

The Real Cost of Prisons for Women and Their Children Background Paper

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I The Current Situation

Between 1936 and 1975 the number of women incarcerated in the US varied between 5,000 and 8,000 prisoners. In 1980 there were 13,000. But by 2001 there were 94,336 women in prison, and another 72,621 women in jail, bringing the total incarcerated over 166,000.¹

The fastest growing segment of the US prison population is mothers, usually custodial parents. In 1999 women in Federal, State and county jails were mothers to at least 250,000 children. Most of those children were under 10 years old, 20% under 5.²

Women are not only affected by their own incarceration, they are also seriously affected by the incarceration of men. 2 million men are now incarcerated, with a heavy concentration among African-American men. With 1 in 3 African-American men between the ages of 20 and 29 now under correctional supervision or control, their mothers, sisters, and the mothers of their children are bearing enormous costs: taking care of children alone and without financial support from the fathers, trying to maintain a relationship with someone who may be hundreds of miles away, and trying to keep their communities intact.

i Characteristics of Incarcerated Women

Only 4 in 10 women inmates in State prisons were employed full-time prior to their arrest; 37% had incomes of less than \$600 per month. An estimated 60% of those on probation, 55% of those in local jails, 56% of those in State prisons, and 73% of those in Federal prison have completed high school.

The median age of incarcerated women is their early 30s. Women under correctional care, custody, or control are substantially more likely than the equivalent general

¹ Allen Beck and Jennifer Karberg. 2002. Prison and Jail Inmates at Midyear 2001, BJS Bulletin. NCJ 191702. Cited in Natalie Sokoloff, Impact of the Prison Industrial Complex on African American Women, unpublished paper, 2003.

² Christopher Mumola, Incarcerated Parents and Their Children. Bureau of Justice Statistics, Special Report. August 2000. p.1.

population never to have been married. 7 in 10 women under correctional sanction have minor children.

Nearly 6 in 10 women in State prisons have experienced physical or sexual abuse in the past; just over a third of imprisoned women have been abused by an intimate in the past; and just under a quarter report prior abuse by a family member.

About 6 in 10 women in State prisons describe themselves as using drugs in the month before the offense, 5 in 10 as a daily user of drugs, and 4 in 10 as under the influence of drugs at the time of the offense. Nearly 1 in 3 said they had committed the offense which brought them to prison in order to obtain money for drugs.³

ii Race

Like men's, women's incarceration is extremely racialized: of those women in local jails only 36% are white, while 44% are black and 15% are Hispanic. In State prisons 33% of women are white, 48% black, and 15% Hispanic; and in Federal prisons 29% are white, 35% black, and 32% Hispanic.⁴ Overall, black women are 7 times more likely than white women to be incarcerated; and in 15 states African American women are incarcerated at rates 10 to 35 times greater than white women.⁵ Since 1986 incarceration of all women has grown 400%, while incarceration of women of color grew 800%. This disparity in growth rates has much to do with the War on Drugs. For example:

| | | | |
|----|---|----------------------------|-----------------------------------|
| NY | African-American and Hispanic women are | 32% of population, but got | 92% of prison sentences for drugs |
| CA | | 38% | 54% |
| MN | | 5% | 27% |

In 1999 black children (7%) were nearly 9 times as likely to have a parent in prison as white children (0.8%). Hispanic children (2.6%) were 3 times as likely as white children to have one.⁶

iii Probation

Two things are particularly worth noticing about the relation between the number incarcerated and the total number under criminal jurisdiction (i.e., including those on probation or parole): first, the multiple of probation/parole to incarcerated is much higher for women than for men. Nearly 1m women are under criminal jurisdiction, with around

³ Lawrence Greenfeld and Tracy Snell, Women Offenders. Bureau of Justice Statistics, Special Report. October 2000.

⁴ Women Offenders, p. 7.

⁵ Impact of the Prison Industrial Complex on African American Women, p. 3.

⁶ Incarcerated Parents and Their Children, p.2.

85% of those under supervision in the community.⁷ This supervision makes it hard for women not to end up back in prison – one third of women who enter prison have had their parole or probation violated, mostly for what are called technical violations such as having contact with someone convicted of a felony, being seen in a neighborhood they have been barred from, having drugs in their urine, rather than for commission of another crime – it means their lives are under constant scrutiny even outside prison. For men the ratio is 5.6m to 1.9m, i.e. more like 65% of those men involved in criminal jurisdiction are under supervision in the community.

Secondly, this fact is highly racialized: while 67% of the women in Federal prison are black or Hispanic, only 37% of those on probation are.⁸ We could term it this way: women of color are being treated like men, with incarceration being favored, while white women are more likely to be under coercive ‘supervision’: a fact with obvious continuity with the old reformatory model of remolding white women into societal norms.

iv What Crimes

When the incarceration of women started growing in the 1970s, criminologist Freda Adler suggested it was because of women’s liberation – that women were now becoming more violent, more like men. It is now clear that that is not the explanation: the proportion of women being admitted for violent crime is both low and falling. 12 % of women in jail, 28% of women in State prisons and 7% of those in Federal prisons are there for violent offenses. Of those female violent offenders an estimated 62% (in comparison with 36% of males) had a prior relationship with the victim as an intimate, relative, or acquaintance.

The proportion of female State prison inmates incarcerated for violent and property offenses has been falling, while the proportion for drug and public-order offenses has dramatically risen during the 1990s. [See figure 1.] 72% of women in Federal prisons, and 34% in State prisons, are incarcerated for drug offenses; 8% of those in Federal and 11% of those in State prisons are there for public-order offenses.⁹

In 2000 1/3 of the women admitted to prison in Illinois were for property offenses, with the most common property offense being retail theft under \$150.¹⁰

⁷ Women Offenders, p.6.

⁸ Women Offenders, p.7.

⁹ Women Offenders.

¹⁰ Susan George, Comments to the Congressional Black Caucus, September 14, 2002.

II Causes: Why Is the Incarceration of Women of Color Growing So Fast?

