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Recommended Citation

LaMont Flanagan, *The Female Offender: A Victim of Neglect*, 2 U. Md. L.J. Race Relig. Gender & Class 209 (2002).
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THE FEMALE OFFENDER: A VICTIM OF NEGLECT

LAMONT FLANAGAN, J.D.*

There is no such thing as love anymore; the kind that is so strong that you can feel it in your bones. You know we used to feel that emotion when we looked into the faces of our mother, father, sisters, brothers, family and friends.

There is no such thing as love anymore. At least not the deep satisfying kind that sits on your heart and influences every decision and action we take throughout each day.

There is no reason to celebrate anymore. Just empty actions and empty reactions, calculated gestures and financial arrangements. There is no such thing as love anymore.¹

These poetic words of wisdom emanate from the mind, spirit and emotions of a brilliant young African-American woman, Lisa Williams, publicly known in the Hip Hop industry as "Sister Souljah." She describes the time in which we live in the Dedication of her national bestseller novel, *The Coldest Winter Ever*.

"The era in which love, loyalty, truth, honor and respect died.
Where humility and appreciation are nonexistent.
Where families are divided and God reviled,
The era.
The Coldest Winter Ever."²

* Commissioner, Maryland Division of Pre-Trial Detention and Services. Also contributed to by Renee Duval, J.D.

1. SISTER SOULJAH, *THE COLDEST WINTER EVER* (New York: Pocket Books, 2000).
2. *Id.*

Sistah Souljah's words are most appropriate in describing the dilemma of the female offender in a society where she is viewed and treated as a victim of neglect. This perception is garnered as a result of the social, cultural and political isolation incarceration imposes upon her existence. Her self-esteem, motherhood, love, comfort, marriage, attention, intimacy and independence are stripped away. Incarceration diminishes the humanity of female offenders and perpetuates a gender insensitive system that entraps substantial numbers of mothers, wives, daughters and sisters.

The pattern of circumstances that forces women to turn to criminal behavior is well documented. The root causes of criminal behavior are sociological, and thus negatively impact all women. They waltz in and wallow through the criminal justice system as a result of the systemic failures of educational, social, religious, health and cultural institutions in American society. The cumulative failure of these institutions became the burden of the correctional industry, where these women will ultimately end. Once in the criminal justice system, women inmates endure even further character atrophy due to the lack of resources and programs that meet their special needs. The neglect of the female offender by the penal system results in the victimization of the female offender. Criminalization automatically deprives female offenders of basic human rights including parenthood, humanity and dignity. Stripped and divested of these intangible assets and hereditary qualities, the female offender becomes barren emotionally, spiritually, mentally and physically.

Women inmates lack gender-specific programs that address their need for health care, education, emotional stability and psychological well-being.³ Research indicates that America's

3. TODD ALAN EDWARDS, SOUTHERN LEGISLATIVE CONFERENCE SPECIAL SERIES REPORT, FEMALE OFFENDERS: SPECIAL NEEDS AND SOUTHERN STATE CHALLENGES 18 (2000). The Office of Juvenile Justice and Delinquency Prevention defines gender-specific services as:

Those that are designed to meet the unique needs of female offenders; that value the female perspective; that celebrate and honor the female experience; that respect and take into account female development; that empower girls and young women to reach their full human potential; and work to change established attitudes that prevent or discourage girls and young women from recognizing their potential.

Barbara Bloom & Stephanie Covington, Gender-Specific Programming for Female Offenders: What is it and Why is it Important?, Address Before the American Society of Criminology (Nov. 14, 1998), available at <http://www.nicic.org/pubs/1998/015127.pdf>.

correctional institutions should place greater emphasis on gender-specific programs for female offenders in the areas of "medical and mental health care, substance abuse treatment, vocational and educational training, counseling for prior victimization, [and] parenting"⁴

The neglectful conditions of confinement for female offenders are demonstrated by the statements by Delegate Eleanor Holmes Norton in January 2000.⁵ Delegate Norton stated, "In placing women in carbon copies of male institutions, the U.S. and the states are not meeting some important gender-specific health and other services."⁶ Delegate Norton argued that, because of the lack of differentiation between male and female institutions, "prison systems have failed to respond effectively to rates of HIV infection and mental illness among female inmates . . . and have actually reduced drug treatment--even though nonviolent drug crimes are the major cause for female incarceration."⁷

Judge Louis J. Freeh commented on the futility of attempting to utilize the criminal justice system as the panacea for social problems in American society.⁸ Director Freeh stated, "the crime and disorder which flow from hopeless poverty, and unloved children, and drug abuse can't be solved merely by bottomless prisons, mandatory sentencing minimums, and more police."⁹

The sociological addiction to incarceration as a crime control policy by American lawmakers has resulted in the incarceration of approximately two million men, women and children in prisons and jails.¹⁰ Supplementing the astronomical quantity behind the walls are 4.3 million criminals under custodial supervision in the community, resulting in the custody of 6.3 million persons, an embarrassing 3.1 percent of all U.S. residents.¹¹ The United States has earned the

4. EDWARDS, *supra* note 3, at 18.

5. Press Release from Eleanor Holmes Norton, Norton Says GAO Report Shows Male Prison Model a Poor Fit for Escalating Number of Female Inmates; D.C. Recommended for Test of Female Prison Innovations (Jan. 31, 2000).

