executives Transforming Probation & Parole, *supra* note 176.

180 Shaila Dewan (August 2, 2015). "Probation may sound light, but punishments can land hard," The New York Times, <https://www.nytimes.com/2015/08/03/us/probation-sounding-light-can-land-hard.html>.

181 See e.g., Harvard Kennedy School, (July 2017). "Toward an Approach to Community Corrections for the 21st Century: Consensus Document of the Executive Session on Community Corrections," Papers from the Executive Session on Community Corrections, https://www.hks.harvard.edu/sites/default/files/centers/wiener/programs/pcj/files/Consensus_Final2.pdf.

including the reasons for their incarceration, any barriers to keeping them in the community, and their need for various services. Counties should use the results of this analysis to create or expand and enhance the jail diversion strategies that could best match women’s needs, including the strategies described earlier. States should use the results to reduce prison admissions.

Successful reductions in admissions will depend on criminal justice stakeholders working together toward the common goal of keeping women out of correctional facilities to reduce their risk of exposure to the virus and their risk of harm from incarceration even beyond the pandemic. All the key county-level stakeholders, including the county governing body, law enforcement agencies, District Attorney’s Office, the courts, probation agency, Sheriff’s Office, public defenders, mental health agencies, and others, must engage in the process of assessing the current jail population and determining whether alternatives exist for each woman. State agency administrators will also need to work with local officials to determine ways to reduce prison admissions without overcrowding local jail facilities.

Invest in more community-based services to ensure adequate health care and social supports that keep women and their families healthy and safe.

The reductions in population achieved during the pandemic should be sustainable, and should be expanded as more community-based diversion options for women are developed. Research has shown that the vast majority of women who come into conflict with the law should not be in jail at all, but rather in the community through a wide variety of diversion efforts paired with a strong community safety net that can address the needs of women and their families. Jail diversion strategies should not be simply a menu of options, but a very carefully tailored approach matching the specific diversion strategy to a particular segment of the detained jail population.

After correctional agencies and criminal justice systems have released as many women as

possible from correctional facilities, agencies need to work with other stakeholders to use prisons and jails sparingly, as a “last resort” for only the most serious crimes, and with a strong preference for providing services to women in the community wherever possible. Counties should rely on the alternatives described in the previous section as the default status for women who are arrested and reserve incarceration for women who present a clear and compelling risk to public safety. The long-term success of this strategy will depend on the availability of gender-responsive community services and treatment providers that can provide alternative methods of accountability that promote recovery and support for women and thereby reduce the likelihood of future criminality.

Some communities have begun to recognize the potential long-term benefits of investing in community-based services. In November 2020, Los Angeles County voters passed a measure that requires a minimum portion of the county’s budget to be spent on housing, mental health treatment, jail diversion programs, and other alternatives to incarceration—all supports and services that could address women’s needs and keep them in their home community.¹⁸²

Recommendations for Reducing Harm to Women in Custody

For women who still remain in custody after the approaches detailed above, it is important to ensure that officials implement COVID safety measures with a concurrent plan to mitigate the harm that women experience as a result of these restrictions. A gender-responsive approach to supervising women in custody identifies and responds to women’s distinct needs, mitigates the harm women experience during incarceration, and ensures women are prepared for release. A gender-responsive approach is more than providing women access to programming that is tailored to addressing their distinct needs. It is a fundamental shift away from a traditional approach to correctional supervision, which harms women. We developed the recommendations

182 So, Heath, Szep, Parker, and Eisler, *supra* [note 157](#).

“There are millions of women like me...The separation from my kids, this is the harshest punishment I have received. Because my kids were very vulnerable and they were very young and they needed me.”

Source: “Governor, let me see my kids before I die,” The Guardian, June 3, 2020.

COUNTY JAIL

below with those objectives in mind. These recommendations should not be considered a menu of options. To be truly gender-responsive, agencies need to carefully tailor all aspects of in-custody supervision to address women's needs and reduce harm.

RECOMMENDATION 3: DEVELOP INNOVATIVE STRATEGIES FOR MAINTAINING COMMUNICATION BETWEEN WOMEN IN CUSTODY AND THEIR CHILDREN AND FAMILIES.

Corrections agencies should develop innovative strategies to help women stay in contact with their children and families while in-person visitation is restricted. Maintaining contact with family reduces the stress women and their loved ones experience from being physically separated and from increased facility lockdowns and social isolation during the pandemic. When women are able to have regular visits with their family, they are more likely to comply with facility rules, their children have better behavior and performance outcomes at school and at home, and their risk of returning to prison or jail is reduced.¹⁸³

Agencies should take the following steps to support family connections:

Immediate Actions

Issue free computer tablets to women with no-cost plans so that they can maintain contact with their children and families without needing to use shared public phones.

Computer tablets would allow women to make video calls and send emails to their children, family, and loved ones. While in-person contact is certainly preferable, tablets provide a viable alternative during a pandemic when in-person contact is restricted. Moreover, access to these devices reduces the need for women to use shared public telephones at facilities, which present a risk for viral transmission.

Tablets should not be cost prohibitive. To support this method of communication between women and their families during public health crises, when facilities need to prohibit in-person visitation and programming, states and counties should shoulder the cost of tablets instead of transferring these costs to women or to their families. Agencies should pay for the devices as well as the usage fees and the fees for any applications that people in custody need to use to talk with family.

These expenses need not be costly for the agencies. The price of tablets has decreased as technology has advanced, making them more affordable. Beyond the price of the device and the user fees, there are a number of steps agencies can take during contract negotiations with tablet vendors to ensure vendors keep costs low.¹⁸⁴

Some jurisdictions already made tablets available for free or at significantly reduced cost to people who are incarcerated, even before the pandemic.¹⁸⁵ Officials in Allegheny County, Pennsylvania distributed free electronic tablets to people in custody at the jail as a way to connect them to the outside world through video calls and messaging.¹⁸⁶ Local corrections agencies across Kansas have also distributed free tablets

183 Bryce Peterson, Jocelyn Fontain, Lindsey Cramer, Arielle Reisman, Hilary Cuthrell, Evelyn F. McCroy, Margaret Goff, Travis Reginal (2019). "Model Practices for Parents in Prisons and Jails: Reducing Barriers to Family Connections," Urban Institute, https://www.urban.org/sites/default/files/publication/100531/model_practices_for_parents_in_prisons_and_jails_0.pdf; Cramer, Goff, Peterson, Sandstrom, *supra* note 64.

184 For a list of best practices agencies should follow to keep costs low, for more guidance on best practices for the use of tablets in prisons and jails, the Prison Policy Initiative developed a resource guide with a comprehensive overview of the security features that are available as well as important warnings for agencies establishing a contractual agreement, including information about how to keep costs low, see Stephen Rahe (February 7, 2020). "Best practices for prison and jail tablet procurement," Prison Policy Initiative, https://www.prisonpolicy.org/messaging/rfp_guidance.html.

185 Rahe (February 7, 2020), "Best practices for prison and jail tablet procurement."

186 Kiley Koscinski (December 21, 2020). "Tablets Offer Those Incarcerated at County Jail Connection to Outside, But Not Without Issues," WESA, <https://www.wesa.fm/post/tablets-offer-those-incarcerated-county-jail-connection-outside-not-without-issues#stream/0>.

to people in custody at jails that they can use to call their families and loved ones.¹⁸⁷

Nor do these devices necessarily present a security risk. Features can be pre-installed to limit who users can contact and what external websites they can access. Agencies can set up tablets to operate on a closed network—an “intranet,” instead of the internet—in order to give facility administrators control over the music, videos, games and other media that users can access.¹⁸⁸ Agencies could also require women to pre-register their contacts to be stored on their tablets. The content of messages and phone calls can also be monitored by jail staff, though agencies must closely adhere to laws governing the calls they are permitted to record. For example, agencies are not permitted to record calls between people in custody and their attorneys.¹⁸⁹

Revise mail policies to support parent-child communication.

