



**Written Testimony of Aleks Kajstura,
Legal Director, Prison Policy Initiative**

**Subcommittee on Crime, Terrorism and Homeland Security
of the U.S. House Committee on the Judiciary**

**Hearing date
July 16, 2019**

Women and Girls in the Criminal Justice System

Thank you, Chairwoman Bass and members of the Subcommittee for providing the opportunity for me to testify. My name is Aleks Kajstura and I am an attorney and Legal Director of the Prison Policy Initiative. We are a non-profit, non-partisan organization based in Massachusetts. Our mission is to produce cutting edge research to expose the broader harm of mass criminalization, and spark advocacy campaigns to create a more just society.

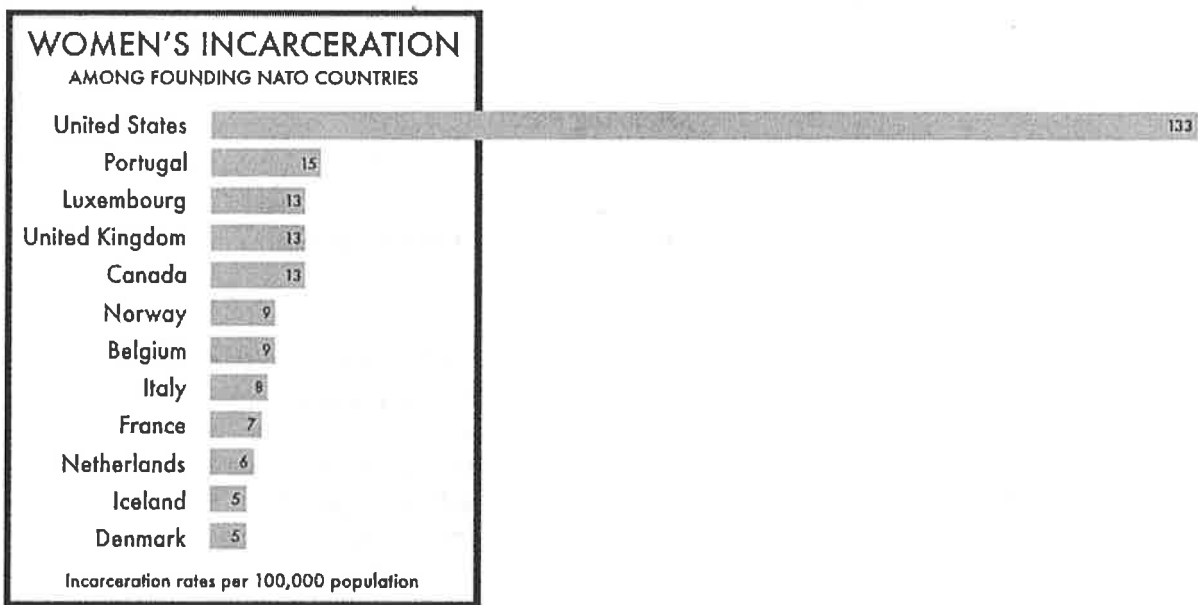
I am thankful for this opportunity to share some data on women's incarceration with the Subcommittee, not only because this is an issue that has been overlooked for too long, but also because women's experiences with the criminal justice system serve well to highlight the faults of the whole system.

The U.S. in context

I have been asked to put numbers on the issues facing women in the criminal justice system. The US incarcerates women at the highest rate in the world, so there is a lot of data to dig through, but as I outline the basics, I would like you to keep one particular fact in mind:

I in 4 women who are incarcerated have not been convicted.