6. *Id.*

7. *Id.*

8. Freeh is the former Director of the Federal Bureau of Investigation. He made this comment while testifying before the National Criminal Justice Commission, in 1996.

9. STEVEN R. DONZIGER, *THE REAL WAR ON CRIME: THE REPORT OF THE NAT'L CRIMINAL JUSTICE COMM'N* (1996).

10. ALLEN J. BECK ET. AL., *U.S. DEP'T OF JUSTICE, PRISON AND JAIL INMATES AT MIDYEAR 2001*, at 1 (2002).

11. Andrew Coyle, *An International Perspective of Imprisonment In The Early 21st Century*, *CORRECTIONS TODAY*, Feb. 2002, at 8.

paradoxical exclusiveness of having just less than five percent of the world's total population but twenty-three percent of the world's inmates.¹²

I. INCARCERATION AS A MEANS TO ACHIEVE SOCIAL CONTROL

Historically, society's reliance on incarceration as a means of social control is unchanged by diverse criminal justice strategies designed to control or stem the growth of prison and jail populations. Furthermore, the introduction of community corrections in the 1980's, where offenders were supervised through alternatives to jail or prison confinement, had little impact on the effort to relieve overcrowding and loosen the fiscal albatross on local governments due to the construction of prisons and jails.¹³ The U.S. rate of incarceration increased from approximately 230 per 100,000 residents in 1979 to 709 per one hundred thousand residents in 2000.¹⁴ The data supports the fact that the economic burden of prison and jail construction is far outweighed by the bureaucratic political process of penal power.

Prisons and incarceration have become the panacea for all of our social ills.¹⁵ Today the United States looks to prisons to alleviate social problems where it once looked to the welfare state.¹⁶ The term "prison-industrial complex" describes this phenomenon and the corresponding reality that capitalism flourishes from imprisonment.¹⁷ Today, with a population of nearly two million persons in local, state, and federal penal facilities¹⁸ at an average cost of twenty thousand dollars each year per inmate, the prison industrial complex costs approximately 146 billion dollars a year.¹⁹ In the last ten years, appropriations for corrections have increased sixty percent while

12. *Id.*

13. *Prison: A Luxury We Can't Afford*, THE VOICE, Aug. 15-21, 1990.

14. BECK, *supra* note 10, at 1.

15. Rose Braz et al., *The History of Critical Resistance*, 27 SOCIAL JUSTICE 6, 7 (Fall 2000).

16. *Id.*

17. *Id.*

18. DEVON B. ADAMS & LARA E. REYNOLDS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS 2002: AT A GLANCE, at 16 (2002). State and federal prisons housed 1,381,892 inmates at year-end 2000; local jails held 621,149 adults at midyear 2000. *Id.*

19. *Id.* at 21. The federal government spent more than twenty-two billion dollars; State governments spent almost fifty billion; counties spent thirty-five billion, and municipalities spent thirty-nine billion. *Id.*

funding for higher education decreased by three percent.²⁰ Those costs are a drain on taxpayers, and exemplify ineffective spending on incarceration.

The prison industrial complex will continue to consume state and local budgets, because it is the most convenient alternative to failed governmental policies in mental health, substance abuse, juvenile delinquency, education and drug enforcement. These unsuccessful policies have created the increasing growth patterns within the custodial population in this nation. Nowhere is this more evident than the incarceration of the female offender. .

II. GROWTH OF INCARCERATION FOR WOMEN

The growth in incarceration has been greater for women²¹ and minorities²² than for men and whites. Over the seventeen-year period of 1980 through 1996, the incarceration rate among women rose nearly five-fold, from eleven female inmates per 100,000 residents to fifty-one inmates per one hundred thousand residents, while the rate among males tripled, from 275 male inmates per 100,000 resident males to 810 per 100,000.²³ Hidden in this data is the accelerated domestic public policy of incarcerating women. Although the proportion of women to men in state and federal prisons remains small,²⁴ the number of women prisoners has for nearly thirty years been growing faster than the number of male prisoners. The absolute number is larger than the entire prison populations of France, Germany and England.²⁵

20. Press Release, Center on Juvenile and Criminal Justice, *Class Dismissed: Higher Education vs. Corrections During the Wilson Years* (Sept. 1998).

21. PAIGE M. HARRISON AND ALLEN J. BECK, U.S. DEP'T OF JUSTICE, *PRISONERS IN 2001*, at 6 (July 2002). Since 1995 the annual rate of growth of the female inmate population has averaged 5.2%, while the male inmate population has increased by 3.7%. *Id.*

22. Between 1986 and 1997, the number of incarcerated white adults increased by 164% (2,090,100 to 3,429,000), the number of black adults increased by 192% (1,117,200 to 2,149,900) and the number of Hispanic adults increased by 354% (32,100 to 113,600). BUREAU OF JUSTICE STATISTICS CORR. STATISTICS UNIT, U.S. DEP'T OF JUSTICE, *CORR. POPULATIONS IN THE U.S., 1997* (1997).

23. Alfred Blumstein & Allen J. Beck, *Population Growth In U.S. Prisons, 1980-1996*, in 26 *PRISONS: CRIME AND JUSTICE SERIES: AN ANNUAL REVIEW OF RESEARCH* 17, 22 (Michael Tonry & Joan Petersilia eds., 1999).