I'll discuss a number of deeper relationships here, then show how they're playing out in what I'll call the *funnel of injustice* – the institutions and structural forces that pull some people so much harder than others into the criminal justice system and ultimately into prison.

i Racialized Patriarchy

To understand why the incarceration of women of color is growing at such an extraordinary pace, we need to start by thinking about the particular forms of oppression they face as women of color. I am using the concept of racialized patriarchy to emphasize two things. Firstly, that the situation of a woman of color is not just a kind of layered or double oppression, sexism on top of racism or vice versa. Rather her situation is shaped by a unique interaction of those systems of oppression. For example, black feminist scholar Kimberle Crenshaw has described what she observed in a study of battered women's shelters in African American communities in Los Angeles. She notes that many of the women seeking the services are poor, and that if shelters are to effectively address not only the immediate crisis (physical violence) but the underlying causes, then they need to acknowledge the "other multi-layered and routinized forms of domination that often converge in these women's lives...". What African American women experience is the confluence of sexism, greater vulnerability to poverty, lack of access to education and jobs, combined with issues of racially based housing and job discrimination. The sum of each of these elements becomes greater than the parts.¹¹

Secondly, I want to emphasize the structural nature of this oppression--- it's not just a matter of the persistence of irrational racist or sexist attitudes, which should erode with time and diversity education, but deep structures of oppression that have co-evolved with capitalism.

Of what does racialized patriarchy consist?

a) Feminization of Poverty

Women are more likely to be living in poverty than men, and they earn lower wages. This fact is extremely racialized: figure 2, median income for full-time year round workers, shows that black women's income remains substantially below those of black men and white women, and that since 1980 white women have been closing the gap with white men but increasing the gap between their income and that of black women.

¹¹ Kimberle Williams Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' from *The Public Nature of Private Violence*, eds Martha Fineman and Rixanne Mykitiuk, Routledge, 1994, pages 93-118.

b) Caring Labor

Women are much more likely than men to be doing unpaid caring labor – taking care of children, as well as aged parents and others in need of care. This adds an extra workload onto them, and it produces many other difficulties – these include the difficulty of finding work that will pay for childcare, the extra urgency of finding an income when you have children to support, the ways women are penalized for taking time out of the paid labor force. This of course is racialized – women of color are more likely than white women to be bringing up children alone, and have fewer financial resources to do it. Of those women that are living in female-headed households with children under 18, 42.2% of blacks are below the poverty level versus (an already very high) 30.9% of whites.¹² The ‘reform’ of the welfare system has made their situation all the more difficult; and the increase in incarceration has left more mothers, sisters and grandmothers taking care of their incarcerated partner, son or daughter’s children alone.

c) Sex Work

Many women, lacking other means to survival, engage in one form or another of ‘transactional sex’ – there is a spectrum of practices of exchanging sex, formally or informally, for money, food, shelter, drugs, protection. The spectrum arguably runs from some marriages and other long-term partnerships at one end, to paid prostitution at the other. It can be thought of as men handing over some of the fruits of their patriarchal privilege, in exchange for sexual access to women’s bodies. It makes women vulnerable in many ways: that includes physical vulnerability to illnesses such as HIV/AIDS, as well as the fact that when the transactions at one end of the spectrum are illegal, as they are in the vast majority of countries, women may end up incarcerated for trying to make a living. Of course this is highly racialized - both whether and where women will be on the spectrum, and whether they get jailed for it. Although only 20 to 30% of prostitutes are women of color, they represent the vast majority of those sentenced to jail time.¹³ And although prostitutes working on the street account for around 20% of prostitutes, they constitute 85-90% of those arrested.¹⁴

d) Abuse

Nearly 6 out of 10 women in State prisons have been abused, often by an intimate. Physical and sexual abuse of women are endemic to patriarchy, they’re built in. Estimates of the number of women in the US who suffer serious violent assault by an intimate partner during an average 12-month period range between 1 million and 4 million.¹⁵

¹² Bureau of the Census, Annual Demographic Survey 2001.

¹³ ‘Black Women and Prostitution’, Gauntlet, #7, Prostitutes’ Education Network.

¹⁴ Prostitutes’ Education Network.

¹⁵ Bureau of Justice Statistics Special Report: Violence Against Women: Estimates from the Redesigned Survey (NCJ-154348) August 1995, p.3; American Psychological Association, Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family, 1996, p.10

Nearly 1 in 3 adult women experience at least one physical assault by a partner during adulthood.¹⁶

Bureau of Justice statistics show that women of all races and Hispanic and non-Hispanic women are about equally vulnerable to violence by an intimate. Some groups of women are particularly vulnerable, though. While domestic violence is spread across all income levels, women in families with income below \$10,000 are more than twice as likely as other women to suffer violence from an intimate (19.9 per 1,000 versus an overall 9.3 per 1,000).¹⁷ Women receiving welfare are also particularly likely to have suffered such violence – studies show a range from 57% to 65% ever having being abused, and 15% - 32% currently being abused. Ever abused women on welfare are very likely to suffer from depression, other mental health problems, and drug and alcohol abuse, and 15-50% of them report interference from their partner with their efforts to obtain education, training or work. These studies strongly suggest that being abused by an intimate makes it very difficult for women to sustain employment and escape poverty.¹⁸

If women respond to their abuse and subsequent mental ill health by self-medicating they are likely to be dealt with through incarceration: more so if they use illegal drugs rather than alcohol or prescription drugs; if they use drugs that are dealt with particularly harshly by the legal system – for example crack rather than powder cocaine – and if they live in neighborhoods that are subject to intense policing. In other words: women of color are not more likely than white women to be abused, but it is more likely to take them down a path that ends in incarceration.

e) Reproduction

Women's sexuality and reproductive capacity are socially controlled, in racialized ways. Nicole Hahn Rafter argues that the reformatory movement in the first few decades of the twentieth century was largely about disciplining and reforming white women's behavior, especially including their sexual freedom - women were jailed indefinitely for consorting with men too freely, etc. Women of color, on the other hand, were excluded both from this norm of femininity and from the minimal protection accorded to white women for their assumed fragility and reformability.

As for reproductive capacity: during slavery black women's reproductive capacity was controlled for the profits of their owners, and abortion was illegal for all women. Roe vs. Wade made abortion legal, but its availability then became a matter of financial ability. Particular laws change, but what continues to underlie them are changing sets of definitions of who counts as a 'good' or fit mother, and who not. A simple starting point here is that white women – more so the richer they are – are constructed as 'good' mothers, while women of color now for the most part are not. Recent expressions of this

¹⁶ American Psychological Association, op. cit., p.10.

¹⁷ Bureau of Justice Statistics, op. cit, p.4.