To support healthy parent-child communication while families are restricted from visiting their loved one in person, agencies should:

- Allow women and children to send photographs, letters, greeting cards, postcards, and drawings to one another, as well as paper-based activities such as coloring pages, growth charts, or crossword puzzles that parents and children can do together via mail.
- Allow women to record themselves reading a book or creating a “video diary,” and send recordings to their children for free. Women should also be allowed to receive recordings of their children from their children’s caregiver.
- Partner with a nonprofit or community-based organization to help facilitate sending these

materials between women and their children. These organizations can teach parents letter-writing skills and help parents process and respond to communications they receive from their children and families, helping women strengthen their relationship with their children while they are away. Organizations can also help women and their families understand and follow the agency’s policies and guidelines for mailing the packages.

Long-term Actions

Continue to provide a video visitation option that families can use if they are unable to travel to the facility, while ensuring that video visits serve as a supplement to, and not a replacement for, in-person visits.

Video visits can eliminate some of the challenges that in-person visits present, such as the distance and cost of travel, and may be less stressful and traumatic for children. Experts suggest that younger children may be less confused by video visits given the widespread public use of video technology, such as Skype, FaceTime, and Zoom.¹⁹⁰ Video visits also offer an accessible means of communication for people who are deaf or hearing impaired and who cannot easily communicate via telephone.¹⁹¹ But it is critical that agencies do not use video communication as a substitute for in-person visits once face-to-face visits are safe to reinstate.¹⁹² Importantly, agencies should always provide free access to tablets and telecommunication services to women in custody and their families. Because it is critical to help strengthen these relationships, the methods of communication that corrections agencies provide should never be a financial burden for women or their families.

187 Amy Renee Leiker (January 3, 2021). “Sedgwick County Jail inmates now have tablets they can download music, movies, games on,” The Wichita Eagle, <https://www.kansas.com/news/local/crime/article247958080.html>.

188 Jeff Horvath (September 28, 2020). “Pennsylvania County Prisons See Tablets Causing Good Behavior,” Government Technology, <https://www.govtech.com/public-safety/Pennsylvania-County-Prisons-See-Tablets-Causing-Good-Behavior.html>.

189 Peter Wagner and Alexi Jones (January 14, 2021). “Best practices for phones RFPs,” Prison Policy Initiative, https://www.prisonpolicy.org/phones/rfp_guidance.html.

190 Cramer, Goff, Peterson, and Sandstrom, *supra* note 64.

191 Mike Ludwig (August 22, 2016). “No Way to Call Home: Incarcerated Deaf People are Locked in a Prison Inside a Prison,” Truthout, <http://www.truth-out.org/news/item/37308-no-way-to-call-home-incarcerated-deaf-people-are-locked-in-a-prison-inside-a-prison>.

192 American Bar Association, Standards for the Treatment of Prisoners, Standard 23-8.5(e) (“Correctional officials should develop and promote other forms of communication between prisoners and their families, including video visitation, provided that such options are not a replacement for opportunities for in-person contact.”).

Allow women, their children, and their families to participate in virtual activities together.

Access to affordable tablet services could allow women to participate in virtual activities with their children and families, such as “Movie Nights Out,” cooking classes, games they might otherwise play together in-person, or reading stories. Activities can help normalize the parent-child relationship and strengthen bonds, improving outcomes among women in custody and their children. For their children, spending time together as a family through play, conversation, or sharing a meal can help mitigate children’s feelings of abandonment and anxiety, both of which can contribute to adverse health and behavioral outcomes.¹⁹³

Create a family-friendly visitation program that takes into account the needs of visitors and provides on-site support to women, their children, and caregivers.

Correctional agencies should create and implement a family-friendly visitation program that supports women, their children, and their children’s caregivers, to encourage ongoing family connections and address the needs of all members of a woman’s family.¹⁹⁴ Research shows that visitation is an underused opportunity for therapeutic intervention, and that parent-child visits appear to be most effective when part of a larger family strengthening program.¹⁹⁵ Services provided through the program might include parenting classes, coached telephone calls, letter writing, and case management for parents, children, and family members. Visits coupled with a suite of services can lead to improved parental attachment and child self-esteem, better school behavior, and lower school dropout rates.¹⁹⁶ Services could also

be provided in a video-conferencing format for families that typically engage through video visits.

RECOMMENDATION 4: DEVELOP INNOVATIVE WAYS TO DELIVER PROGRAMS AND REENTRY SERVICES TO WOMEN IN CUSTODY.

Not only can tablets help women in custody maintain contact with their families, these devices can also supplement the programs and services provided to women while they are incarcerated. While tablets offer a great deal of promise, they should be used to supplement existing services, not to replace them. For example, the increased use of tablets should never be used to justify eliminating libraries in correctional facilities or for restricting access to paper mail.¹⁹⁷ But tablets can certainly be used to deliver remote classes and support sessions when in-person programming is not possible due to the pandemic. And tablets could be used to offer a more individualized menu of classes and services that are tailored to the needs of each woman.

Immediate Actions

Provide women with free tablets that have applications they can use to attend virtual programs and access services, at no cost to the women.

In addition to allowing for continued communication with families, tablets provide women with the ability to access virtual programming, education, recovery services, and wellness programming, among other resources. Programs could be accessible on tablets, whether through pre-recorded videos or live streaming. Women could use tablets for completing work and

193 Cramer, Goff, Peterson, and Sandstrom, *supra* note 64.

194 Ervin Dyer, Kathy McCauley, and Evelyn Whitehill (2013). “The Bridge to Home: The Allegheny County Jail Collaborative’s Family Support Initiative,” Allegheny County Department of Human Services, <https://www.alleghenycountyanalytics.us/wp-content/uploads/2016/06/The-Bridge-to-Home-The-Allegheny-County-Jail-Collaborative%E2%80%99s-Family-Support-Initiative.pdf>.

195 Cramer, Goff, Peterson, and Sandstrom, *supra* note 62; Marty Beyer, Randi Blumenthal-Guigi, and Tanya Krupat (2010). “Strengthening parent-child relationships: Visit coaching with children and their incarcerated parents,” *Children of Incarcerated Parents: Theoretical, Developmental and Clinical Issues*, New York: Springer, p. 187-214, <https://psycnet.apa.org/record/2010-06959-008>.