24. In 2000, the female inmate population was one-fourteenth as large as the male inmate population. HARRISON, *supra* note 21, at 6.

25. Michael Tonry & Joan Petersilia, *American Prisons at the Beginning of the Twenty-First Century*, in 26 *PRISONS: CRIME AND JUSTICE SERIES: AN ANNUAL REVIEW OF RESEARCH* 1, 10 (Michael Tonry & Joan Petersilia eds., 1999).

In spite of the illustrative fact that, as of 1998, the female prison population in the United States exceeds the combined comparable populations of the aforementioned nations, the race to incarcerate proceeds at a record pace. From July 1, 2000 to June 30, 2001, the number of women under the jurisdiction of state and federal prison authorities grew from 93,681 to 94,336.²⁶ Since 1990, the annual growth of female inmates has averaged 7.5 percent higher than the 5.7 percent average increase of male inmates.²⁷ These statistics underscore the need for immediate action to reduce the numbers of women in prison and the number of families and communities disrupted by their imprisonment.

III. COLLATERAL EFFECTS OF FEMALE INCARCERATION ON CHILDREN AND FAMILIES

The increase in the imprisonment of women in support of the prison industrial complex causes severe collateral effects on American society. Policies favoring incarceration create diverse social maladies in American culture. Approximately seventy percent of incarcerated women are mothers of children under the age of eighteen.²⁸ Two-thirds of women incarcerated in state prisons resided with their children prior to incarceration.²⁹ These statistics support the initial premise that imprisonment destroys the family structure.

Nearly two million American children have a parent who is incarcerated,³⁰ but it is the imprisonment of the mother, which causes extreme consequences.³¹ Children of women in prison often perform poorly in school, demonstrate aggressive behavior, and have emotional problems.³² These children struggle with anxiety, shame, sadness, grief, social isolation, and guilt.³³ Furthermore, the children often

26. *Id.* at 4.

27. *Id.*

28. LAWRENCE A. GREENFELD & TRACY L. SNELL, U.S. DEPARTMENT OF JUSTICE, SPECIAL REPORT: WOMEN OFFENDERS, at 7 (Dec. 1999).

29. *Id.* at 8.

30. *Id.*

31. John Hagan & Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, in 26 PRISONS: CRIME AND JUSTICE SERIES: AN ANNUAL REVIEW OF RESEARCH 121, 137 (Michael Tonry & Joan Petersilia eds., 1999).

32. Susan Sharp et al., *Gender Differences in the Impact of Incarceration on the Children and Families of Drug Offenders*, 4 OKLA. CRIM. JUSTICE RESEARCH CONSORTIUM J. 26, 27 (1997-98).

33. *Id.*

withdraw and regress developmentally, exhibiting behavior similar to younger children.³⁴ As the children reach adolescence, they may begin to act out in anti-social ways.³⁵ Studies suggest that the "economic deprivation, reduced parental supervision and lack of relationships with parents" associated with imprisonment may lead to "deviant behavior among the children."³⁶

The negative collateral effect of incarceration on parents, particularly the female parent, is also well documented.³⁷ The impact of incarcerating mothers is more detrimental than incarcerating fathers, as mothers are generally the primary caretakers of their children.³⁸ The breakdown of the family structure increases the risk factors for mental and physical problems for both the mother and her child. Mothers often "grieve the 'loss' of their child and experience guilt and lowered self-esteem."³⁹ Often, the parental rights of incarcerated mothers are terminated and their children are removed from the family home.⁴⁰ These children are subsequently placed either with relatives, usually grandparents, or forced into the state's foster care system.⁴¹ In contrast, when fathers are incarcerated, their children usually remain living with their mothers, resulting in less disruption in their lives.⁴²

A recent survey indicates that while [ninety] percent of male inmates' children were living with the child's mother, only a quarter of the female inmates reported that the child lived with his or her father. Women were disadvantaged by their dependency on an extended network of relatives, friends and social agencies for contact with their children while men could rely on the child's mother.⁴³

34. *Id.*

35. *Id.*

36. *Id.*

37. MARY M. BALDWIN & JACQUELYN JONES, JOHNS HOPKINS UNIV.'S WOMEN'S AND CHILDREN'S HEALTH POLICY CTR., HEALTH ISSUES SPECIFIC TO INCARCERATED WOMEN: INFORMATION FOR STATE MATERNAL AND CHILD HEALTH PROGRAMS 6 (May 2000).

38. Sharp, *supra* note 32, at 27. Children of women inmates are less likely to have their other parent living in the home, and are therefore more likely to be placed in alternative living arrangements. Thus, children must cope with unfamiliar people and surroundings, separation from siblings, confusion over the relationship between themselves and their caregiver. *Id.*

39. Kathleen J. Block & Margaret J. Potthast, *Girl Scouts Beyond Bars: Facilitating Parent-Child Contact in Correctional Settings*, 77 CHILD WELFARE 561 (Sept.-Oct. 1998).

40. Sharp, *supra* note 32, at 27.

41. *Id.*

42. *Id.*

43. Hagan, *supra* note 31, at 137.

Consequently, even in imprisonment, the female offender experiences unfair treatment in regard to the plight of her children.