¹⁸ Raphael and Tolman, Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship between Domestic Violence and Welfare – Project for Research on Welfare, Work, and Domestic Violence, University of Michigan, April 1997.

include the welfare ‘reforms’, fuelled by racist stereotypes of black welfare mothers; also laws criminalizing drug addicted women for bearing children, which have been applied in racist fashion. Of course, if you believe that black men have become largely excluded from the US economy, and the incarceration boom has been in part a way of managing this change¹⁹, then it is unsurprising that black women, formerly physically coerced into bearing children, are now being heavily discouraged.

ii Globalizing Neoliberalism

First, neoliberalism. I am using the word neoliberalism to refer to the conservative economic model that has become dominant in the US and many other countries since the early 1980s. ‘Liberal’ because it is based in the liberalism of the eighteenth century that first made the argument for using the market to run the economy. ‘Neoliberal’ because this version is a new one, developed in reaction to the economic, political and social upheavals of the 1960s and 70s. Some of the elements of neoliberalism that are especially relevant for this discussion are:

- Rollback of the government. The government’s role of providing a safety net for those who are hurt by market economics or by changes in economic structures, has been cut back. For example, spending on healthcare and education has been cut; and fiscal support to the states has been cut, forcing them to cut back further on spending on education, social programs, and support for low-income families. Welfare has been severely cut back with the ‘reforms’ of 1996. The effects of this were muted during the late 1990s when jobs were being created, enabling low-income women denied TANF to transition to employment. But since 2000 the rate of unemployment among low-income single mothers has risen more than the overall rate and their incomes have fallen, yet they actually received less from public assistance, on average, in 2001 than in 2000.²⁰
- Associated with the government rollback has been a reduction in public sector employment. A report by the Institute for Women’s Policy Research shows that between 1979 and 1998 employment in the public sector dropped significantly, particularly for African Americans and Hispanics. This is important because median wages tend to be higher in the public sector: for women without a college degree they are 15% higher than in the private sector. They are also much more likely to carry pension plans and health insurance.²¹
- Reduced power of labor, including unions.
- Increased inequality and poverty. The share of total household income received by the bottom 40% of households fell from around 15% in 1970 to below 13% in 1997,

¹⁹ See for example Christian Parenti, Lockdown America.

²⁰ Jeff Chapman and Jared Bernstein, ‘Falling Through the Safety Net: Low-Income Single Mothers in the Jobless Recovery’ EPI Issue Brief #191. Economic Policy Institute, April 11, 2003.

²¹ ‘Why Privatizing Government Services Would Hurt Women Workers.’ IWPR Publication #B234, October 2000. The higher pay and benefits are primarily due to unionization.

while the share of the top 5% of households rose from under 17% to under 21%. The median weekly earnings of African-American women fell from 93% of those of white women in 1979, to 84% in 1998. In the second half of the 1990s there were reductions in poverty rates, but they have been increasing again over the last two years. According to the Census Bureau 34.6 million Americans were living in poverty in 2002, 1.7 million more than in 2001. Nearly 3.8 million families were hungry in 2002 to the point that someone in the household skipped meals because the family could not afford them. That is 8.6% more families than in 2001, when 3.5 million were hungry, and a 13% increase from 2000.²²

- A pattern seen across many different countries has been an increase in women's participation in the informal sector as a way to absorb the impact of reduced employment in the public sector, cutbacks in social programs, and reduced income. The informal sector includes under-the-table work, but also illegal activities such as the drug economy or sex work.
- Neoliberalism has gone with an ideology of individual blame that helps to legitimize its effects on inequality and poverty. Thus the structural constraints within which people exercise their agency are ignored, and they are blamed, demonized as morally impoverished super-predators or crack moms, and incarcerated.

As for 'globalizing:' we need to think about neoliberalism's globalizing aspect for two reasons. First, the increased ability of capital to shift jobs overseas has produced tremendous economic and social change in both inner cities and rural areas of the US over the last couple of decades. Blue-collar jobs have been leaving the US for countries of the global South, and export-oriented agro-industry has been destroying small family farms, leaving rural communities seeking prisons as last-resort attempts at economic development.

The second reason is this: we need to think of neoliberalism as a global system because the prison crisis in the US is not entirely unique to the US, which suggests that its causes are not entirely US-specific, either. . It is famously true that the US has by far the highest rate of incarceration worldwide – 702 per 100,000 of the population, as compared to a worldwide average around 140. But the great majority of countries are now incarcerating people at faster and faster paces. During the 1990s incarceration increased by over 40% in half the large countries in Europe; by 60-85% in the US, Mexico, Argentina, Brazil and Colombia; and according to one study of 118 countries the rate grew in 73% of the countries surveyed.²³

As other countries move toward the US model, private prison corporations are globalizing too. For example, Wackenhut is now the US division of a multinational

²² 'More US Families Hungry or Too Poor to Eat, Study Says' New York Times, November 2, 2003.

²³ 'An overview of world imprisonment: global prison populations, trends and solutions' Roy Walmsley, paper presented at the United Nations Programme Network Institutes Technical Assistance Workshop, May 2001 – available on website for the International Centre for Prison Studies, www.kcl.ac.uk/depsta/rel/icps/home.html

enterprise, Group 4 Falck, which operates in more than 80 countries. Its Global Solutions division manages prisons in the UK, Australia, South Africa and Saint Lucia. It is also taking on a host of 'related' activities, including operation of magistrates' courts in the UK, and now the running of (ostensibly non prison-related) schools and healthcare.

The reasons for the increase in incarceration are different in different countries and regions, and the growth rates, indeed, vary enormously even within continents --- Southern Africa, for instance, has much higher growth rates than West Africa. In some regions crime actually seems to have increased – this is true in some Latin American countries, where it has increased because of increasing unemployment and falling real wages, and because of the war on drugs.²⁴ But these are clearly related to neoliberalism, and the same kinds of forces that are driving incarceration in the US. In Eastern Europe and the Soviet Union, similarly, there is huge economic and social upheaval related to the fall of Communism.

Race is clearly playing an important role in some other countries' move toward incarceration: in New Zealand in 1995 just over half of all the men and nearly two-thirds of the women sent to prison were Maori --- yet only 12 out of every 100 New Zealanders are Maori. In Australia at the end of 1995 Aboriginals accounted for 1.7% of the general population and 19% of those in prison. In Canada in 1993 black adults were admitted to prison at more than 5 times the rate of white adults. In the state of Rio in Brazil 61% of the population is white, but 31% of those in prison are white. In Eastern Europe the same pattern is found with gypsies or Roma.²⁵ And in Britain incarceration of blacks is increasing at such a dramatic pace that 1 in every 100 black British adults is now in prison.²⁶ But race cannot explain all countries' experiences; and we have to ask why so many countries have recently [stepped up incarceration]

This is not the place to examine the experience of all different countries in depth, but the argument I want to make is that the fact that incarceration is increasing in so many countries simultaneously is highly unlikely to be a coincidence. It may be partly a matter of a kind of ideological contagion, with other countries picking up the US model. But it seems plausible that it is at least partly related to the new economic model that is taking hold globally; and, furthermore, that understanding the dynamics in other countries will illuminate new aspects of the US's experience.

iii War on Drugs

(This material will come from the RCPP's curriculum on the war on drugs, soon to be completed.)