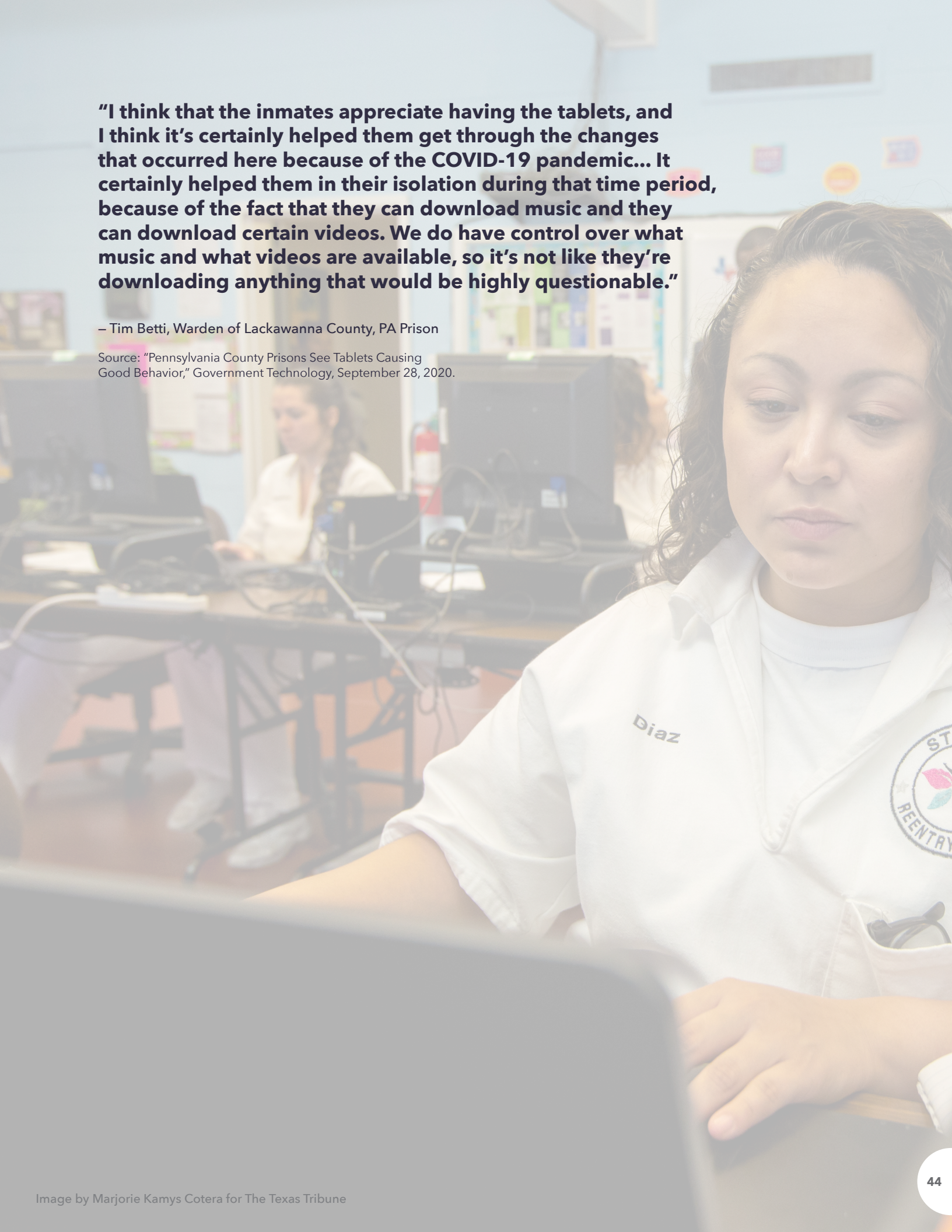
196 Cramer, Goff, Peterson, and Sandstrom, *supra* note 64.

197 Mack Finkel and Wanda Bertram (March 7, 2019). “More states are signing harmful ‘free prison tablet’ contracts,” Prison Policy Initiative, www.prisonpolicy.org/blog/2019/03/07/free-tablets/.

“I think that the inmates appreciate having the tablets, and I think it’s certainly helped them get through the changes that occurred here because of the COVID-19 pandemic... It certainly helped them in their isolation during that time period, because of the fact that they can download music and they can download certain videos. We do have control over what music and what videos are available, so it’s not like they’re downloading anything that would be highly questionable.”

– Tim Betti, Warden of Lackawanna County, PA Prison

Source: “Pennsylvania County Prisons See Tablets Causing Good Behavior,” Government Technology, September 28, 2020.



assignments that can then be sent to instructors who are temporarily unable to enter the facility. The costs of all programming and applications must be picked up by the correctional agency, not by the women themselves. This should be seen as an essential method for delivering programming, not as a money-making venture for the agency or a third-party business.

Women in custody should also be permitted to use tablets to contact service providers that may be able to provide reentry support. Allowing women to connect with service providers before release increases the likelihood that women will engage with services immediately after their release. As discussed in Recommendation 3, as a security measure, agencies could require women to pre-register the contacts that they would store on their tablets to make calls.

Shift current programming and services to teleconferencing platforms.

Agencies should shift currently suspended programming and services to teleconferencing platforms to allow program facilitators to provide curriculum through live teleconferencing sessions. For example, in Colorado, the University of Denver Prison Arts Initiative continued to provide classes in prison using Google hangouts, and put together a four-hour production showcasing the incarcerated students' work, which they were able to stream through YouTube on televisions in prison facilities across the state.¹⁹⁸ And the Cornell Prison Education Program in New York continued to provide classes to people who are incarcerated by switching to a combination of email and teleconferencing.¹⁹⁹ If providing live sessions is not possible, agencies should allow facilitators to record themselves, and provide incarcerated people an opportunity to view the recording. For example, staff could upload any

pre-recorded programming onto women's tablets to view on-demand, or could play the recordings on televisions in the facilities. The Texas Department of Criminal Justice, for example, streams pre-recorded church services on televisions in common areas in its facilities.²⁰⁰

Allow women to use their tablets to play games, read e-books, listen to music, and participate in any other virtual activity, free of charge.

Tablets also give women more options for how to spend their time, especially during the extended lockdowns during the pandemic. Music, books, and games could also be accessible on tablets, providing women access to activities that would help prevent idleness and stress, both of which can contribute to adverse health and behavioral outcomes. Soon after agency officials in Kansas began distributing tablets to people in custody, nearly 60% of jail staff reported the positive impact that devices had on the behavior of people in custody.²⁰¹ Many of the features available on these devices are also free to people in custody, including: job search tools; thousands of e-books; self-paced educational materials; law library access; religious information; and dozens of podcasts focused on addiction and mental health.²⁰²

For women who are placed in medical isolation or quarantine after testing positive for COVID or after they were exposed to the virus, tablets can mitigate the risk of psychological harm that can come from keeping people socially isolated. Agencies should ensure women in medical isolation or quarantine are able to access tablets. This strategy is discussed in more detail in Recommendation 7.

Ensure virtual programming runs smoothly.

Staff should be trained on modifications to the daily schedule for programs and activities and should

198 Keri Blakinger (January 19, 2021). "Zoom funerals, outdoor classes: Jails are evolving amid Covid, but what happens afterward?" NBC News, https://www.nbcnews.com/news/us-news/zoom-funerals-outdoor-classes-jails-are-evolving-amid-covid-what-n1254402?fbclid=IwAR0WHijxT2oSsVR83HSDmc4QpQwNRv7ClTg91cMQmls2Qi4YjZ3_nvVvmYc.

199 Ibid.

200 Ibid.

201 Leiker, *supra* note 187.

202 Ibid.

understand their role in ensuring the new schedule runs smoothly. If women are allowed to use tablets during the day, staff need to know when they are required to distribute tablets in the morning and to collect them at the end of the day, and how the tablets should be sanitized between uses. If a woman's access to her assigned tablet is contingent upon her behavior, staff should be clearly trained on the protocol for determining which women are permitted to access their tablets on any given day. If women are allowed to attend virtual group programming, staff should understand their role in coordinating the logistics for those programs. They may need to make sure the proper AV equipment is set up, to arrange chairs with a safe distance between them, and to make sure women have washed their hands before and after the session.