Comparing the effects of the loss of a mother to the loss of a father, male and female inmates reported the same number of problems per child, however the type of problems differed.⁴⁴ Fathers reported discipline-related problems, such as drug and alcohol use and school truancy, while mothers noted their children “withdrew” as a result of their incarceration, excessive crying, daydreaming, and suffering academically.⁴⁵

These orphaned children with high risk factors for juvenile delinquency also have a higher rate of adult criminality. A number of studies have documented the adverse effects of parental incarceration and its nexus with the intergenerational transmission of risks of imprisonment.⁴⁶ “Parental crime, arrests, and incarceration interfere with the ability of children to master developmental tasks and to overcome the effects of enduring trauma, parent-child separation, and an inadequate quality of care. The combination of these effects produces serious long-term outcomes, including intergenerational incarceration.”⁴⁷

Concomitant with negative behavior is the mental and emotional stress experienced by those individuals impacted by incarceration. The trauma is most devastating for the mother imprisoned by a system unresponsive to her needs and undaunted by the negative collateral effects of incarceration:

The loss of imprisoned mothers’ daily contact with their children and the subsequent loss of parental skills are coupled with feelings of inadequacy regarding their personal authority. This often makes the desire of these mothers for reunion with their children shortly after release an unrealistic goal. Finally, although many women’s families received state support prior to their

44. *Id.* at 148.

45. *Id.*

46. See, e.g., Kathleen J. Block & Margaret J. Potthast, *Girl Scouts Beyond Bars: Facilitating Parent-Child Contact in Correctional Settings*, in CHILDREN WITH PARENTS IN PRISON: CHILD WELFARE POLICY, PROGRAM, AND PRACTICE ISSUES 93 (Cynthia Seymour & Creasie Finney Hairston eds., 2001); Denise Johnston, *Effects of Parental Incarceration*, in CHILDREN OF INCARCERATED PARENTS 59, 68 (Katherine Gabel & Denise Johnston eds., 1995); Cynthia Seymour, *Children with Parents in Prison: Child Welfare Policy, Program, and Practice Issues*, 77 Child Welfare 472 (Sept.-Oct. 1996).

47. Hagan, *supra* note 31, at 146.

incarceration, on their release they face even more serious financial difficulties in trying to support their families, with many unable to find employment. Incarcerated mothers are a group at risk for future parental difficulties.⁴⁸

Thus, imprisonment is a deficit in the stability of parents and families.

Compounding the difficulties of incarcerated mothers is the negative imprints from imprisonment that produce emotional and mental health problems in their children. Research indicates that the child's mental health is often affected by the trauma experienced due to an early separation from their primary caregiver and the difficult life that follows.⁴⁹ Furthermore, the effects of parental incarceration, particularly the effect of incarcerated mothers, on their children, varied by age and gender.⁵⁰ Older children suffered from fatalism and feelings of helplessness, and male children were likely to mask their feelings of depression through aggression and violence.⁵¹

The dehumanization of children resulting from the imprisonment of their parents, particularly their mothers, erodes the family structure and contributes to the degeneration of society. The most obvious concern is the damaging effect of imprisonment on those who are incarcerated, their families, and their communities.⁵²

IV. EXPENSE OF INCARCERATION VS. BENEFIT TO PUBLIC SAFETY

Since the cost of parental incarceration, specifically for women, is so extensive, a major public policy question becomes whether this expensive investment is truly beneficial for public safety. Does it deter and incapacitate crime? In 1998, there were an estimated 3.2 million women arrested, accounting for approximately one fifth of all arrests by law enforcement agencies.⁵³ Women comprised seventeen percent⁵⁴ of the Part I violent crimes⁵⁵ and twenty-nine

48. *Id.* at 144.

49. *Id.* at 146.

50. *Id.*

51. *Id.*

52. *Id.* at 122.

53. GREENFELD, *supra* note 28, at 5.

54. *Id.*

55. Part I violent crimes are murder, rape, robbery, and aggravated assault. *Id.*

percent⁵⁶ of those arrested for Part I property crimes.⁵⁷ Additionally, there were more than a quarter million female drug arrests, accounting for about eighteen percent of all drug arrest violations.⁵⁸

Comparatively, the majority of women are serving time for non-violent offenses that directly relate to social problems plaguing society. For example, data indicates that of the women in all prisons and jails, thirty-four percent are serving time for drug offenses and thirty-two percent for property offenses often related to crimes committed to support drug habits.⁵⁹ By self-admission, three of every four are substance abusers.⁶⁰ At the federal level, seventy-two percent of female inmates were sentenced for drug offenses.⁶¹ In addition, the General Accounting Office found that the number of women incarcerated for drug offenses nearly doubled from 1990 to 1997.⁶²

Thus, the answer to the question of whether incarceration deters and incapacitates crime must be no. The crime rate continues to increase despite mandatory minimums and sentencing guidelines, which aim to deter crime. The economic and social costs of imprisoning large portions of the population outweigh the benefits of incarceration, especially for non-violent offenses.

V. CHARACTERISTICS OF INCARCERATED WOMEN

In exploring the cause of incarceration for women, several major questions arise, such as: Who are these women entering the penal system at record levels? What are the characteristics of female offenders entering correctional systems? Why do they have special needs and merit programs to meet these needs? A truism, indigestible by a majority of criminal justice policy makers, is that women are different than men, particularly in the penal system environment.⁶³

56. *Id.*

57. Part I property crimes are burglary, larceny, and motor-vehicle theft. *Id.*

58. *Id.*

59. Larry Curry, *Tougher Sentencing, Economic Hardships and Rising Violence*, CORRECTIONS TODAY, Feb. 2001, at 74.

60. *Id.*

61. *Id.*

62. U.S. GEN. ACCOUNTING OFFICE, REPORT TO HONORABLE ELEANOR HOLMES NORTON HOUSE OF REPRESENTATIVES: WOMEN, ISSUES AND CHALLENGES CONFRONTING U.S. CORRECTIONAL SYSTEMS 20 (1999).