²⁴ 'Prisons in South America: Which Way Out?' Julita Lemgruber. Beyond Prisons Symposium – Kingston, Ontario - available on website for Correctional Service of Canada, www.csc-scc.gc.ca

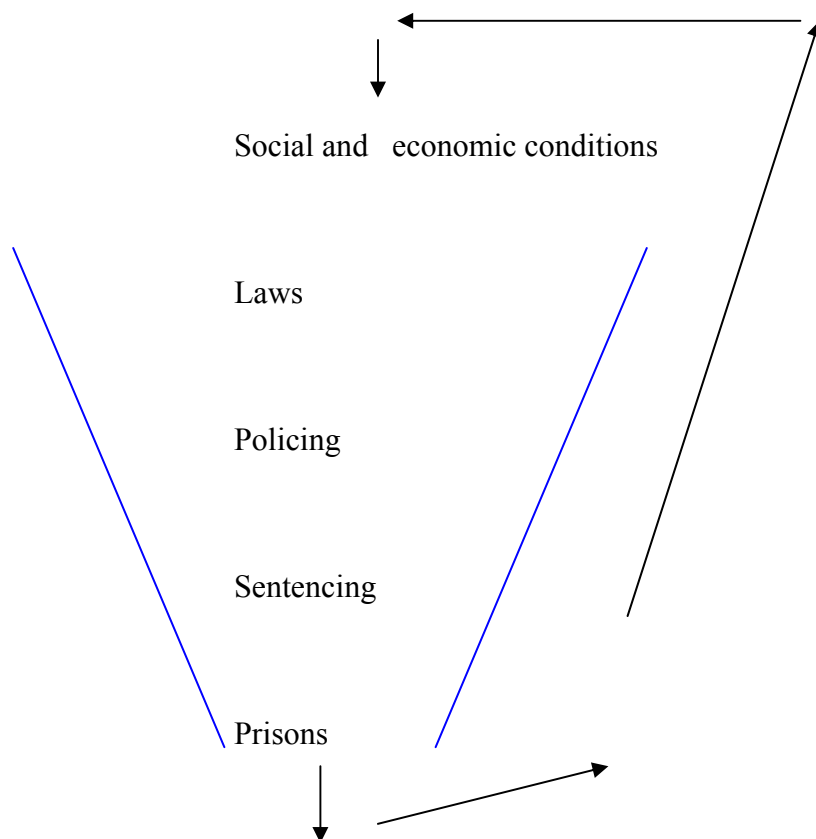
²⁵ Vivien Stern, 'A Sin Against the Future: Imprisonment in the World' Penguin Books, 1998. p.120.

²⁶ 'One in 100 black adults now in jail' The Observer, 30 March 2003.

iv The Prison Industrial Complex

Julia Sudbury defines the prison industrial complex as ‘a symbiotic and profitable relationship between politicians, corporations, the media and state correctional institutions that generates the racialized use of incarceration as a response to social problems rooted in the globalization of capital.’²⁷ One useful thing about that definition is that it is discussing a wider array of profits than just those that flow to private prison corporations or the companies using cheap prison labor. While those kinds of profits are real, they are not enough to drive the whole complex. But politicians also ‘profit’ from being hard on crime, and from handing out prison contracts; and the media profits by sensationalizing crime and punishment to sell newspapers or advertising. There is now a huge parasitic superstructure of people benefiting from the racialized use of incarceration.

v The Funnel of Injustice



Now to connect all this to the incarceration of women of color in the US.

²⁷ Julia Sudbury, ‘Women of Color, Globalization, and the Politics of Incarceration’ from Barbara Raffel Price and Natalie J. Sokoloff, eds, The Criminal Justice System and Women: Offenders, Prisoners, Victims and Workers, forthcoming.

Here's our question: if you start out at the top of the funnel, with babies being born into different lives in different parts of this country, why do some end up 20 years later being pulled down the funnel into prison and others not? Why are members of some groups so much more vulnerable, for instance men of color? And why have women of color become so much more vulnerable than they used to be? The simple story is that at each stage going down the funnel, some groups are being dragged down much harder than others; some have a very strong downward force pulling at them while others do not.

a) Social and economic conditions

What we've seen by thinking about racialized patriarchy and about globalizing neoliberalism, is that those conditions are particularly bad for women of color, and make them far more vulnerable than white women - especially wealthier white women - to being sucked further down the funnel. That is, as inner cities are gutted, public sector jobs disappear and government support programs have been cut, women of color are increasingly likely to be in situations of economic desperation that reduce their survival options to those around the top of the funnel, i.e. those that break laws, such as sex work or stealing food or clothes, or involvement in the drug economy.

b) Laws

Laws don't come from God, they are socially constructed. In a culture of racism and patriarchy, moral panics and disciplinary maneuverings, this means that some laws are constructed in ways that yank particularly hard at poor women and women of color. For instance: the fact that sex work is illegal, which places women at greater risk of sexually transmitted diseases and violence and makes them liable to cycles of arrest and incarceration. In some places in the US you can now arrest women just for being 'known streetwalkers.' Another example is the laws governing women's reproductive rights, including those under which women are prosecuted for taking drugs while pregnant. Or more accurately, as activists and feminist legal scholars have pointed out, for having a baby while being addicted to drugs. If the concern here was to ensure the health of fetuses then drug treatment would be made more readily available. What happens instead is that women are given little or no help in fighting their addiction – indeed, are driven away from seeking help by the threat of being reported and convicted - then they are prosecuted for giving birth. This even though there is no scientific evidence that use of crack cocaine – the target of much of this legal activity – does harm to a fetus above the damage done by a woman's living in poverty and having inadequate prenatal care.²⁸

Another example is the laws imposing mandatory minimum sentences for drug-related crimes, which have particularly harsh effects on women. A woman who takes a phone message for a boyfriend involved in a drug deal, or drives him to the bank, can be charged for conspiracy. Since she will have no information about other people involved in the deal she won't be able to plea bargain, with the result that she may end up being

²⁸ For more information about this, including the case of Regina McKnight, prosecuted for homicide and sentenced to 20 years in jail after her stillborn baby was found to have cocaine metabolites in its bloodstream, see the websites for Drug Policy Alliance, or National Advocates for Pregnant Women.