Long-term Actions

Expand and enhance the programs and services available to women in custody, through additional community partnerships and use of technology to supplement in-person offerings.

Post-pandemic, correctional agencies should continue to offer an expanded array of programs and services through tablets and video conferencing platforms in addition to in-person programs and services. Virtual platforms allow volunteers and other facilitators to offer programs and services without requiring them to travel to the facility. This is especially advantageous for facilities located in remote areas. The virtual options should continue to be provided at no cost to the women, since these programs and services are so essential for effective preparation for reentry.

Agencies should develop formalized partnerships with community providers to offer a range of ongoing services that respond to the diverse needs of women (e.g., mental health, substance use services, family support and reunification, employment, and health care services) and to support their transition back into the community after release. Agencies should also partner with businesses that offer women in custody vocational

training through a virtual platform and possible employment post-release.

Agencies that are unable to provide women with tablets should still partner with community providers to offer an array of services, but providers would have to facilitate programs in-person.

Offer wellness programs as well as other preventive measures that promote women's health.

Corrections agencies should work with community-based services to create a wellness program for women with weekly workshops focusing on nutrition, smoking cessation, weight reduction, healthy cooking, basic sanitation, safe sex practices, drug use, the spread of infectious diseases, management of chronic diseases, and preventive healthcare. The program should also provide information on parenting, domestic violence, sexual abuse, and healthy relationships, and should offer yoga, t'ai chi and other exercise classes.²⁰³ All of these courses could be pre-recorded or provided via live stream so that women in the facilities could participate virtually.

Provide women with healthy food options and food preparation skills they can use after release.

The food served at prisons and jails should be nutritious and include healthy choices, including fresh fruit and vegetables. Women who want to maintain a vegetarian, vegan, or religious diet should be provided food options that support those lifestyles. The commissary should offer healthy food items for purchase, and they should be able to store those items where they can easily access them. Access to healthy foods could improve women's physical health and prevent weight gain while incarcerated, which often contributes to adverse health outcomes and a negative self-image, which in turn can contribute to continued dependence on drugs or alcohol and to recidivism.²⁰⁴ Moreover, providing women access to healthy foods is an important complement to classes on nutrition, wellness, and other healthy habits.

203 Meghan Ramaswamy and Nicholas Freudenberg (2007). "Health Promotion in Jails and Prisons: An Alternative Paradigm for Correctional Health Services" *Public Health Behind Bars*, New York, NY: Springer, p. 232, https://link.springer.com/chapter/10.1007/978-0-387-71695-4_13.

204 Sawyer, *supra* note 83.

Some facilities are finding creative ways to provide people in custody with healthy food options by creating an in-house “farm-to-prison” process in which people in custody grow healthy, nutritious food that they are able to harvest and cook for themselves and their peers. In Maine, people in custody at the Mountain View Correctional Facility cultivate and harvest crops, and bake virtually all of the rolls, breads, and muffins served at the prison. The facility’s food service manager, an experienced farmer, teaches the science and health values behind the food they prepare so that they can utilize the knowledge and skills in the community after release.²⁰⁵ Any surplus crops are distributed to other prisons and food banks across the state, and leftover food is composted, which creates nutrient rich soil for crops to grow.²⁰⁶ The Farm to Prison Project in Maryland is piloting a similar program with women in custody at the Maryland Institute for Women.²⁰⁷ Importantly, these practices must be complemented by positive employment experiences—women in custody should be paid a fair wage for any work performed at correctional facilities.

The Noble Correctional Institution in Ohio is combining healthy eating practices with positive family visits by providing people in custody an opportunity to organize and plan a cookout with their families.²⁰⁸ The activity provides an opportunity for people in custody to prepare meals for their families, eat together, and clean up afterward. Because the vast majority of incarcerated women have children from whom they are currently separated, this activity could be especially beneficial for them.

Offer arts programs that provide education and a creative outlet for women in custody, and use virtual streaming options to prevent programming disruptions and to showcase their work.

Agencies should also partner with arts organizations in the community to offer programs to women in custody, including, for example, theatre, music, creative writing, and poetry workshops. Providers could organize shows, concerts, a reading, or a spoken word night in which other women in the facility and the participants’ families and friends are invited. Ideally, programming would be offered in-person, but agencies should continue to provide virtual streaming options so that loved ones and members of the community who are not able to attend in person can still watch the events and participate as audience members. Even when in-person gatherings are possible, agencies and community partners could still stream these events online. Participation in the arts promotes emotional health, encourages a woman’s membership in a supportive community with others who have shared interests in the arts, and helps decrease recidivism. As Dean Williams, Executive Director of the Colorado Department of Corrections, has noted, arts programming, including theater workshops, has an impact on people in custody by helping them discover new talents and a sense of responsibility to their peers.²⁰⁹

Create a diverse team of case managers and a structure for overseeing a woman’s progress toward achieving her goals and for preparing her to return to a community transformed by the pandemic.

All programs and services provided at a gender-responsive facility should be as individualized and personalized as possible for each woman. Toward this end, each woman should be assigned a case manager while she is incarcerated to help her develop goals and track her progress towards reaching those goals. At intake, case managers should administer a gender-responsive needs assessment and develop

205 Brown, *supra* note 94.

206 Ibid.

207 Ibid.

208 Ibid.

209 Laura Miller (December 2, 2020). “Thousands View Artwork and Performances from People Inside Colorado’s Prisons,” University of Denver Prison Arts Initiative, <https://liberalarts.du.edu/prison-arts/news-events/all-articles/thousands-view-artwork-and-performances-people-inside-colorados-prisons>.

a service plan for each woman that builds upon her existing skills and matches her needs to the programs and services available to her during incarceration, including virtual options that can be individualized. Case managers should also prepare women for their release by helping them identify and coordinate services that they need to support their return to a community that has been transformed by the pandemic.

Case managers should be professionals with expertise and specialized training in social work, health, behavioral health, trauma, family relationship dynamics, and parenting support. They should also be trained in gender-responsive interactions and should model positive, healthy, and professional relationships. Case managers should be able to shift easily between in-person and virtual meetings to prevent any potential disruption in services if they are not able to meet with women at the facility.

Agencies should also provide women in custody with peer support specialists as a complement to case management services. Peer specialists are individuals with a history of substance use and/or mental health challenges, and who have also been involved in the legal system. Peer specialists are managing those challenges and are healthy, supportive members of their community. Their lived experience has a value typically not offered by other mental health providers, and peers are trained to harness their experience to promote hope, socialization, recovery, self-advocacy, development of natural supports, and maintenance of community living skills. Peer support services also reduce the stigma of lived experiences by demonstrating that recovery and long-term health and safety is not only possible, it is expected.

Peer specialists could complement case management services by facilitating programs and services, and taking the lead on transition planning, helping women navigate the web of community-based services they will need to access after release. They could continue to provide

services during the first three months after a woman's release to ensure a continuum of care and reduce the likelihood of recidivism.

All programs and services should use a trauma-informed approach to interventions that recognize the prevalence of trauma among justice-involved women.

