

# Women, Prison, and the Drug War

May 2018

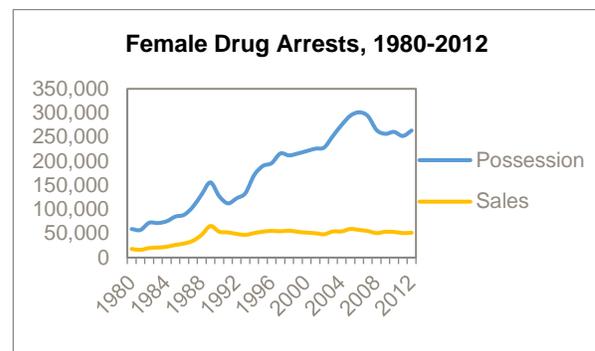


While men are more likely to be targeted by drug law enforcement, many of the drug war's victims are women. Largely as a result of draconian drug laws, women are one of the fast growing segments of the U.S. prison population. Most women behind bars are mothers, many of them sole caregivers. Women, and particularly women of color, are disproportionately affected by drug law enforcement, by social stigma, by laws that punish those unable or unwilling to inform on others, by regulations that bar people with a drug conviction from obtaining public assistance, and by a drug treatment system designed for men. Incarcerated women also have lower incomes than their male counterparts, making it more difficult for them to be able to afford cash bail, phone calls from prison, and ancillary services (such as babysitters) which they might require to meet all of their probation requirements.

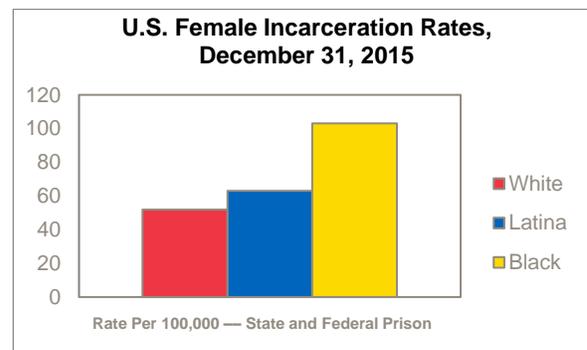
Women are one of the fastest-growing segments of the prison population. Between 1978 and 2014, the number of women in state and federal prisons grew by nearly 800 percent.<sup>1</sup> The U.S. accounts for 5 percent of the world's female population but it represents almost 30 percent of the world's incarcerated women.<sup>2</sup> Globally, the 25 jurisdictions that have the highest rates of women incarcerated are all U.S. states.<sup>3</sup>

More than a quarter of women in state prison were incarcerated for drug offenses at the end of 2015, compared to 15 percent of men.<sup>4</sup> More than 61 percent of women in federal prison are incarcerated for drug offenses, compared to approximately 50 percent of men. Currently, there are 8,500 women in federal prisons on drug charges, 24,700 in state prisons and

27,000 in local jails. Of the 27,000 women in local jails on drug charges, a staggering 63 percent have not been convicted.<sup>5</sup>



Source: Bureau of Justice Statistics.<sup>6</sup>



Source: Bureau of Justice Statistics, 2016.<sup>7</sup>

Drug use and drug selling occur at similar rates across racial and ethnic groups, yet black and Latina women are far more likely to be criminalized for drug law violations than white women.<sup>8</sup> Black women are almost twice as likely – and Latinas are more than 20 percent more likely – to be incarcerated than white women.<sup>9</sup>

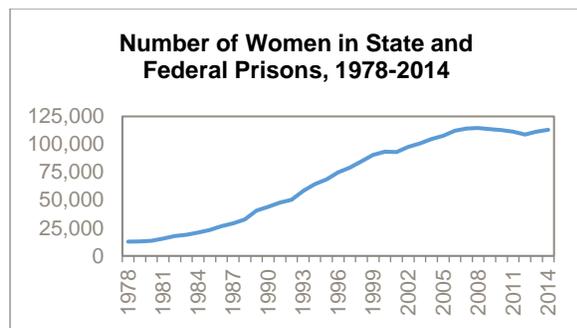
Even though black women are no more likely than white women to use illicit drugs during pregnancy, they

are far more likely to be reported to child welfare services for drug use.<sup>10</sup> In fact, a seminal study published in the *New England Journal of Medicine* found that black women were 10 times more likely than white women to be reported to child welfare.<sup>11</sup>