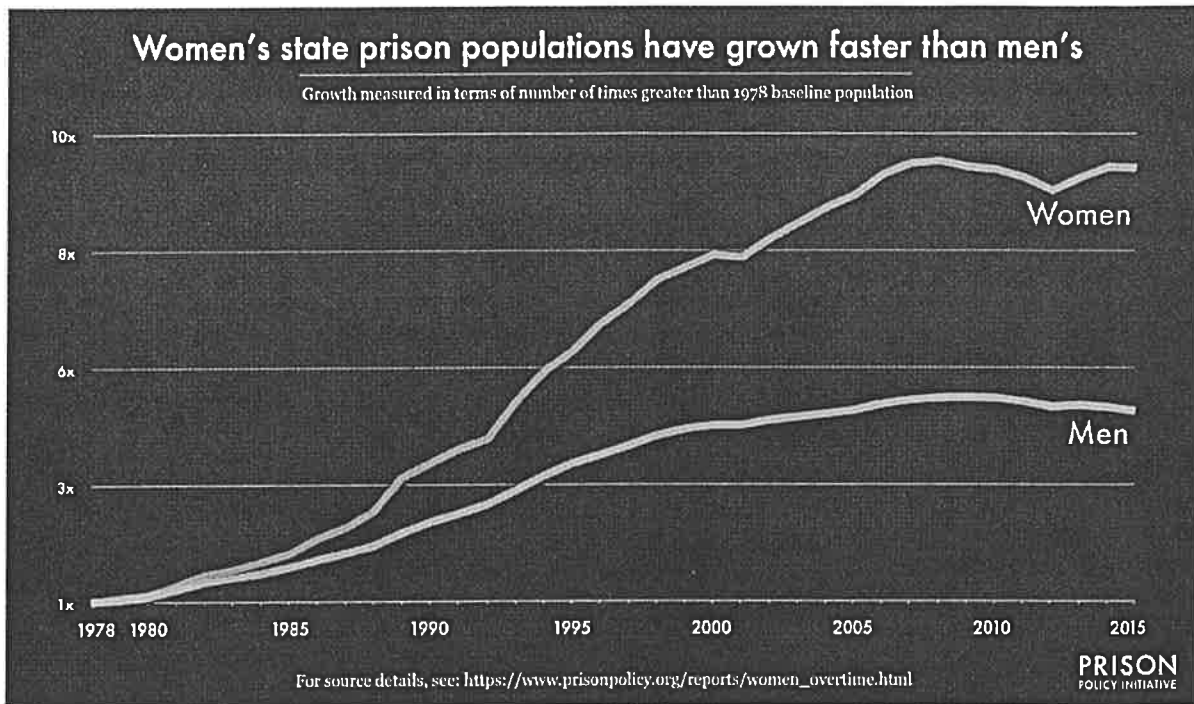
That figure alone demonstrates how we over-use incarceration. But there are many other ways to look at the problem. For example, the U.S. is home to only 5% of the world's female population, but it accounts for nearly 30% of the world's incarcerated women. And when it comes to its peer nations, it is literally off the charts:



Source: <https://prisonpolicy.org/global/women/2018.html>

Worsening problem

Since the 1970's women's state prison populations have grown faster than their male counterparts. There are nearly 10 times as many women in state prisons now as there were 40 years ago. Despite this dramatic growth, women's prisons have remained an afterthought – they continue to operate like men's prisons, despite those populations having different needs.



In most states, women's prison populations don't appear to have benefitted from recent efforts to reduce incarceration as much as men's prison populations have. In a number of states, women's prison populations are growing faster than men's, and in others, they are growing while men's are actually declining. In some states, both women's and men's populations have fallen, but women's have fallen less dramatically than men's. Nationally, men's state prison populations have dropped about 5% since they peaked in 2009, but women's prison populations have fallen only a fraction of a percent.

Causes

There are a myriad of interconnected reasons why the U.S. is incarcerating women at ever-increasing rates. Here are a few examples:

States continue to “widen the net” of criminal justice involvement by criminalizing women’s responses to gender-based abuse and discrimination. For example, the expansion of drug conspiracy laws means that even those with minor or peripheral roles in the sale or manufacturing of drugs receive the same harsh sentences as those in charge of the operation. Other policy changes have led to mandatory or “dual” arrests for fighting back against domestic violence, increasing criminalization of school-aged girls’ misbehavior — including survival efforts like running away — and the criminalization of women who support themselves through sex work.

Fewer diversion programs are available to women. In Wyoming, for example, a “boot camp” allow men to participate in a six-month program, instead of serving a lengthy prison sentence. But no similar program is available for women in the state, so women face years of incarceration for first-time offenses while their male peers return quickly to the community. (After suing the state the women were allowed to attend a similar program – in Florida, 2,000 miles from home.)

And then, while women are incarcerated, they face a greater likelihood of disciplinary action — and more severe sanctions — for similar behavior when compared to men. Disciplinary action works against an incarcerated woman’s ability to earn time off of her sentence and against her chances of parole.