Given that 90% of women in custody report personal histories that include sexual assault, physical assault, parental abuse and neglect, and other traumatic experiences, all programs and services at the facility should be trauma-informed, meaning that programs and services provided to address needs other than trauma should incorporate knowledge about violence against women and the impact of trauma in order to increase their effectiveness.²¹⁰ Staff and providers facilitating the programs and services should understand how a woman's history of trauma may impact her receptiveness or resistance to program participation, her behavior, and her attitudes. Programs should be adapted to take account of those considerations, avoid triggering trauma reactions and/or re-traumatizing the individual, support the individual's coping capacity, and allow survivors to manage their trauma symptoms successfully so that they are able to benefit from the programs and services.²¹¹

Agencies should also provide trauma-specific treatments, supports, and interventions that are therapeutic approaches for individuals with trauma-related disorders such as PTSD. Such a continuum of services helps women identify and cope with the effects of trauma in their lives, become motivated through education, understand their trauma and its impact on addiction and recovery, identify their triggers, focus on their strengths, develop resilience, and create aftercare plans to support them in the community after release. Trauma-specific treatment programs address the salient risk factors contributing to women's involvement with the criminal justice system (e.g., mental health challenges and a history of substance use and trauma) as co-occurring disorders.

210 Bloom and Covington, *supra* note 43.

211 Maxine Harris & Roger D. Falot (2001). "Using Trauma Theory to Design Service Systems," *New Directions for Mental Health Services*, San Francisco: Jossey-Bass, available at: <https://psycnet.apa.org/record/2001-00826-000>.

Trauma-informed programs and services are only effective when implemented within a trauma-informed culture. Research shows the benefits of creating a trauma-informed culture within the facility in which staff understand trauma's pervasive effects on a woman's mental and physical health and in which programs are offered to help women better understand and cope with these effects.²¹² Staff and providers should be trained to identify the ways in which a woman's history of trauma and co-occurring conditions translate into challenges and barriers to success in the reentry process. This awareness can help support women inside the classroom (or another setting in which the programs and services take place) and in staff's everyday interactions with the women, which can be important opportunities for women to practice the skills they have learned in their programs and services to prepare them for their return to the community. Staff training is discussed more in Recommendation 8.

RECOMMENDATION 5: PROVIDE WOMEN IN CUSTODY ACCESS TO GENDER-SPECIFIC HEALTH SERVICES THAT SUPPORT POSITIVE PHYSICAL, BEHAVIORAL, AND REPRODUCTIVE HEALTH OUTCOMES.

A gender-responsive correctional health care system recognizes and addresses women's comprehensive needs, including their specific physical, reproductive, and mental health care needs. During the COVID crisis, it has been even more critical to address women's health needs since those with preexisting conditions are at a greater risk of the worst outcomes from the virus.

Immediate Actions

Expand women's access to health services by offering telehealth and tele-mental health services.

Connecting women to telehealth services through community-based providers could expand access to physical and mental health care at a time when

correctional healthcare systems are already strained due to COVID. While telehealth cannot replace many types of necessary medical care that must be provided in-person, it could supplement the delivery of health care services to women, including for some types of preventive, reproductive, and mental health care. The Telebehavioral Care Clinic at the Texas A&M University Health Science Center, which has been delivering mental health care through telehealth platforms to people in custody in rural populations for the last decade, has found that providing telebehavioral health services can transcend geographic barriers between people in custody and their providers, who are often not able to travel long distances, and is also a much more affordable option than in-person care.²¹³ Texas A&M providers also found that people in custody who received mental health care through telehealth platforms developed more trust for their providers and were more likely to engage in services, even after their release.²¹⁴ Agencies should provide telehealth platforms on tablets so that women can access their appointments from their housing units, thereby reducing the need for movement throughout the facility and limiting the risk of viral spread.

Expand access to prenatal counseling to support women through the challenges of pregnancy and to help them plan for their babies' arrival.

Recognizing the stress, trauma, and detrimental impact on a new mother's mental health when separated from her baby, correctional agencies should provide new mothers with targeted services focused on supporting their mental health and wellness, including healthy coping skills. Health services should also include contraception counseling and coordination with health care providers to ensure pregnant women have a choice of contraception after delivery. Contraception counseling and coordination should also be available for all women in custody to ensure they are able to continue to use their contraception method

212 Benedict, *supra* note 45, at p. 1.

213 Mary Leigh Meyer (February 27, 2020). "Using telehealth technology to provide mental health counseling for inmates," Vital Record, Texas A&M Health Science Center, <https://vitalrecord.tamhsc.edu/using-telehealth-technology-to-provide-mental-health-counseling-for-inmates/>.

214 Ibid.

of choice while they are incarcerated. Women who would like to start using contraception should be advised of their choices and provided access to the option they choose.

Providers need to work closely with each pregnant woman to help determine an appropriate plan for ensuring the safe care of her infant following delivery if she remains incarcerated. For a woman who chooses adoption or a temporary caretaking arrangement for her newborn, the provider could help facilitate discussions between the woman and the baby's identified caregiver. Such conversations could help ease the stress experienced by the woman relinquishing care of her new baby while she resolves her case or completes her sentence.

Long-term Actions

Partner with community-based health services to develop a continuum of care for women that begins while they are still in custody and supports their reintegration to the community.

Sustaining the population reductions agencies are able to achieve during the pandemic will require women to connect with and engage in community-based health services.²¹⁵ Agencies should develop partnerships with community health clinics and treatment providers that can provide women access to safe, respectful, and dignified health services that meet their needs. Comprehensive, integrated programs and treatments should be designed to meet women's multifaceted health care needs, including physical health, mental health, and reproductive health care, as well as substance use treatment. Health care services should also include health literacy and general wellness classes that provide information about the ways in which community health services have been transformed by the pandemic.

Telehealth services should also remain available to women even after the pandemic is over as a way to supplement existing in-person health care.

215 Wang, Western, Backes, and Schuck, *supra* note 110.

216 Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95.

217 Ibid.

RECOMMENDATION 6: CREATE SMALL COHORTS, OR "MINI-COMMUNITIES," IN CORRECTIONAL FACILITIES TO REDUCE THE ISOLATION CAUSED BY SOCIAL DISTANCING DURING THE PANDEMIC.

After releasing as many women as possible, agencies should reconfigure housing arrangements for those who remain to make it less stressful for the women as the agency implements social distancing and other public health guidelines for minimizing the risk of exposure to COVID-19. Just as in outside communities, social isolation can lead to high levels of stress, tension, and mental health ramifications, and thus, it is essential to find ways to increase opportunities for connectedness among the women who are incarcerated.

Immediate Actions

Organize women into "cohorts" to minimize the risk of viral transmission but still allow for social interactions.

Correctional administrators should develop cohorts based on where residents currently reside, to minimize the spread of the virus through movements within the facility.²¹⁶ The cohorts should operate like "mini-communities" within the facility, much in the way that individuals living alone and small family units have bonded into pods with friends and neighbors in the outside world to provide them with a slightly larger social circle. Members of incarcerated cohorts should be housed together, eat and do all activities together, and practice absolute social distancing from other cohorts within the facility. Custodial staff should be assigned to supervise the same cohort during every shift, to minimize the number of different people to whom the cohort gets exposed. Public health experts believe this type of grouping of residents in congregate care settings can slow the spread of the virus by more easily containing any identified cases of COVID-19.²¹⁷ Any lockdown could potentially be limited to just the members of a cohort where a member tests positive for the virus, rather than extending to the entire facility.

Cohorts help alleviate the stress and anxiety that comes from lockdowns, as individuals within the cohort unit can continue to interact freely within the group. Cohorts can also provide a sense of community, helping to mitigate the feeling of isolation that women have experienced as a result of increased lockdowns, quarantine conditions, and limited contact with their family and loved ones.

The size of cohorts will naturally vary by facility depending on the number of people in custody and the facility's level of risk for transmission. The Pennsylvania Department of Corrections implemented a cohort plan for facilities to implement based on the risk for transmission.²¹⁸ The plan requires cohort sizes to be as small as two people when the risk is high and allows cohorts to be as large as 50 people when the risk for transmission is low.²¹⁹

Allow cohorts to participate in programs and other community activities together.