More than half (54 percent) of incarcerated people are parents of minor children, including more than 120,000 mothers and 1.1 million fathers. Roughly 60 percent of women in state and federal prisons are mothers of minor children.<sup>12</sup> Two-thirds of these parents are incarcerated for non-violent offenses, a substantial proportion of which are drug law violations.<sup>13</sup> More than 5 million children (one in every 14) have a parent who is or has been incarcerated.<sup>14</sup> The racial disparities seen in the incarcerated population replicate themselves among the children left behind: by 2008, one in nine (11.4 percent of) black children, one in 28 (3.5 percent of) Latino children and one in 57 (1.8 percent of) white children had an incarcerated parent.<sup>15</sup>

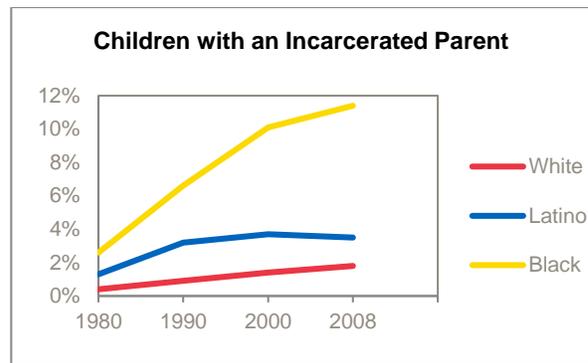
An estimated 84 percent of parents in federal prison and 62 percent of parents in state prison are housed 100 miles or more from their children.<sup>16</sup>

Pregnant women who are incarcerated for drug law violations often do not receive prenatal care. Children are routinely separated from their imprisoned mothers, causing irreparable damage to the child.<sup>17</sup>



Sources: Bureau of Justice Statistics.<sup>18</sup>

<sup>1</sup> Bureau of Justice Statistics, "Female prisoners under State or Federal jurisdiction," Corrections Statistical Analysis Tool, [www.bjs.gov](http://www.bjs.gov).  
<sup>2</sup> Aleks Kajstura and Russ Immarigeon, "States of Women's Incarceration: The Global Context," (Prison Policy Initiative, 2015) <http://www.prisonpolicy.org/global/women/>.  
<sup>3</sup> Ibid.  
<sup>4</sup> Carson, "Prisoners in 2015," Table 9.  
<sup>5</sup> Prison Policy Initiative, "Women's Incarceration: The Whole Pie 2017" <https://www.prisonpolicy.org/reports/pie2017women.html>



Source: Western and Pettit, *Pew Charitable Trusts*, 2010.<sup>19</sup>

Prisons and jails commonly use restraints (handcuffs and shackles) on women in labor and during delivery, regardless of their histories. According to a 2015 shadow report to the United Nations Committee on Torture, "Only 18 states have legislation in place that restricts the use of restraints on pregnant inmates, 24 states limit the use of restraints on pregnant inmates only through institutional policies, and 8 states do not have any form of regulation at all."<sup>20</sup> Washington DC and the Federal Bureau of Prisons have also banned or restricted this practice, which the American College of Obstetricians and Gynecologists opposes because it puts "the health of the woman and fetus at risk."<sup>21</sup>

The long-lasting penalties and exclusions that follow a drug conviction have created a permanent second-class status for millions of Americans, who are often banned from voting, getting a job, securing a student loan and accessing housing or other forms of public assistance, such as Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP). A 2013 report found that more than 180,000 women have been affected in the twelve states that maintain a full lifetime ban for people with drug convictions.<sup>22</sup> Due to the extreme racial disparities in drug law enforcement and sentencing, these collateral consequences disproportionately affect people of color.<sup>23</sup>