63. LaMont W. Flanagan, *Meeting the Special Needs of Females in Custody: Maryland's Unique Approach*, 59 FED. PROBATION 49, 49 (June 1995).

Female prison populations differ from male populations in several significant ways. First, women are less likely to have committed violent offenses and more likely to have been convicted of crimes involving alcohol, drugs or property.⁶⁴ Besides being significantly less violent than men, women show more responsiveness to prison programs, although they have less opportunity to participate in them due to the lack of availability.⁶⁵

Another difference is that men often deal with their anxieties through physical activity, while women resort to increasing food intake, sleeping long hours, and consuming prescription pills.⁶⁶ Most female inmates are poor, undereducated, unskilled, single mothers, and a disproportionate number of them are minorities.⁶⁷ In addition to health problems, nearly twenty-four percent of women in state prisons have been identified as being mentally ill.⁶⁸

Many women in prison have a history of physical and sexual abuse.⁶⁹ In one study, nearly eighty percent reported experiencing some form of abuse; twenty-nine percent reported being physically abused as children; and sixty percent reported being abused by adults, usually by their partners.⁷⁰ Moreover, since nearly half of all women in prison are serving sentences for nonviolent offenses, the impact of substance abuse establishes the foundation for their criminal behavior and subsequent imprisonment.⁷¹ The need for treatment in the community and penal system is dramatically underscored by the fact that three-fourths of female inmates in the state prisons admit to drug use regularly prior to imprisonment.⁷² In view of these facts, substantial criminality can be precluded if female offenders are provided quality programs to halt their drug or alcohol addiction cycle.

VI. LACK OF GENDER-SPECIFIC PROGRAMS FOR INCARCERATED WOMEN

64. U.S. GEN. ACCOUNTING OFFICE, *supra* note 62, at 28.

65. Stephanie Covington, *Creating Gender-Responsive Programs: The Next Step for Women's Services*, CORRECTIONS TODAY, Feb. 2001, at 85.

66. *Id.* at 86.

67. *Id.*

68. U.S. GEN. ACCOUNTING OFFICE, *supra* note 62, at 7.

69. Covington, *supra* note 65, at 85.

70. *Id.* at 86.

71. U.S. GEN. ACCOUNTING OFFICE, *supra* note 62, at tbl.III.3.

72. Tessa Hale, *Creating Visions and Achieving Goals: The Women in Community Service's Lifeskills Program*, CORRECTIONS TODAY, Feb. 2001.

In view of the distinctive problems of women inmates, another major issue is the absence of gender-specific programs within the prisons. The major impediment and unacknowledged problem confronting the female offender is that the American penal system is a male-modeled system – the system was developed primarily for male offenders and is managed primarily by male managers.⁷³ Programs, penal security systems, managerial strategies and organizational protocols have been developed from a male perspective with little acknowledgement of the special needs of female offenders.⁷⁴

The penal system does not take into account the physical and sexual differences of the woman inmate to that of her male counterpart. For example, female offenders who are pregnant should be placed in a maternity ward and receive special diets to nourish the fetus.⁷⁶ Moreover, in the penal system there has been confusion and a lack of comprehension about the special needs of female offenders. Although female and male offenders receive equal treatment from a punitive sanction perspective, female offenders have not been provided with equal services unique to their needs.⁷⁵

The minority status of women in correctional systems has resulted in their special needs being neglected in the policies and practices of a majority of correctional systems, which are male-dominated and programmatically skewed against women.

VII. VICTIMS OF HUMAN RIGHTS VIOLATIONS: LAW SUITS AND POLICY CHANGES

Corrections is a male-dominated system. As a result, women offenders have endured sexual assault and violations of privacy by male prison guards.⁷⁷ The disregard of and failure to recognize the special needs of female inmates is a human rights violation. The undignified status of female offenders has attracted the attention of international organizations.⁷⁸ Approximately forty years ago, the

73. Flanagan, *supra* note 63, at 49.

74. SOUTHERN LEGISLATIVE CONFERENCE, *supra* note 3.

76. John J. Sheridan, *Inmates May Be Parents, Too*, CORRECTIONS TODAY, Aug. 1996, at 100.

75. MORASH ET AL., U.S. DEP'T OF JUSTICE NAT'L INST. OF JUSTICE RESEARCH, WOMEN OFFENDERS: PROGRAMMING NEEDS AND PROMISING APPROACHES (1998).

77. *See infra* notes 96-105 and accompanying text.

78. Amnesty International investigated state laws and recommended tougher penalties for prison workers who engage in sexual misconduct with female inmates. Eun-Kyung Kim, *Report Finds Laws Don't Protect Female Inmates*, SOUTH COAST TODAY, Mar. 7, 2001, at A3.