Cohorts should be allowed to participate in programs together, which is especially advantageous if women do not have access to tablets to deliver individual programming. Even when the program provider is remote, the provider could make a recording of a lecture that could be played for each cohort, either at a designated space within their housing unit or in a common area within the unit, such as a classroom or chapel, so long as no other cohorts are permitted in the designated room at the same time and the room is sanitized between uses.

Cohorts could also participate in other community activities together, such as movie nights, book clubs, or other virtual recreation activities. Activities could provide women a meaningful activity and an opportunity to further develop the "mini-community" within their cohort. Moreover, there would be no need to restrict dayroom activities within the cohort.

Allow cohorts to participate in recreation at least daily.

Recreational activities provide important health and wellness benefits. Rather than restricting women from participating in recreation or yard privileges, agencies should allow cohorts to access indoor or outdoor recreation spaces together on a daily basis. Women should still be required to wear face masks, especially when staff escort them from their housing unit to the recreation spaces and back again, since they may pass through areas of the facility where other potentially infected people have been. Masks help protect women and staff from becoming infected.²²⁰

Conduct regularly scheduled information sessions with each cohort in order to provide any pertinent information about the virus or any forthcoming changes to operational protocols, and allow women to provide feedback about how they have been affected by the COVID safety measures.

Correctional health staff or facility administrators should provide women in custody with regular updates about COVID-19, its impact in the community, and any adjustments to operational practices the agency will be implementing to prevent the spread of the virus in the facility. Women should receive clear instructions for safely socializing within their cohort and the importance of minimizing movement within the facility. Women should also be provided an opportunity to ask questions and provide feedback about what is working and what may need adjustment. Holding informational sessions and providing patient education could help ensure women have the correct information about the virus, and can help build trust between women and staff.

218 John E. Wetzel and Janeen M. Davis (2020). "The Response to the COVID19 Crisis by the Pennsylvania Department of Corrections," *Victims & Offenders*, 15 (7-8): 1298-1304, <https://www.tandfonline.com/doi/pdf/10.1080/15564886.2020.1830324>.

219 Pennsylvania Department of Corrections (June 2020). "Demobilization Plan COVID-19 Inmate Movement," p.13, <https://icpa.org/wp-content/uploads/2020/06/Demobilization-Plan-5-20-20-Inmate2.pdf>.

220 Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95.

Long-term Actions

Create community living pods for all women in custody.

Correctional agencies could create community living pods inside each facility that function like the cohorts, but are used longer term. Women could learn ways to live in community with one another. They could develop support groups to practice and reinforce the skills they are learning in their classes and programs. They could also support one another by practicing vocational skills they may be learning, such as barbering and cosmetology, activities that serve the dual purpose of providing practice to those who may seek a job in those areas and helping women to feel more “normal.” These mini-communities could encourage women to complete various programs and services and help encourage them as they prepare for release. In certain Scandinavian prisons, including the famed Halden maximum-security prison in Norway, incarcerated people live in small housing units of 12 people where they cook together and socialize in much more normalized settings than correctional settings in the United States.²²¹

Develop a Resident Council for each community living pod.

Women should have the opportunity to formally voice ideas and concerns to staff and administrators through the use of resident councils. Each community living pod could select a group to serve as its representatives (“the Resident Council”) that meets regularly and communicates the views of the cohort to facility administrators. The use of these councils would help women recognize the value of civic engagement and teamwork, help build a sense of community, and provide the facility’s leadership with important information about what is and is not working in the unit.

RECOMMENDATION 7: ENSURE THAT MEDICAL ISOLATION AND QUARANTINE ARE SEPARATE AND DISTINCT FROM SOLITARY CONFINEMENT AND THAT THEY ALIGN WITH COMMUNITY STANDARDS OF CARE.

Separating people who are diagnosed with COVID-19 and those who are exposed to the virus is a critical public health strategy that corrections agencies should use to prevent large outbreaks within a facility. However, given that separation is typically used as punishment in prisons and jails, corrections agencies should take meaningful steps to ensure that medical isolation and quarantine are distinct from punitive segregation. Staff should follow guidelines for the ethical use of medical isolation and quarantine that follow community standards of care.

Immediate Actions

Medical isolation and quarantine should be separate and distinct from punitive solitary confinement, and corrections staff should be trained on the differences between these practices.

According to correctional health care experts, medical isolation should be used to separate individuals with confirmed COVID-19 cases from the uninfected population until they are no longer contagious.²²² Individuals who are exposed to or expected to have an infectious disease should be quarantined from others in the facility to see if they will become sick, which should take no longer than 14 days.²²³

Some jails have also quarantined individuals immediately upon booking in order to prevent asymptomatic individuals from spreading the virus to the general population. In Travis County, Texas, for example, the Sheriff’s Office has been quarantining everyone immediately after they are booked into the jail facility in separate cells for 10 to 14 days before transferring them to the general population; this practice, which the Sheriff implemented at the start of the pandemic, helped the agency keep the number of

221 See, e.g., Jessica Benko (March 26, 2015). “The Radical Humaneness of Norway’s Halden Prison,” The New York Times Magazine, <https://www.nytimes.com/2015/03/29/magazine/the-radical-humaneness-of-norways-halden-prison.html>.

222 Brie Williams (August 26, 2020). “Medical Isolation, Quarantine, and Solitary Confinement in Correctional Facilities During COVID-19.” Presentation at National Academies webinar on Health Care and Health Care Financing for COVID-19 in Correctional Facilities, <https://www.nationalacademies.org/event/08-26-2020/health-care-and-health-care-financing-for-covid-19-in-correctional-facilities>.

223 Wang, Western, Backes, and Schuck, *supra* note 110.

COVID cases extremely low compared to most other Texas jails. By mid-April, a month into the pandemic, no one in custody at the Travis County Jail had been infected with COVID,²²⁴ and by the end of 2020, the sheriff's office reported a total of only 13 cases among people in custody (though the number of infections has since surged).²²⁵

Medical Isolation: The practice of separating people known to have a contagious virus from the rest of the population.

Quarantine: The practice of separating people who may have been exposed to a contagious virus from the rest of the population.

Solitary confinement: The practice of separating people from the rest of the population as a means of punishment.

Lockdown: The practice of restricting movement within a facility, typically in response to a perceived threat. This security measure requires people in custody to remain in their cell for 23 hours a day and restricts everyone except essential staff from entering the facility.

Source: "Medical Isolation and Solitary Confinement: Balancing Health and Humanity in U.S. Jails and Prisons During COVID-19," *Journal of General Internal Medicine*, September 2020.

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Texas, for example, the Sheriff's Office has been quarantining everyone immediately after they are booked into the jail facility in separate cells for 10 to 14 days before transferring them to the general population; this practice, which the Sheriff implemented at the start of the pandemic, helped the agency keep the number of COVID cases extremely low compared to most other Texas jails. By mid-April, a month into the pandemic, no one in custody at the Travis County Jail had been infected with COVID,²²⁶ and by the end of 2020, the sheriff's office reported a total of only 13 cases among people in custody (though the number of infections has since surged).²²⁷

"Separating people who become infected is a necessary public health challenge, particularly in prisons and jails. But turning to the punitive practice of solitary confinement in response to the COVID-19 crisis will only make things worse."

Source: "COVID-19 in Correctional Facilities: Medical Isolation," AMEND, 2020.

