

**Testimony of Piper Kerman before the House Judiciary Subcommittee on
Crime, Terrorism, and Homeland Security Hearing
“Women and Girls in the Criminal Justice System”**

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I spent 13 months as a prisoner in the Federal Bureau of Prisons system from 2004-2005, with most of my time served at the Federal Correctional Institution in Danbury, Connecticut.

If you are familiar with my book, *Orange Is the New Black*, you know I’m the first to acknowledge that unlike many prisoners, I have the resources and support to take my own experiences in prison and use them to try to make critical improvements to this country’s criminal justice system. Since my release, I have worked with many criminal justice-involved women who advocate for the changes they need to be safe and to get back on their feet. I am here today in that capacity.

Women’s incarceration is a growing problem and has been for years¹. The majority of incarcerated women in this country are charged with drug offenses or property crimes; many of these are low-level offenses, yet they may be met with prison or jail sentences. A sentence means the removal of a woman from her community, from her family, from her children if she is a mother, and exile into a correctional facility.

American prisons and jails are built by and for men, governed by policies and procedures developed for male prisoners. I was incarcerated in a women’s prison and I now teach in a men’s medium-security prison and I can assure you there is no institution more hierarchical, dominance-oriented, patriarchal and based on the threat and promise of violence than an American prison. This is not an accident; it is by design.

Incarceration rates are driven by policy, not by crime rates. It’s essential that current policymakers fully comprehend this crucial fact, as they bear the responsibility of reversing decades of bad criminal justice policy decisions and repairing their negative consequences for all Americans. Specifically, the federal crime bill of 1994 had the effect of not only inflating federal incarceration rates but also incentivizing the states to incarcerate more people. As a nation we are still

¹ Since 1978, women’s state prison populations have grown 834%, while men’s state prison populations have grown 367%. Wendy Sawyer, *The Gender Divide: Tracking Women’s State Prison Growth* (2018). Prison Policy Initiative. available at https://www.prisonpolicy.org/reports/women_overtime.html

struggling with the legacy of this bad policymaking; many individuals, corporations and special interests draw huge benefit — and in some cases profit — from the status quo of mass incarceration.

While the lack of correlation between crime rates and incarceration is widely acknowledged by criminology experts, it remains unknown or unacknowledged by many policymakers and the public. The conventional wisdom that incarceration is the best or only response to crime is dead wrong, and has had corrosive consequences for this nation, especially for people of color and poor people who are most likely to be incarcerated. According to the 2014 report by the National Research Council of the National Academies on *The Growth of Incarceration in the United States*:

Yet over the four decades when incarceration rates steadily rose, U.S. crime rates showed no clear trend: the rate of violent crime rose, then fell, rose again, then declined sharply. The best single proximate explanation of the rise in incarceration is not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime. Mandatory prison sentences, intensified enforcement of drug laws, and long sentences contributed not only to overall high rates of incarceration, but also especially to extraordinary rates of incarceration in black and Latino communities. Intensified enforcement of drug laws subjected blacks, more than whites, to new mandatory minimum sentences—despite lower levels of drug use and no higher demonstrated levels of trafficking among the black than the white population. Blacks had long been more likely than whites to be arrested for violence. But three strikes, truth-in-sentencing, and related laws have likely increased sentences and time served for blacks more than whites. As a consequence, the absolute disparities in incarceration increased, and imprisonment became common for young minority men, particularly those with little schooling.²

It's important to emphasize this disconnect because we've so normalized prison and jail as our only response to problems and conflicts in our communities. The United States incarcerates far more of its own people than any nation in the world. No society in human history has ever locked up so many of its own citizens. And yet: American prisons and jails don't fix problems like substance abuse and addiction, mental illness, or family or community violence;. Quite the opposite, most

² National Research Council (2014). Summary. In Travis, J., Western, B. & Redburn, S. (Eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (pp. 1-12). Washington, DC: The National Academies Press.

correctional settings in this country unquestionably make these problems worse, not better, hidden behind the walls where we exile our own people.

After a person returns from prison or jail, their sentence is not over. Probation and parole are problematic systems that continue to punish rather than help people, and are particularly harmful to the poor, who make up the bulk of Americans caught in the maze of the criminal justice system. As civil rights lawyer Bryan Stevenson has noted, we have a legal system that treats you better if you are rich and guilty than if you are poor and innocent. I draw your attention to the Jeffrey Epstein case as just one among many very recent examples of this truth.