United Nations promulgated international standards for the supervision of female inmates by male correctional officers to avoid incidences of abuse.⁷⁹ The 1957 United Nations Standard Minimum Rules for Treatment of Offenders⁸⁰ entailed the following guidelines:

1. Women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
2. No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
3. Women prisoners shall be attended and supervised only by women officers.⁸¹

The United Nations Standards also established policies protecting the privacy rights of female offenders by prohibiting cross-gender searches and staffing in female correctional housing units.⁸²

The compliance with these standards by the United States Correctional Systems was short lived due to constitutional challenges on the legal basis of equal protection and employment discrimination.⁸³ Federal Courts summarily found that equal employment rights trump any privacy or other constitutional rights that female prisoners hold.⁸⁴

Subsequent lawsuits⁸⁵ and policy changes⁸⁶ regarding male guards and female prisoners soon followed in Michigan against the federal government and other states.⁸⁷ The lawsuits and policy changes permitted male guards into female prisoner housing units.⁸⁸ Forty years after the promulgation of international human rights

79. *United Nations Standard Minimum Rules for Treatment of Prisoners*, E.S.C. Res. 663C, U.N. ESCOR, 24th Sess., Supp. No. 1, at 11, U.N. Doc. E/3048 (1957), revised by U.N. Doc. E/5988 (1977).

80. *Id.*

81. *Id.*

82. Martin Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law: A Case Study of Women in United States Prisons*, 13 HARV. HUM. RTS. J. 71, 112 (2000).

83. *Id.* at 113.

84. *Griffin v. Mich. Dep't of Corr.*, 654 F. Supp. 690 (E.D. Mich. 1982).

85. Geer, *supra* note 82, at 113.

86. *Id.*

87. *Id.*

88. *Forts v. Ward*, 471 F. Supp. 1095 (S.D.N.Y. 1979).

standards for female inmates, lawsuits and investigations remain robust.⁸⁹

The conditions of confinement for female inmates have been an impediment to providing them with an environment conducive to their special needs. For example, females require special services such as parenting skills, primary care of children and material counseling. Correctional systems fail to provide their services for a variety of reasons. Historically, state and local governments neglected the need for domestic human rights for female inmates. However, legal action ensued and standards for the basic humane treatment of female inmates were developed.⁹⁰ The United States Department of Justice utilized the State of Michigan as fertile ground to ameliorate abusive treatment of imprisoned women and to establish standards of humane treatment.⁹¹

The *Glover v. Johnson*⁹² civil rights case of 1977 was filed on behalf of a class of women inmates seeking redress for denials of their constitutional rights to equal protection and access to the courts.⁹³ *Glover* challenged the lack of educational programs for female inmates.⁹⁴ Subsequent to a 1979 ruling in their favor, the plaintiffs embarked upon a twenty-year struggle to enforce court ordered remedies in the face of unprecedented recalcitrance by the State of Michigan.⁹⁵ The twenty-year history of this case manifests Michigan's reluctance to invest in programs and facilities for the exclusive unique needs of female inmates.

In 1995, the United States Department of Justice wrote the Governor of Michigan, commenting on the results of their investigation into the treatment of women prisoners in Michigan:

The sexual abuse of women prisoners by guards, including rapes, the lack of adequate medical care, including mental health services, grossly deficient sanitation, crowding and other threats to the physical safety and well being of prisoners, violates their constitutional rights . . . Nearly every woman

89. Geer, *supra* note 82, at 80.

90. *Id.*

91. *Id.*

92. 934 F.2d 703, 705 (6th Cir. 1991).

93. *Id.*

94. *Id.*

95. *Id.*

interviewed reported various sexually aggressive acts of guards.⁹⁶

The attention by the United States Department of Justice to the plight of female inmates enlivened the concern of international human rights groups. A report by the United Nations elucidated the dilemma of women inmates in the United States.⁹⁷ The report stated, "International and domestic scrutiny of United States Correctional facilities have yielded troubling findings regarding the mistreatment of female prisoners perhaps the most marginalized sector of the United States population."⁹⁸

The pervasive mistreatment and abusive conditions of women inmates in some United States Correctional facilities were illuminated significantly in the Human Rights Watch Report of 1996.⁹⁹ The report found significant abuses of female prisoners in the Michigan system, including rape, sexual harassment, impregnation, forced abortions, privacy violations and retaliation:

Corrections employees have vaginally, anally, and orally raped female prisoners and sexually assaulted and abused them. In the course of committing such gross abuses, male officers not only used actual or threatened physical force, but have also used their near total authority to provide or deny goods and privileges to female prisoners to compel them to have sex or, in other cases, to reward them for having done so. In other cases, male officers have violated their most basic professional duty and engaged in sexual contact with female prisoners absent the use or threat of force or any material exchange. In addition to engaging in sexual relations with the prisoners, male officers used mandatory pat-frisks or room searches to grope women's breasts, buttocks, and vaginal areas and to view them inappropriately while in a state of undress in the housing or bathroom areas. Male corrections

96. HUMAN RIGHTS WATCH, WOMEN'S RIGHTS PROJECT, ALL TOO FAMILIAR: SEXUAL ABUSE OF WOMEN IN UNITED STATES PRISONS 236-37 (1996).

97. *Report of the Special Rapporteur on Violence Against Women: In Cases and Consequences*, United Nations ESCOR, 55th Sess., Agenda Item 12, at 4, U.N. Doc. E/CN.4/1999.