Conditions in medical isolation and quarantine should avoid the punitive hallmarks of solitary confinement, such as social isolation, physical idleness, and sensory deprivation. These individuals are not being subjected to punishment for misconduct, and are being placed in this position for public health reasons.²²⁸ The more punitive the regime to which women are subjected while in medical isolation or quarantine, the less likely the women are to report their symptoms,

224 Jo Clifton (April 15, 2020). "Travis County jail treads carefully amid coronavirus," *Austin Monitor*, <https://www.austinmonitor.com/stories/2020/04/travis-county-jail-treads-carefully-amid-coronavirus/>.

225 Hojun Choi (February 9, 2021). "Coronavirus cases still surging among Travis County jail inmates, sheriff's employees," *Austin American-Statesman*, <https://www.statesman.com/story/news/2021/02/09/covid-19-cases-among-travis-county-jail-inmates-remain-high/4442782001/>.

226 Jo Clifton (April 15, 2020). "Travis County jail treads carefully amid coronavirus," *Austin Monitor*, <https://www.austinmonitor.com/stories/2020/04/travis-county-jail-treads-carefully-amid-coronavirus/>.

227 Hojun Choi (February 9, 2021). "Coronavirus cases still surging among Travis County jail inmates, sheriff's employees," *Austin American-Statesman*, <https://www.statesman.com/story/news/2021/02/09/covid-19-cases-among-travis-county-jail-inmates-remain-high/4442782001/>.

228 David H. Cloud, Cyrus Ahalt, Dallas Augustine, David Sears, and Brie Williams (September 2020). "Medical Isolation and Solitary Confinement: Balancing Health and Humanity in U.S. Jails and Prisons During COVID-19," *Journal of General Internal Medicine*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7338113/>.

which runs counter to the goal of protecting the institution from the spread of the virus. Moreover, punitive conditions in medical isolation or quarantine could exacerbate the harm experienced by the women exposed to these settings, given that so many have extensive histories of trauma and live with underlying mental health challenges.

Staff should be trained on the purpose and procedures for medically isolating women who are diagnosed with COVID and placing women in quarantine who have been exposed to the virus. Staff should be able to identify the differences between these practices and the punitive use of solitary confinement, and should understand the harm that is caused when medical isolation and quarantine resemble punishment.

Provide women who are placed in medical isolation or quarantine with meaningful opportunities to communicate with others and engage in programs and services.

Keeping people socially isolated in a closed cell without a meaningful opportunity to communicate with family, friends, and loved ones, and without access to programming or recreation activities, can cause immense, and often irreparable, psychological harm.²²⁹ To mitigate these adverse outcomes, people in quarantine or medical isolation should have access to resources that can make their separation psychologically bearable, such as television, tablets, radio, and reading materials—the same tools individuals who are sheltering-in-place in the community may be using to cope with the anxiety of isolation.²³⁰ Agencies should also take steps to ensure women are able to maintain contact with other people. Tablets should include free apps that allow women in isolation or quarantine to call their family, children, and loved ones. When tablets are not available, women should have access to phone calls for the same purpose.

Agencies should also allow women to remain in contact with their peers by cohorting women who are placed in medical isolation (“cohorting” was described in Recommendation 6). Correctional health care experts have found that grouping women with confirmed COVID-19 cases can allow agencies to mitigate the harmful impact from isolation while preventing further transmission in the rest of the facility.²³¹ Cohorts operate as “mini-communities,” by sharing housing units, bathroom facilities, meals, programming, and work assignments. To be clear, the cohorts of women in medical isolation should only include people with a known COVID-19 infection.²³²

Staff should communicate frequently with women who need to be separated from the general population. Women in medical isolation and quarantine should have easy access to medical and mental health professionals, and should receive daily updates from correctional healthcare staff as to why separation is necessary and how long they can expect it to last.²³³

Long-term Actions

Agencies should implement a therapeutic approach to discipline that relies on de-escalation and trauma-informed approaches rather than punitive practices like solitary confinement.

In a gender-responsive facility, discipline and sanctions systems should be therapeutic rather than punitive, and should be structured to address the underlying behavior that led to an infraction. Problematic behavior is often a response to previous trauma, and punishment can mimic the trauma, thus exacerbating the underlying factors that led to the behavior in the first place. De-escalation and trauma-informed approaches are more effective at changing problematic behavior that is rooted in trauma than the use of immediate, reactive punishment.

229 AMEND, “COVID-19 in Correctional Facilities: Medical Isolation,” <https://amend.us/covid-19-in-correctional-facilities-medical-isolation/>.

230 Cloud, Ahalt, Augustine, Sears, and Williams, *supra* note 226.

231 Wang, Western, Backes, and Schuck, *supra* note 110.

232 Ibid.

233 Cloud, Ahalt, Augustine, Sears, and Williams, *supra* note 226.

Staff need to modify their strategies for holding women accountable for misconduct, to explore the underlying issues that led to the infraction. Once identified, those issues should be addressed directly with the assistance of a case manager or clinician. The provision of services should be increased as necessary. Women may need to receive the same services more frequently, or they may need to receive additional services to address the issues that are surfacing.

“Staff have been taught to use these highly ineffective and punitive tools of the prison trade to inappropriately label, control and punish women’s behavior instead of understanding and working with them to determine and implement solutions. [These situations are] contrary to everything we know in psychology and are actually causing problems, harming women and creating unsafe facilities.”

– Alyssa Benedict, Executive Director
CORE Associates

Source: “Women in prison punished more harshly than men around the country,” Chicago Reporter, October 14, 2018.

When consequences for misconduct are appropriate, those consequences should involve a temporary loss of privileges, with the ability to earn back those privileges following demonstration of safe and effective behavior. When an incident occurs between residents or between residents and staff, the parties should be brought together to discuss and resolve issues or tensions, with the goal of restoring community equilibrium. Incidents both large and small should be debriefed among the staff to create a culture that supports self-assessments, quality control, and critical incident reviews. Any staff member implementing a restorative approach should be trained on how to apply this approach specifically with women in custody.

Staff should separate women from the general population only when it is absolutely necessary for the safety of people who live and work in the facility. Conditions of separation should not be psychologically punitive and should not re-traumatize the women.

Only in instances involving serious safety concerns should a woman be separated from the rest of the community. Even in those instances, women should be placed in the least restrictive conditions possible for the shortest possible period of time to allow them to decompress and self-regulate their stress and negative behaviors.²³⁴ These spaces should never resemble punitive solitary confinement conditions.

Women who are placed in separation should continue to have access to programming, services, and contact with family members and loved ones. If programming, services, and visitation cannot be provided in-person, agencies need to provide women tablets so that they can contact their families and service providers through a video conferencing platform, as described in Recommendation 4.

To promote cooperation, staff should frequently communicate with women who are temporarily separated, clearly communicating that the separation occurred for the safety of their peers in custody, rather than punishment, and helping women understand what needs to occur in order for them to return to their unit.

Absent exceptional circumstances, there should not be any use of long-term segregation rooms, which can be traumatizing and exacerbate underlying mental health challenges.

RECOMMENDATION 8: STAFF INTERACTIONS WITH WOMEN IN CUSTODY SHOULD BE RESPECTFUL, HELPFUL, AND TRAUMA-INFORMED.

How staff members engage with women in custody has an enormous impact on the experiences of both the women and the staff, as well as on the culture of the facility. During COVID, these

234 Benedict, *supra* note 46.

dynamics are even more critical both because the women have few other people with whom they are interacting due to institutional restrictions and because everyone is under extreme stress. Now more than ever, it is essential that staff learn to communicate with the women in ways that are respectful, kind, and helpful, and that staff recognize the ways in which their treatment of women can aggravate the trauma the women have experienced in their lives.