Among the most vulnerable people caught in the maze of the American criminal justice system are women and girls. Women are the fastest growing population in the American criminal justice system, and their families and communities are also punished by what happens when we choose to incarcerate a woman. A significant majority of women in prison are there for a nonviolent offense³. Many women are incarcerated due to substance abuse and mental health problems, which are overwhelmingly prevalent issues in prisons and jails. For women and girls there is also a staggering, widespread incidence of victimization by sexual abuse or other physical violence before incarceration⁴.

Before we even think about where or how women and girls should be incarcerated, we should consider *if* they should be incarcerated. There are other ways for them to serve their time that result in less damage to them and their families. When we look to the states, we see such innovations, such as JusticeHome in New York. JusticeHome allows some women who plead guilty to felonies to remain in their homes with their children. The women report regularly in court and are visited weekly by case managers to make sure they receive supervision and guidance about jobs, education and management of their homes and children. Some must receive treatment for drug addiction and mental illness. The cost of JusticeHome is less than \$20,000 per family, while it costs over \$130K to incarcerate a woman in New York City for one year if two of her children are sent into foster care.⁵ What is priceless

³ In 2012, 37.1% of women in state prison were held for a violent offense, compared with 55.0% of men. E Ann Carson, Bureau of Justice Statistics, Prisoners in 2013, Tbl. 9, September 30, 2014, available at <http://www.bjs.gov/content/pub/pdf/p13.pdf>

⁴ In 2012, 86% of women in jails had experienced sexual violence, 77% had experienced partner violence, and 60% had experienced caregiver violence before their incarceration. Lynch et al. *Women's Pathways to Jail: Examining Mental Health, Trauma, and Substance Use* (2013). Bureau of Justice Assistance. available at <https://www.bja.gov/Publications/WomensPathwaysToJail.pdf>

⁵ McHugh, Diana. "Re: JusticeHome Success Data Points." Message to Kamara Jones. July 2, 2019. Email

about this program is that it is working hard to keep families together which we know is an effective way to reduce crime and increase safety, and to stop a cycle that can condemn entire families to the penal system. 88% of JusticeHome graduates remain arrest-free after completion of the program.⁶

Again, looking to the states for innovation, we see new primary caretaker legislation adopted in Massachusetts and Tennessee that acknowledges that when a sentence is imposed it impacts not only the convicted person but also her children and family⁷. These new measures require judges in Massachusetts and Tennessee to consider family impact when sentencing a person who is the primary caregiver of minor children, and to impose accountability measures appropriate for the offense that will not harm those children. This legislative reform was conceived of and championed by formerly incarcerated women from the National Council of Formerly Incarcerated and Incarcerated Women and Girls⁸, a true example of the power of women's wisdom and activism in service of the lives of others; it should be adopted within the federal system so that federal judges are required to make the same considerations at sentencing.

Incarcerated women suffer from disproportionately high incidences of mental illness, substance use disorder, and survival of serious trauma like sexual assault or domestic abuse. However, these issues are not being addressed adequately in the federal prison system. With more than 200,000 people in its custody, the Federal Bureau of Prisons has grown to become the nation's largest prison system.⁹ The federal prison population has increased more than eight-fold since 1980¹⁰, reflecting the United States' unique and regrettable reliance on incarceration to inappropriately and ineffectively address social problems like substance abuse, mental illness and poverty. Below I outline some of the ways in which the Bureau could and should improve its treatment of women in custody.

The Bureau of Prisons should adopt gender-responsive policies and programs along the lines of best practices in states such as Washington that reduce recidivism rates

⁶ McHugh, Diana. "Re: JusticeHome Success Data Points." Message to Kamara Jones. July 2, 2019. Email

⁷ Human Impact Partners. (April, 2019) *Keeping Kids and Parents Together: A Healthier Approach to Sentencing in MA, TN, LA*. Retrieved from <https://humanimpact.org/hipprojects/primary-caretakers/>

⁸ "Current Legislation." Families for Justice as Healing, available at <http://justiceashealing.org/current-legislation/>.