charged, and serving a mandatory minimum, for the entire quantity of drugs being sold, while the man who did the actual deal gives up information in exchange for a lesser charge.²⁹

c) Policing

Policing obviously happens differently in communities of color than white communities. A particularly graphic example of this is the Tulia scandal, where a drug sting operation in Tulia, Texas in 1999 led to the arrest of 46 people – 40 of them black, the other 6 either Hispanic or whites dating blacks. This amounted to 15% of the black community of the town. The arrests - and subsequent incarceration of 21 people, for terms of up to 99 years - were based solely on the uncorroborated testimony of a private informant hired to conduct the sting operation, Tom Coleman, who worked alone and did not wear a wire. In this case family members and groups including the William Moses Kunstler Fund for Racial Justice, the ACLU, and the NAACP Legal Defense Fund, worked for years to overturn the injustice. The Texas Court of Criminal Appeals has yet to consider the case, but such plentiful evidence has come to light of Coleman's unreliability as a witness, that Gov. Rick Perry signed a bill in June 2003 unanimously approved by the Texas House allowing the remaining inmates to be freed on bond. As one of those centrally involved in the case, Ethan Nadelmann of the Drug Policy Alliance, put it, 'What happened in Tulia is particularly shocking in its starkness, scale and notoriety. Unfortunately, though, it is just one of the countless injustices in a war on drugs that disproportionately targets people of color while wasting millions of taxpayer dollars.'³⁰

Another example of differences in policing is in a 1990 New England Journal of Medicine study comparing the results of toxicologic tests of pregnant women who received prenatal care in public health clinics and private obstetrics offices in Pinella County, Florida. The study found little difference in substance abuse by race, economic class, or in whether subjects attended the public or private clinic. But the black women in the study were *ten times* more likely than the white ones to have been reported to public health authorities for substance abuse.

Drug use rates per capita among minority and white Americans are similar, and studies suggest that drug users tend to purchase their drugs from sellers of their own race.³¹ However while blacks constitute approximately 12 percent of the population, they constitute 38% of all drug arrestees. By 1989, with the war on drugs in full sway, blacks

²⁹ See website for Families Against Mandatory Minimums.

³⁰ Drug Policy alliance website:

<http://www.drugpolicyalliance.org/news/pressroom/pressrelease/pr040203.cfm>

³¹ Substance Abuse and Mental Health Services National Administration, U. S. Department of Health & Human Services, "National Household Survey on Drug Abuse, Preliminary Results from 1997" (1999), pp. 13, 58, Table 1A. K. Jack Riley, "Crack, Powder Cocaine, and Heroin: Drug Purchase and Use Patterns in Six U.S. Cities," National Institute of Justice, United States Department of Justice (December 1997), p. 1.

were being arrested for drug crimes at a rate of 1600 per 100,000, while whites were being arrested at one-fifth that frequency per capita – 300 per 100,000.³²

d) Sentencing

Once people have been arrested, conviction and sentencing occur in racist fashion. Blacks, 38% of those arrested for drugs, constitute 59% of those convicted of drug offenses and, because they are less likely to strike a favorable plea bargain with a prosecutor, 74% of those sentenced to prison for a drug offense.³³

Nationwide, black males convicted of drug felonies in state courts are sentenced to prison 52% of the time, while white males are sentenced to prison only 34% of the time. The ratio for women is similar – 41% of black female felony drug offenders are sentenced to prison, as compared to 24% of white females. With respect to violent offenses, 74% of black males convicted serve prison time, serving a mean sentence of 107 months, as opposed to only 60% of white male convicted felons serving time, with a mean sentence of 79 months.³⁴

The New York State Division of Criminal Justice Services studied felony sentencing outcomes in New York courts between 1990 and 1992, concluding that one third of minorities sentenced to prison would have received a shorter or non-incarcerative sentence if they had been treated like similarly situated white defendants.³⁵

Mandatory sentencing laws treat some crimes with undue severity, especially drug-related ones. It has been widely noted that the disparate treatment of crack and powder cocaine in this respect (a conviction for the sale of 500 grams of powder cocaine triggers a 5-year mandatory sentence, while only 5 grams of crack cocaine are required to trigger the same 5-year mandatory sentence) has racist outcomes. In 2000 blacks made up 30.3% of powder cocaine offenders but 84.2% of crack cocaine offenders. However it is worth noting that this difference is not entirely a black:white difference. Whites make up a much larger proportion of offenders for powder cocaine than crack cocaine (18.2% vs. 5.7%); but the majority of those arrested for powder cocaine are actually Hispanic (50.6%, vs. 9.0% of crack cocaine offenses).³⁶

Women are particularly hurt by their weak position for plea bargaining: given mandatory sentencing laws plea bargaining is essentially the way it's decided what sentence people

³² Michael Tonry, 'Drug Policies Increasing Racial Disparities in US Prisons' in Michael Tonry and Kathleen Hatlestad, eds, *Sentencing Reform in Overcrowded Times* Oxford University Press, 1997. Pp. 233, 235.

³³ 'Justice on Trial: Racial Disparities in the American Criminal Justice System' Leadership Conference on Civil Rights. Chapter 3. - <http://www.civilrights.org/publications/reports/cj/index.html>

³⁴ Jodi M. Brown and Patrick A. Langan, 'State Court Sentencing of Convicted Felons, 1994' Bureau of Justice Statistics, March 1998, p. 24, Table 2.10.

³⁵ Office of Justice Systems Analysis, New York State Division of Criminal Justice Services, "Disparities in Processing Felony Arrests in New York State, 1990-1992" (September 1995), pp. v-vi, xi.

³⁶ 'Race and Class Penalties in Crack Cocaine Sentencing' Michael Coyle. The Sentencing Project. pp. 1 and 10.

will get for drug-related crimes – defendants plead guilty in over 90 percent of all criminal cases, often even if they are innocent, and the plea bargain is controlled entirely by prosecutors.³⁷ They will reward defendants who give up information about other people, which women, lower down in the drug hierarchies, are much less likely to have access to than men. So there are many anecdotes of women serving longer sentences than men who committed much worse crimes. Poor women are also hurt by their lack of access to lawyers who can get them reduced or suspended sentences or diversion to drug treatment centers.