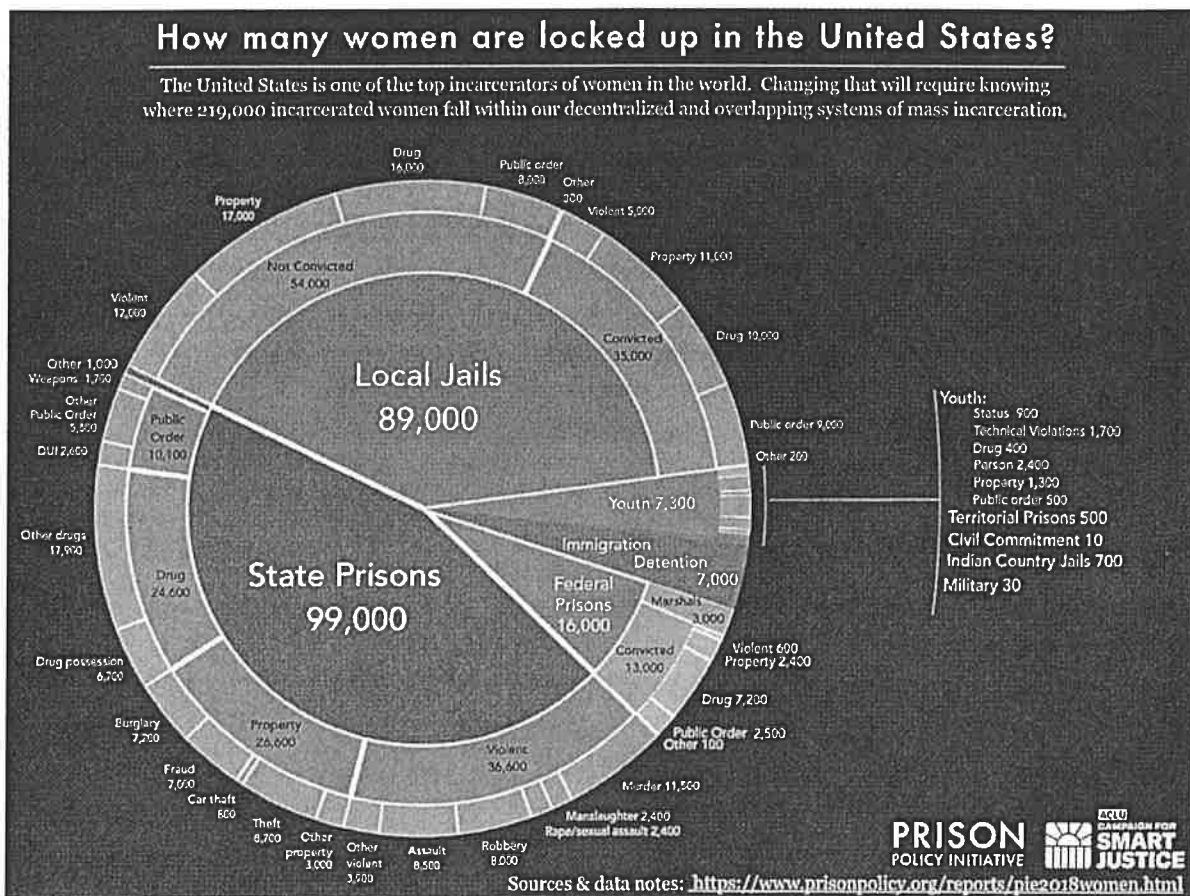
The tentacles of mass incarceration have a long reach

Women incarcerated in jails and prisons account just for a small percentage of women under some form of correctional control. Probation accounts for the majority of women under correctional control. Probation is often billed as an “alternative to incarceration,” but compliance with restrictive probation terms of probation is particularly difficult for women, so it often sets us up to fail.

For example, probation often comes with monthly fees, which women are in the worst position to afford. Failing to pay these probation fees is often a violation of probation. Childcare duties further complicate probation requirements that might require meetings with probation officers, with no extra money to spend on babysitters or reliable transportation across town. And ongoing struggles with mental health and substance use disorders also mean that women need additional support rather than punishment for “failures” on probation.

Not having basic data holds back reform efforts

Even as incarceration rates drop, women's incarceration continues to grow at alarming rates. Getting the hard data is the next obvious step in making policy change. You would think that knowing how many women are locked up, and where, would be easily available. After all, this is a population that is literally counted multiple times a day.



But there is an astounding lack of data on women's incarceration.

When I set out to give a complete picture of women's incarceration in my report "Women's Mass Incarceration: The Whole Pie", I had to weave together data scattered across incompatible government reports and surveys to answer even the most basic questions.

For example, how many officers and enlisted women are held under military jurisdiction? The last time Bureau of Justice Statistics (BJS) published that number was 1998. That's over 20 years ago. I'm guessing much has changed in our armed forces in the last two decades. Since then nearly 300,000 women have served in Afghanistan and Iraq alone. It would be good to know how they are faring under military jurisdiction.

Did you know that the last time the BJS published a comprehensive report on incarcerated women it was 1999? That's literally in the last century. Since then, data on incarcerated women has been available piecemeal scattered throughout BJS publications. But the even worse, the BJS has stopped even *collecting* data on women's conviction status in jails, much less publishing it. Nearly 50% of incarcerated women are held in jails, but the BJS doesn't even ask whether they are convicted or awaiting trial. As you may remember, my calculation shows that 1 in 4 women who are incarcerated today have not been convicted, but that is at its core derived from 2009 data – we need to know what has changed since then to assess the impact of reforms efforts.

When our statistical agencies are blindfolded, the policy makers are too. This has consequences: overall incarceration rates are falling, but women's incarceration is still growing.

Further Reading

This testimony was compiled from several recent Prison Policy Initiative publications. For more details I would highly recommend the following four reports and articles:

- Women's Mass Incarceration: The Whole Pie 2018
<https://www.prisonpolicy.org/reports/pie2018women.html>
- The Gender Divide: Tracking Women's State Prison Growth
https://www.prisonpolicy.org/reports/women_overtime.html
- State-level studies identify causes of the national "gender divide"
https://www.prisonpolicy.org/blog/2018/04/11/state_studies_gender/
- States of Women's Incarceration: The Global Context 2018
<https://www.prisonpolicy.org/global/women/2018.html>

Thank you for your time and consideration.


Aleks Kajstura
Legal Director