Immediate Actions

Staff should engage in supportive conversations with women throughout the day and should always use respectful language when talking with women.

Staff should routinely engage with women in ways that encourage their growth and progress, and that de-escalate tensions and build problem-solving skills. Staff should celebrate the women's strengths and accomplishments, and should support and encourage them during challenging times. Staff should display empathy, while simultaneously employing healthy, professional boundaries. These staff behaviors should not only be encouraged, they should be rewarded because they are linked to improved outcomes for residents and can go a long way toward promoting safety in a facility.

How staff speak with women in custody is even more important during the COVID pandemic, when women are experiencing more social isolation. Communicating kindness and empathy with women in custody will help reduce stress and anxiety among women, promote positive behavior, and encourage compliance with COVID safety measures. Establishing open lines of communication between women in custody and staff can increase trust and

prevent women from hiding their symptoms for fear of punitive consequences.²³⁵

Corrections staff should also pay particular attention to the ways that they communicate with and show compassion for women in quarantine or medical isolation who are scared and showing signs of distress.²³⁶

Moreover, staff should reduce stigma and communicate respect by adopting person-first language and eliminating labels such as "offender," "inmate," "felon," and "convict."²³⁷ Those labels reinforce the belief that women in custody have unchangeable criminal tendencies and are incapable of growth and change. Instead, staff should refer to individual women by their names, and refer to them collectively as "residents."

Set clear expectations for COVID-safe behavior and directly communicate any changes to facility protocol to the women in the facility.

As best practices for following public health guidelines during the pandemic continue to develop, facility administrators and staff should set very clear expectations and parameters for COVID-safe behavior by both staff and women, and should explain to women any changes to facility procedures or activities that will take place and why they are happening, with step-by-step communication.²³⁸ Clearly communicating that changes to programming, movement, or visitation are occurring to protect the safety of women, rather than as punishment, is important for encouraging cooperation. Women should be allowed to ask questions and receive answers about the procedures.

235 Cloud, Ahalt, Augustine, Sears, and Williams, *supra* note 226.

236 World Health Organization (March 15, 2020). "Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim Guidance," <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-15-march-2020-produced-by-who/euro>.

237 Cameron Okeke and Nancy LaVigne (November 29, 2018). "Restoring humanity: Changing the way we talk about people touched by the criminal justice system," Urban Wire, The Urban Institute, <https://www.urban.org/urban-wire/restoring-humanity-changing-way-we-talk-about-people-touched-criminal-justice-system>.

238 Andrew Coyle (2002). "Managing prisons in a time of change," International Centre for Prison Studies, pp. 71-72, http://www.prisonstudies.org/sites/default/files/resources/downloads/managing_prisons_0.pdf.

Staff should value openness and seek to be as transparent as possible because that openness and respect builds trust and cooperation. Moreover, correctional health experts noted early on that people in custody are a critical source of information about whether or not a correctional agency's modified practices and protocol are working to protect the health and safety of people inside.²³⁹

Communicate openly with families about the spread of COVID within the facilities and important COVID-related changes in operational protocols.

Agencies should establish methods of communicating with women's families and loved ones to keep them informed about the spread of COVID-19 in each facility and steps the agency is taking to address the risks to the women incarcerated there. This ongoing contact and sharing of information can reduce the stress and anxiety that the families are experiencing with respect to their loved one in custody during the pandemic. Moreover, families should be kept informed about any changes to protocol that affect visitation, mail, phone or video contact, or the ability to contribute to a person's commissary account.

Long-term Actions

Ensure that staff who supervise women have more of a social work mindset than a control attitude.

The respectful and empathetic interactions between staff and residents that should be encouraged during the pandemic should become routine long after the pandemic ends. In a gender-responsive facility, staff become part of the residents' support team, encouraging engagement in positive activities and rehabilitative services, engaging with the women regularly, and answering questions for them. Because so many women have experienced trauma that can be exacerbated by incarceration, every aspect

of staff interactions with women, including tone of voice, postures, body proximity, searches, and disciplinary measures, should be reconsidered from the standpoint of how those interactions might trigger a trauma response from the women. Trauma-informed behaviors on the part of staff could help improve the dynamic between women in custody and staff, thereby creating a safer and less stressful environment for those who live and work in these settings. The social work mindset must be taught to new recruits from the start, in order to support the facility's rehabilitative, gender-responsive, trauma-informed, and positive culture. Staff should also receive training on cultural competency issues so that they will be able to respond most effectively to meet special concerns of women of color.

While the pandemic continues, staff need to receive specialized training on how an agency's COVID-19 safety measures can exacerbate women's trauma, and on ways they should adjust their approach with women. Topics of trainings should include female criminal justice pathways (e.g., risks, strengths, and needs), communication strategies (e.g., de-escalation, motivational interviewing), racial and cultural sensitivity, effective responses to women's mental health, and the impact of trauma and trauma-informed care.

Employ therapeutic discipline practices in responding to women's misbehavior.

Staff should have tools that serve them well when it comes to holding women accountable for their behavior. Staff should be trained in ways to hold women accountable for infractions and unsafe behavior without exacerbating their trauma. This approach to discipline has been shown to significantly reduce the frequency of assaults, fights, and other incidents, as well as the consequent need for use of force by staff in a women's facility.²⁴⁰

239 Williams, Ahalt, Cloud, Augustine, Rorvig, and Sears, *supra* note 95; Gonnerman, *supra* note 74.

240 Benedict, *supra* note 46.

VI. Conclusion

This report has shown the many ways that women in custody have suffered distinct harms by virtue of their continued incarceration during the COVID-19 pandemic. As experts have advised since the start of the pandemic, public health considerations necessitate significant releases of women who are incarcerated. For those women who remain in the facilities, it is essential to implement COVID safety precautions that protect them without causing them additional harm. Each restrictive safety measure must be balanced by a strategy of replacing something of what has been lost, in order to avoid exacerbating women's trauma, causing them mental health problems, and limiting family connections.

Corrections agencies should also continue to provide women with opportunities to connect with community-based service providers that can help support them after release. More than ever, it is essential that reentry planning begin upon a woman's admission to a prison or a jail, not in the weeks leading up to release, since making these connections with community providers is a lengthy process. Women need access to stable housing, jobs, education, health care, and behavioral health care in order to successfully reintegrate into the community.

The steps that justice system actors take now to respond to the unprecedented demands of the

COVID crisis can help fuel longer-term reforms with respect to justice-impacted women. The recommendations we propose here include both immediate measures and more sustainable steps that can help reduce the need for incarceration of most women, help strengthen family relationships, and provide more individualized programming and services to meet the needs of women who are incarcerated. Beyond that, these recommendations can help ensure a correctional environment that is more humane and that treats women with dignity and respect, helps address the factors that contributed to their incarceration, and better prepares them to reunite with their families and reintegrate into their communities.

COVID-19 has laid bare the poor conditions in so many correctional facilities, the disproportionate harm that accrues to the most vulnerable people within these institutions, and the limited means that women have to protect themselves from harm while incarcerated. As both a public health measure and as a humanitarian mandate, we must find ways to better protect incarcerated women and to build their resilience for now and for the future. The recommendations highlighted here begin the process of enhancing the safety and well-being of justice-impacted women and ensuring a correctional environment that better meets the needs of those who remain incarcerated.

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