People of color are also disproportionately excluded from participating in drug courts because of the exercise of discretion at various points: they are deemed less likely to succeed in treatment; they have longer criminal histories because they are the subject of intensive law enforcement; they have more serious addictions because they have less access to drug and mental health treatment, medical services, and social services; they often have fewer family resources or ties that courts consider to be markers of stability; and are more likely to be overcharged by police and thus rendered ineligible for drug courts.³⁸

e) Prisons

Prisons now operate in a way that could hardly be more efficient at increasing recidivism if they'd been deliberately designed with that goal. Education programs – known to reduce recidivism- have been cut, little vocational training happens, and drug treatment is available to few. In 1991 43% of prisoners about to be released from state prisons reported participating in an educational program and 31% receiving vocational training. By 1997 this was down to 35% in educational programs and 27% in vocational training. In 1991 nearly a quarter of all inmates in state prisons had received drug treatment since their admission. By 1997 this had fallen below 10%.³⁹

In the most recent Bureau of Justice study of recidivism, which followed a group of state prison inmates released in 1994, nearly one third of released offenders was rearrested within six months, and over two thirds had been arrested by the end of three years. A significant portion of these arrests resulted in conviction and re-incarceration. But it's also worth noting how many of those who returned to prison did not do so for a new crime, but for technical violations of their parole. Of those released in 1994 25.4% were re-incarcerated within three years with a new sentence, and an additional 26.4% were returned to prison for technical violations of parole.⁴⁰ This could include having a 'dirty' urine test, missing an appointment with a parole officer, or being a 'known' streetwalker. The importance of parole violations was even higher for women than men. Overall

³⁷ Angela J. Davis, 'Incarceration and the Imbalance of Power' in 'Invisible Punishment: The Collateral Consequences of Mass Imprisonment', eds. Marc Mauer and Meda Chesney-Lind. New Press, 2002. p.68

³⁸ From a talk by Daniel Abrahamson, Director of Legal Affairs, Drug Policy Alliance, at Canadian Harm Reduction Conference, 23 November 2002. See also US Dept. of Justice report on California Drug Courts.

³⁹ 'Recidivism of State Prisoners: Implications for Sentencing and Corrections Policy' The Sentencing Project, August 2002.

⁴⁰ P.A.Langan and D.J.Levin, 'Recidivism of Prisoners Released in 1994' Bureau of Justice Statistics, 2002.

women were less likely than men to be returned to prison over a three year period – 39.4% versus 53.0%. But of those returned to prison, 51% of men and 56% of women were for technical parole violations rather than committing a new crime.

f) Post-Release

When people leave prison, they're effectively put into a chute that ends up poised right above the top of the funnel again - not a safe distance away so they're not immediately pulled down again, but somewhere over the top. This effect is produced by denying women and men with drug felony convictions access to public housing, many types of jobs, loans for higher education, welfare, food stamps. Their options for economic survival, which already were likely within a narrow range, have been narrowed down still further.

III Costs

Note, inasmuch as we buy the possibility of there being any social benefit to incarceration, the social benefit of incarcerating women is likely to be lower than that of incarcerating men, since much of that alleged benefit comes from protecting the rest of society against violence and incarcerated women are less often violent than men. On the other hand, the social cost of incarcerating them tends to be higher because of child care issues. So our starting point is that it makes even less sense to incarcerate women than men.

i Costs to Women and Their Children While Women are Incarcerated

- Years of lost life (YLL). I will follow the methodology used by Ernest Drucker in his paper on the impact of New York's Rockefeller drug laws, to make a rough calculation of the mortality equivalent of women's incarceration.⁴¹ The YLL methodology is an overstatement inasmuch as women incarcerated have not actually been killed. But it gives some sense of the magnitude of loss of their freedom. In the year 2001 166,000 women were incarcerated. Their median age was early 30s: say 32. Women's estimated life expectancy in 1999, the last year I found numbers for, was 79.9 for white women, 74.7 for black women.⁴² I did not find an estimate for Hispanic women. The racial average of incarcerated women varies between State and Federal prison: I will simply use the mean figure of the two, 77.3, which is likely to be higher than the real figure. Then we divide 166,000 by (77.3 – 32), to get a total of 3,664. That is, in 2001 the 'mortality equivalent' of women's incarceration was approximately 3,664 women's lives lost. To give one comparison, the attack on the World Trade Center caused 2,752 deaths according to the New York City Department of Health's most recent estimate.

⁴¹ Ernest Drucker, 'Population Impact of Mass Incarceration under New York's Rockefeller Drug Laws: an Analysis of Years of Life Lost' Journal of Urban Health: Bulletin of the New York Academy of Medicine. Vol.79,#3 September 2002.

⁴² Bureau of Vital Statistics (US). 'Estimated Life Expectancy at Birth in Years, by Race and Sex', National Vital Statistics Report, vol.50,#6 March 21, 2002.

- Lost income. This is pulled down by the fact that so many incarcerated women were unemployed prior to their arrests. I cannot make an exact estimate given that I don't have an unemployment figure for women in Federal prison, or a breakdown of the numbers of women in Federal and State prison. But notice that even a very low estimate of income, such as an average \$10,000 per annum, gives us a total lost income of \$1.66 billion.
- Loneliness, unhappiness, violence of life inside prison.
- Vulnerability to sexual abuse inside prison.
- Healthcare problems: TB, hepatitis, HIV, untreated substance addiction. Rates of HIV among incarcerated women are very high – 3.6% nationwide; 10.3% in the Northeast US; 18.2% in New York. An estimated 9% of incarcerated women are pregnant. They suffer poor prenatal care, a high number of late-term miscarriages, even being forced to give birth while shackled, and separation from their baby almost immediately after birth. There are added long-term costs of all those ways of neglecting women's and babies' health.
- Loss of contact with children: difficulties making visits to faraway prisons, the extortionate cost of phone calls, etc. The majority of parents in State (62%) and Federal (84%) prison were held at least 100 miles from their last place of residence. 54% of mothers and 57% of fathers in State prison had never been visited by their children since their incarceration.
- Possibility of losing long-term custody of children. 90% of fathers in State prison reported that at least one of their children was in the care of his/her mother. For incarcerated mothers the proportion whose children were in custody of their father was only 28%. 10% of mothers reported that their children had gone to foster homes, agencies, or institutions. This costs an estimated \$25,000 per child per annum, but that takes no account of the emotional trauma suffered by both parent and child.
- The probability that children will end up in the criminal justice system is estimated to be 2-3 times higher if one of their parents was incarcerated.
- Larger cultural effects: a further delegitimizing of the parenting of women of color.

ii Costs After Leaving Prison

- Felony disenfranchisement or 'civil death'. Over half a million women have lost the right to vote: that is 1 in 8 of the total disenfranchised.⁴³

⁴³ 'Felony Disenfranchisement Laws in the United States'. Briefing Sheet, The Sentencing Project, June 2003.