98. *Id.*

99. HUMAN RIGHTS WATCH, *supra* note 96.

officers and staff have also engaged in regular verbal degradation and harassment of female prisoners, thus contributing to a custodial environment in the state prisons for women, which is often sexualized and excessively hostile.¹⁰⁰

This report reflects how the historical neglect of females in the penal system is a significant failure in the current correctional system.

The findings by the Human Rights Watch were validated by the United States Department of Justice and corroborated the inhumane treatment of female inmates in a report to the Governor of Michigan.¹⁰¹ The Chief United States Assistant Attorney General, Civil Rights Division, Deval Patrick concluded that sexual abuse of female inmates occurred by both male and female guards.¹⁰² Pregnancies resulted from these activities and female inmates were disciplined by having their parole revoked.¹⁰³ Correctional officers additionally exposed their genitalia and subjected female inmates to both suggestive comments and verbal abuse.¹⁰⁴ Assistant Attorney General Deval Patrick further concluded that:

During routine pat-searches the officers touch all parts of the women's bodies, fondling and squeezing breasts, buttocks and genital areas in a manner not justified legitimate security needs. In addition, many searches are conducted when the women are in their nightgowns in the evening; there is improper visual surveillance by the corrections officers. Many officers stand outside cells and watch prisoners undress and use the showers and toilets. Maintenance workers, in addition to corrections officers, are allowed to view women in various degrees of undress. The degree and kind of surveillance employed exceed legitimate security needs.¹⁰⁵

100. Geer, *supra* note 82, at 81 (quoting HUMAN RIGHTS WATCH, *supra* note 96, at 236-37).

101. *Id.* at 81-82.

102. *Id.* at 82.

103. *Id.*

104. *Id.*

105. *Id.*

Resistance to all legal coercion on behalf of female inmate rights persisted in Michigan from 1979 to 1999, even in the midst of another international organization's findings.¹⁰⁶ In 1998, Amnesty International issued an extensive report of its investigation of a variety of human rights violation allegations in the United States.¹⁰⁷ A review of the penal systems in Michigan, Arizona and California found overcrowded conditions, an exploding inmate population, physical brutality, sexual abuse, and shackling of pregnant prisoners.¹⁰⁸

The legal momentum to correct the deficiencies in human rights for female inmates has been curtailed through the passage of new federal legislation entitled the Prison Litigation Reform Act, hereinafter referred to as P.L.R.A.¹⁰⁹ The P.L.R.A. was signed into law in April 1996 and was enacted primarily as a response to mounting concerns over the cost of litigation initiated by and on behalf of inmates.¹¹⁰ In essence, the passage of the P.L.R.A severely limited legal offensives based on the Eighth Amendment's cruel and unusual constitutional standard.¹¹¹

The P.L.R.A. carves out the area of prison litigation from all other cases before the judiciary, sets new rules, and significantly affects past and future prison reform efforts, as well as the scope of protections for individuals.¹¹² The P.L.R.A. dramatically limits a court's ability to remedy findings of unconstitutional prison conditions or practices.¹¹³ The P.L.R.A. also prohibits a prisoner from bringing a claim for mental or emotional injury in federal court without "a prior showing of physical injury."¹¹⁴ This provision limits the application of the Eighth Amendment's 'cruel and unusual' punishment clause to violations that result in physical injuries.¹¹⁵ "It also precludes other constitutional claims often raised in prisoner litigation where physical injury does not occur, such as violations of privacy, access to counsel, substantive due process, equal protection, and other First, Fourth, Fifth, Ninth and Fourteenth Amendment rights."¹¹⁶

106. *Id.* at 80.

107. *Id.* at 82.

108. *Id.* at 83.

109. Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (1996).

110. *Id.*

111. Geer, *supra* note 82, at 104.

112. Prison Litigation Reform Act of 1995 § 802.

113. *Id.*

114. *Id.* § 803(d).

115. Geer, *supra* note 82, at 104.

116. *Id.*

The new legislative standards enhance the difficulties women inmates encounter in seeking legal redress for mistreatment in the penal system. The protective guarantees for mental and emotional well being for women inmates have been discarded by a legislative system concerned only with containing the cost of prisoner litigation. The prospect of changing the conditions of confinement for female inmates will be dependent on changing domestic jurisprudence to incorporate international human rights standards. The public at-large needs to be educated to the systemic flaws in the penal system pertaining to the special needs of female inmates and the collateral effects of imprisonment, in order to help facilitate a reconstruction of this system.

VIII. INNOVATIVE PROGRAM INITIATIVES FOR INCARCERATED WOMEN

The future of women inmates is the prerogative of correctional executives who determine managerial priorities daily. Utilizing the creative resources of their intellect, gender specific program initiatives can be developed to meet the special needs of female inmates without strapping the limited budgets of penal systems. A few correctional systems have embarked on ambitious ventures to orchestrate gender-specific programs that begin to confront the special needs of female inmates. Amongst those few who have piloted special initiatives is the Maryland Department of Public Safety and Correctional Services (MDPSCS).¹¹⁷

The programs initiated by the MDPSCS are fostered by partnerships with public and nonprofit agencies.¹¹⁸ These business relationships create programs that are inexpensive for the correctional institution, instead requiring predominantly an investment of interest and cooperation by correctional administrators. Most public agencies need the participation of the correctional population to fulfill service mandates of federal grants and appropriations.¹¹⁹ The nonprofit organizations and private foundations are willing to invest funds in correctional programs to improve the health and education of inmates.¹²⁰ A substantial number of programs emanate from research

117. Flanagan, *supra* note 63, at 50.

118. STATE OF MD. DEP'T OF PUB. SAFETY AND CORR. SERV., DIV. OF PRETRIAL DETENTION AND SERV., WOMEN'S DETENTION CTR. BROCHURE OF PROGRAMS AND SERV. (2002).