<sup>6</sup> Bureau of Justice Statistics, Arrest Data Analysis Tool, <http://www.bjs.gov/index.cfm?ty=datool&surl=arrests/index.cfm>.  
<sup>7</sup> The Sentencing Project, *Trends in US Corrections*.  
<sup>8</sup> Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health: Detailed Tables," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015); Jamie Fellner, *Decades of disparity: drug arrests and race in the United States* (Human Rights Watch, 2009). National arrest data by ethnicity are not collected systematically and are therefore incomplete. What data are available at the national, state and local levels, however, tend to show that Latinos and Latinas are

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disproportionately arrested for drug offenses. See Drug Policy Alliance and Marijuana Arrest Research Project, "Race, Class and Marijuana Arrests in Mayor de Blasio's Two New Yorks: the N.Y.P.D.'s Marijuana Arrest Crusade Continues in 2014," (2014) <http://www.drugpolicy.org/resource/race-class-and-marijuana-arrests-mayor-de-blasios-two-new-yorks-nypds-marijuana-arrest-crusade>; Federal Bureau of Investigation, "Crime in the United States, 2014," (Washington, DC: U.S. Department of Justice, 2015), Table 43.

<sup>9</sup> E. Ann Carson, "Prisoners in 2014," (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2015), Table 10. The incarceration rate for black women has declined in the past decade, while the incarceration rate for white and Latina women has increased. See Marc Mauer, Sentencing Project, and United States of America, *The Changing Racial Dynamics of Women's Incarceration* (Sentencing Project, 2013).

<sup>10</sup> Sarah C. M. Roberts and Amani Nuru-Jeter, "Universal Screening for Alcohol and Drug Use and Racial Disparities in Child Protective Services Reporting," *Journal of Behavioral Health Services & Research* 39.1 (2012): 3-16.

<sup>11</sup> Chasnoff IJ, et al., "The prevalence of illicit-drug or alcohol use during pregnancy and discrepancies in mandatory reporting in Pinellas County, Florida," *New England Journal of Medicine* 322, no. 17 (1990):1202-1206.

<sup>12</sup> Lauren Glaze and Laura Maruschak, "Parents in Prison and Their Minor Children." (Washington: Bureau of Justice Statistics, 2010) 3; and The Sentencing Project, "Parents in State Prison," (2013).

<sup>13</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Pew Charitable Trusts, 2010), 4.

<sup>14</sup> David Murphy and Cooper, "Parents Behind Bars: What happens to their children?," Child Trends.

<sup>15</sup> Bruce Western and Becky Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Pew Charitable Trusts, 2010), 4.

<sup>16</sup> The Sentencing Project, *Incarcerated Parents and Their Children: Trends 1991-2007* (2009),

<sup>17</sup> Lynn M Paltrow and Jeanne Flavin, "Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health," *Journal of health politics, policy and law* 38, no. 2 (2013).

<sup>18</sup> Bureau of Justice Statistics, "Female prisoners under State or Federal jurisdiction," Generated using Corrections Statistical Analysis Tool at [www.bjs.gov](http://www.bjs.gov).

<sup>19</sup> Western and Pettit, *Collateral Costs: Incarceration's Effect on Economic Mobility*.

<sup>20</sup> International Human Rights Clinic of the University of Chicago et al., "The Shackling of Incarcerated Pregnant Women," (2015) <https://ihrclinic.uchicago.edu/sites/ihrclinic.uchicago.edu/files/uploads/Report%20-%20Shackling%20of%20Pregnant%20Prisoners%20in%20the%20US%20-%20Final%201.8.14%29.pdf>.

<sup>21</sup> American College of Obstetricians and Gynecologists, "Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females," (2011); Institute on Women & Criminal Justice, "Laws Banning Shackling during Childbirth Gaining Momentum Nationwide," (Women's Prison Association, 2011).

<sup>22</sup> The Sentencing Project, "A Lifetime of Punishment: The Impact of the Federal Drug Ban on Welfare Benefits," (2013).

<sup>23</sup> Ibid; Meda Chesney-Lind and Marc Mauer, *Invisible punishment: The collateral consequences of mass imprisonment* (The New Press, 2011).