- Difficulties negotiating the parole system without ending up back in prison. About 45% of women for whom parole supervision was ended in 1996 were returned to prison or had absconded.
- Difficulty finding employment or housing with criminal record, given CORI restrictions and the ban on public housing – even staying in someone else’s apartment - for those with drug convictions.
- Loss of welfare: some states impose a lifetime ban for anyone with a felony drug conviction. 92,000 women are currently affected by the ban: 44,000 white women, 35,000 African-Americans, and 10,000 Latinas. Combined with the difficulties finding employment, this may leave little or no alternative to sex work, drug selling, or dependence on men. Violating probation or parole can leave women ineligible for food stamps, SSI, and TANF.
- Regaining custody of children will often require the woman to have a job and a place to live. If she can’t get these she will eventually lose the children permanently: the Adoption and Safe Families Act requires states to move to sever a parent’s right to a child after he or she has spent 15 months in foster care.⁴⁴
- Ineligible for student loans with a felony drug conviction. In 2001 more than 43,000 college students faced possible denials of federal aid because of this ban. This of course doesn’t account for those who aren’t even trying to go to college because they know about the ban.
- If immigrants, may face deportation
- High rates of recidivism, especially since education, vocational training in prisons have been cut back.

iii Costs to Women and Children of Mass Incarceration of Men

- Lost income.
- Lost parenting, relatives, friends and intimate partners. Over 10 million children have had a parent incarcerated at some point in the child’s life.
- Stigma for the families.
- Costs of trying to keep in contact with the men, and support them: costs of visits to faraway prisons, extortionate collect phone calls, emotional costs etc.
- Social effects in African-American community of the distorted ratio of men: women.

⁴⁴ ‘[No Kids Please. You’re In Prison](#)’ Ann Farmer, Women’s Enews, 1 July 2002.

iv Costs to the Community

- The direct financial cost to taxpayers of incarcerating women is enormous. The estimated cost of pre-sentencing expenses associated with female inmates in Chicago, for instance, is \$31,000 per person, with actual time incarcerated costing an additional \$25,000 a year per person. On top of that is the cost of foster care for any children taken into care, which is estimated for Chicago at \$25,000 per child.⁴⁵
- Reductions in public services because of the cost of prison expansion. This leads to cuts in the kinds of public sector jobs that might have been good options for women in deindustrializing inner cities: as mentioned above, the median wage for women without a college degree is 15% higher in public sector jobs than private.
- Opportunity cost of the education that lost its funding to prison. In many states there has been a tradeoff, with increased spending on prisons associated with cuts in higher education spending. The Justice Policy Institute attributes this to the fact that ‘prisons and universities generally occupy the portion of the state’s budget that is neither mandated by federal requirements nor driven by population – like Medicare or K-12 education. Because they dominate a state’s discretionary funds, prisons and universities must ‘fight it out’ for the non-mandated portion of the state’s budget.’⁴⁶ For example, between 1979 and 2003 General Fund appropriations for Arizona’s public universities fell by 25.7%, while appropriations for the state’s prisons and juvenile facilities shot up by 185.5%. In FY2002, for every dollar appropriated to provide African Americans and Latinos with a state university education, the state of Arizona spent roughly \$2.42 to incarcerate African Americans, and \$1.54 to incarcerate Latinos.⁴⁷
- Census distortions from counting prisoners. Prisoners are counted as part of the population of the area where they are imprisoned rather than the community they came from and will return to. Since these numbers are used for determining government funding and political representation, resources are being reallocated from, on average, inner cities and communities of color to the rural areas where prisons are located. This is exacerbating the effects of felony disenfranchisement.⁴⁸
- Short-term costs of pulling children out of their families; long-term social costs of the damage done to those children. To estimate the total short-term costs of foster care alone: the Center for Children of Incarcerated Parents estimates that in 1995 2.7% of

⁴⁵ Robert LaLonde and Susan George, ‘Incarcerated Mothers: The Chicago Project on Female Prisoners and Their Children’, Initial Report, June 2002,

⁴⁶ ‘Class Dismissed: Higher Education vs. Corrections During the Wilson Years.’ Dan Macallair, Vincent Schiraldi and Khaled Taqi-Edden. Justice Policy Institute, September 1998.

⁴⁷ ‘Borrowing Against the Future: The Impact of Prison Expansion on Arizona Families, Schools and Communities’ Arizona Advocacy Network and Grassroots Leadership, April 2003. p.5

⁴⁸ See Drug Policy Alliance website. Also ‘Prisoner Nation; Prisons Skew Census Results.’ The Nation. July 17, 2000. No. 3, Vol. 271.

those children with one or more parents incarcerated, were in foster care. That number is now conservative: the figure comes from a weighted average of fathers, whose children are less likely to go to foster care, and mothers, whose children are more likely, and the actual weighting presumably has moved towards mothers in the last 8 years as women's incarceration has grown so fast, making 2.7% a conservative figure. If we apply it to the total 1,941,796 children who now have a parent incarcerated, we get an estimated 52,428 children going to foster care. Multiplying that by a conservative per child cost of \$20,000 a year gives us a total of just over \$1 billion a year just in short-term financial cost. Long term costs would also include the costs to the children in education, healthcare, and mental health of years spent in foster care, and the costs to the community of the long-term damage.

- Within the African-American community, the damage done to social capital, community, and possibilities of informal social control, by having people constantly be moved into and out of prisons. Note the continuity with slavery here - and the similarities with South African apartheid - in the ways that families and communities are constantly being ripped apart.

Todd Clear and Dina Rose use the phrase 'coercive mobility' about these cycles of incarceration and re-entry. They have shown in their work that by disrupting the social networks which are the basis of informal social control, the high concentration of coercive mobility in some neighborhoods diminishes available levels of social capital and collective efficacy, with very destructive effects. Crime, for example, can actually increase in these neighborhoods because of the destruction of social capital. And children will be badly affected, by incarceration and re-entry not only in their own homes but in the community at large. In some neighborhoods children 'are more likely to know someone involved in the criminal justice system than to know someone who is employed in a profession such as law or medicine'.⁴⁹

- Disenfranchisement of a large portion of the African-American community, which denies them an electoral voice to change this situation.

IV Alternatives

I will structure the discussion of alternatives by following the structure of the funnel of injustice in reverse order, that is from post-release on up. This is not to say that all activists must focus simultaneously on all levels, but that there are many different directions from which to attack this situation.

a) Conditions and policies facing the incarcerated upon release

⁴⁹ A.C. Case and L.F.Katz, 'The Company You Keep: The Effects of Family and Neighborhood on Disadvantaged Youths' Cambridge, MA: National Bureau of Economic Research, 1991. Quoted in Dina Rose and Todd Clear, 'Incarceration, Reentry and Social Capital: Social Networks in the Balance', John Jay College of Criminal Justice, January 2002.