119. *Id.*

120. *Id.*

grants that have identified particular problems and solutions to alleviate them.¹²¹

The MDPSCS provides an array of legal, spiritual, psychological, physical health, social, educational, and recreational activities specifically targeted for adult and juvenile female inmates.¹²² The inmates' participation is voluntary and activities are scheduled seven days a week. The provision of services and programs for these populations is made possible by continuous collaborative efforts with the Baltimore City Health Department, local community churches, professionals, community self-help and non-profit organizations, the Johns Hopkins University, University of Maryland Baltimore County, and Abell Foundation, Inc.¹²³

Legal services are provided for inmates to assist with transferring parental custody, adoption and foster care placement while incarcerated. Legal advice is also offered for issues regarding divorce, death, housing, financial matters and wills.¹²⁴

Spiritual services are provided by the Staff Chaplains and volunteer ministers. Inmates have an opportunity to schedule daily visits with the Chaplains and receive inspirational literature, and religious service activities related to their faith/religious affiliation.¹²⁵

The student body at Johns Hopkins University provides remedial education classes to prepare inmates for General Education Diploma courses on Saturdays. Library services are additionally available to inmates on a weekly basis where they may borrow books and receive assistance with research activities upon request.¹²⁶

Prenatal conditioning is offered to promote healthy and structured physical exercise for the pregnant population. All activities are approved by licensed physicians and certified instructors. A special maternity dormitory has been designed for pregnant females in their third trimester of pregnancy and each inmate housed in this area receives regular prenatal care, and remains in the dormitory until the delivery of their babies.¹²⁷

Tamar's Children is an additional interdisciplinary program that provides an opportunity for mother/infant bonding despite incarceration. Pregnant and post-partum women qualifying for this

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

program are housed in a separate facility designed for this population.¹²⁸

Health care and prevention programs for female inmates are provided by Maryland State Prison Health Services, the Baltimore City Health Department and an array of community health care organizations. The Baltimore City Health Department HIV Prevention Program provides case management for inmates addressing the following areas: HIV/AIDS risk and risk reduction, use of condoms and other prevention devices, substance abuse counseling and relapse prevention, decision making and problem solving techniques, parenting skills, and counseling for mental health issues.¹²⁹ Mental health is addressed by the North Baltimore Center for Community Prevention and Support. Inmates are educated on basic mental health issues and community services and are offered residential and adult day care services upon release.¹³⁰

Recreational services provide inmates with an opportunity to participate in structured physical conditioning and training activities. These activities are designed to help inmates control stress, anger and anxiety particular to confinement and encourages positive self-images. Recreation services are offered daily and take place in section dayrooms and/or the gymnasium. Juvenile female inmates are additionally taught meditation and relaxation exercises to reduce explosive and impulsive behaviors.¹³¹

Acupuncture has been integrated into inmate programs and services to provide an alternative treatment modality for substance abuse and related illnesses. The Baltimore City Detention Center's Addicts Changing Together-Substance Abuse Program (ACT-SAP) provides drug dependency screening, in-depth clinical assessment and intensive acupuncture treatment and education to substance abusing females.¹³² Acupuncture is used as a treatment modality in conjunction with traditional substance abuse counseling. Acupuncture has proven successful in treating addictions such as alcohol, heroin, cocaine and PCP without utilizing pharmaceutical products.¹³³

ACT-SAP has a team of acupuncturists providing forty-five minute acupuncture treatments, six hours of weekly education and counseling session to aid inmates on drug rehabilitation. Through the

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

mandates of Drug Court (District and Circuit), referrals of clients (inmates) are made for short-term treatment intervention with after-care planning and follow-up recommendations, which are essential for success.¹³⁴

The need for an effective means of controlling anger and violent behavior within the detention center has become increasingly acute for female offenders during the past several years. In an effort to stem the tide of violence among the female population, the Baltimore City Detention Center developed and implemented the Baltimore City Detention Center Stress Reduction Program.¹³⁵ The Stress Reduction Program provides trained practitioners who teach meditation techniques for coping with stress. Two-hour classes are held twice a week, and evening meditation sessions are conducted by volunteers.¹³⁶ Inmates participating in this program are housed in a special housing area. Women who have completed the program are eligible to attend local meditation programs in the community.

The Women's Detention Center Beauty Salon is the latest educational program to join the family of services designed to meet the special needs of the female inmate population.¹³⁷ The Beauty Salon is a professional hair care program that will consist of volunteer licensed cosmetologists who will provide inmates with an educational opportunity on hair care.¹³⁸ The cosmetologists will demonstrate and explain to inmates how to maintain healthy hair and in the process promote positive self-esteem.

It is the obligation of correctional systems to prepare inmates to reenter society. Part of this preparation is to provide programming that will ameliorate the risk factors that attracted these individuals to a life of criminality. Unless gender-specific programming is provided to female offenders, the propensity for their return to the criminal justice system will be greater as the risk factors have not been reduced to curtail recidivism.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