In New York 'Second Chance' legislation is being proposed by Ed Koch, Harvard professor Charles Ogletree, and Rev. Al Sharpton. People convicted of no more than two nonviolent drug-related felonies and misdemeanors, and who have served their sentences, could enroll in Second Chance. They would be required to fulfill stringent requirements: complete drug and alcohol treatment and testing, obtain a GED high school equivalency diploma, do at least one year of community service and stay crime-free for five years. After completing the Second Chance program, ex-offenders could apply to a Second Chance commission to have their criminal records sealed. This proposal still seems far too stringent, but it is at least introducing the concept.

b) Prisons

At one end of the spectrum here is prison abolition, advocated by Angela Davis among others. Prisons could be abolished for all but the most violent criminals, such as mass murderers, and replaced with other forms of community-based rehabilitation and restitution. These would be much cheaper, more humane, and more effective at reducing recidivism. Every other country in the world uses prison far less than the US.

In Mother-Child Correctional Programs mothers can keep their young children with them in prison. There are currently 10 such programs in the US, some run within prisons and some operated by non-profit agencies. They often offer parenting and vocational classes and drug treatment. They are cheap alternatives to minimum security prisons; particularly in the long run, if they can keep children out of foster care and strengthen their ties with their mothers.⁵⁰

Effective, client-driven drug treatment programs and vocational training can be offered within prisons. Among other benefits, these reduce recidivism.

c) Sentencing

A RAND corporation study estimates that every additional \$1 spent on drug treatment saves taxpayers \$7.46 in social costs. A number of states have passed measures to sentence more people to drug treatment programs rather than prison, with successful results. CA's Proposition 36, passed in 2000, is estimated to save \$100 to \$150m annually by diverting about 36,000 drug possession offenders from jail and prison to treatment. A 1996 Arizona initiative is estimated to have saved nearly \$7m in 1999.⁵¹ In Mississippi, the state auditor released a report calculating savings of \$5.4m a year if 500 people successfully made it through drug court treatment programs instead of going to prison, adding momentum to the campaign to increase the number of programs.⁵²

In 2002 the Brazilian Congress adopted legislation reducing the use of custodial sentences for drug users, in favor of community service and rehabilitation. It is predicted

⁵⁰ CCIP Journal, Volume 3/Number 1 October 2001.

⁵¹ 'Cutting Correctly: New Prison Policies for Times of Fiscal Crisis' Center on Juvenile and Criminal Justice 2002.

⁵² ?? March 2003.

that judges will send as many as one third fewer people to jail, and the recidivism rate is expected to fall – in the state of Rio Grande do Sul, where treatment replaced prison terms, the recidivism rate has already been halved from 85% two years ago.⁵³

Mandatory sentencing is being readdressed in numerous states, under both Democratic and Republican governors. The Louisiana legislature has abolished mandatory sentences for dozens of nonviolent offenses and amended their ‘Three Strikes’ law, requiring that both the first two convictions be for violent crimes. Some scaling back has also happened in Indiana, North Dakota, Connecticut and Michigan.⁵⁴

In New Zealand a new law was introduced in July 2002 that requires the judge when sentencing to “think about the desirability of not sending the offender to prison.” In Canada the prison population has recently been reduced, from 115 per 100,00 in 1998 to 102 in 2001. A new conditional sentence has been introduced, and sentences less than 2 years have been suspended in many cases with requirements for community service imposed.⁵⁵

d) Laws

There are many alternatives to the current legal framework. Those include legalizing or decriminalizing some or all drugs; legalizing and/or regulating paid sex work; allowing harm reduction strategies such as needle exchange. Canada is about to open a legal safe-injection site for drug addicts in Vancouver: clients will be given the equipment they need to inject safely, with medical support available and no police harassment. Similar safe-injection programs have been set up in the Netherlands, Switzerland, Australia and Germany.⁵⁶ Community control over policing would lead to less policing of poor African-American neighborhoods.

e) Social and economic conditions

Groups like Coyote aim to organize sex workers to improve their working conditions and curb police harassment. They push for destigmatization and ultimately decriminalization of sex work.

There are many European countries that support caring labor better than the US does, with, for instance, generous maternity leaves and state-funded child-support. These programs do not fall into distinguishing ‘deserving’ from ‘undeserving’ recipients, but support all mothers for doing work that the whole community depends on.

⁵³ ‘Brazil’s drug users will get help, instead of jail’ Christian Science Monitor, January 04, 2002.

⁵⁴ ‘Cutting Correctly: New Prison Policies for Times of Fiscal Crisis’ Center on Juvenile and Criminal Justice 2002.

⁵⁵ Speech by Baroness Vivien Stern to Latin American conference on penal reform, 5-11 November 2002. Available on website for International Centre for Prison Studies.

⁵⁶ ‘Canada Plans Injection Site for Addicts’ New York Times, 27 June 2003.

The destruction of inner city neighborhoods caused by the globalizing economy and worsened by the effects of the prison industrial complex, is directly addressed by alternative models of economic development. For example the Dudley Street Neighborhood Initiative, in Roxbury MA, won the right of eminent domain over vacant land, and has now converted over 600 such lots into affordable housing, community gardens and food production lots, safe play spaces and parks. Porto Alegre, Brazil practices a form of participatory budgeting that involves large numbers of residents across the city in democratic planning about the needs of their community and best allocation of the city's budget. Burlington, VT is now trying this model.⁵⁷

Federal and state governments could give back a percentage of the money saved by redirecting people from prison into treatment programs and education, to heavily hit neighborhoods for drug programs, job training, and housing development.

The vast majority of those incarcerated in the US are men, particularly men of color; but the costs for women are also extremely high. As we have seen, women of color are themselves being imprisoned and supervised at a rapidly increasing rate. But they are also bearing tremendously high costs when the men in their homes and communities are incarcerated. Women's situation needs to be understood for a full reckoning of the costs of prisons, and it needs to be taken seriously in the fight for alternatives.

⁵⁷ 'Porto Alegre's budget of, by, and for the people' David Lewit, Yes! A Journal of Positive Futures, Winter 2003. See also Gianpaolo Baiocchi in Politics and Society, 29, 2001.

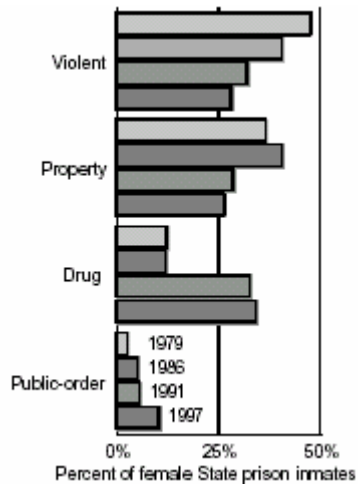


Figure 1: Trends in Most Serious Offenses.
 Reproduced from Lawrence Greenfeld and Tracy Snell, Women Offenders. BJS Special Report, 1999. Figure 9.

Median Income for Full-Time Year Round Workers