⁹ Federal Bureau of Prisons, Inmate Statistics, July 30, 2015, available at http://www.bop.gov/about/statistics/population_statistics.jsp#pop_report_cont

¹⁰ Federal Bureau of Prisons, Past Inmate Population Totals, available at http://www.bop.gov/about/statistics/population_statistics.jsp#old_pops

and give women opportunities to reintegrate into their communities and succeed post-incarceration.

Gender-responsive correctional approaches are guided by women-centered research. They are strengths-based, trauma-informed, culturally competent, and holistic. These approaches recognize the importance of relationships as a target of intervention for women. Finally, they account for the different characteristics and life experiences of women and men who are involved with the criminal justice system, and respond to their unique needs, strengths and challenges¹¹.

Most research in the correctional field has been conducted on men. The research that has been done on women shows that the risk factors I mentioned, and others specific to women, require different approaches than the BOP takes for men in order to reduce women's recidivism and achieve more successful outcomes. This is not unlike findings in other fields such as healthcare, where gender-specific research found that women experience heart attack symptoms quite differently from men. This understanding in turn led to gender-specific responses to these symptoms.

Female prisoners are different from male prisoners in a number of obvious and less obvious ways. In addition to having a higher percentage of mentally ill people among their ranks, incarcerated women are often single moms with young children. Very high incidences of sexual and physical assault¹² are a reality for women in prison, jail and immigration detention centers, both before and during their incarceration. It is essential to consider this trauma in order to establish rehabilitation that works, and to avoid correctional settings that make things worse.¹³

¹¹ National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Key Definitions, n.d., available at <http://cjinvolvedwomen.org/sites/all/documents/DisciplineGuideSection1Overview.pdf>

¹² In state prison, 57.6% of women reported past physical or sexual abuse, compared to 16.1% of men. In federal prisons, 39.9% of women reported past abuse, compared to 7.2% of men. In jails, 47.6% of women reported past abuse, compared to 12.9% of men. Caroline Wolf Harlow, Bureau of Justice Statistics, Prior Abuse Reported By Inmates And Probationers 1 (1999), available at <http://www.bjs.gov/content/pub/pdf/parip.pdf>. More than a third of women in state prisons or local jails reported being physically or sexually abused before the age of eighteen.

¹³ Human Rights Watch, *All Too Familiar: Sexual Abuse of Women in U.S. State Prisons* (1996), available at <http://www.hrw.org/legacy/reports/1996/Us1.htm> [hereinafter *All Too Familiar*] ("One of the clear contributing factors to sexual misconduct in U.S. prisons for women is that the United States, despite authoritative international rules to the contrary, allows male correctional employees to hold contact positions over prisoners, that is, positions in which they serve in constant physical proximity to the prisoners of the opposite sex.").

Instituting gender-responsive policies garners significantly improved outcomes including reductions of inmate-on-staff assaults and inmate-on-inmate assaults, segregation placements, disciplinary reports, one-on-one mental health watches, petitions for psychiatric evaluation, crisis contacts, self-injury incidents and suicide attempts¹⁴.

These policies clearly make women's correctional facilities safer for prisoners and staff, which is the first step towards creating a rehabilitative environment. If we want to reduce recidivism for women and help them be more successful when they return home, we need to address their specific risk factors and needs – gender-responsive policies and programming, such as the following, account for these differences.

- Gender-responsive policies, first and foremost, recognize that there are gender-specific needs and modify facility operations, supervision, management, programs and services to address them.
- They ensure that all staff who work with women are trained in trauma-informed care, understand gender-responsive principles and how justice-involved women are different from men, and at a minimum, have effective communications and intervention skills.
- These policies influence facility culture so that there is a physical environment that is conducive to change (positive messages on walls, positive images), an attitude of respect among staff and inmates, positive encouragement for family visits and interactions, and calming environments (reduced noise level, banging, shouting).
- Practices and procedures are implemented that do not (re) traumatize or trigger women's trauma, such as letting women know ahead of time what is going to happen during a procedure, telling them what is happening during the procedure, and checking in with them after the procedure is conducted. Other similar examples include limited use of solitary confinement or segregation (which may trigger women), more limited use of strip searches (which may be reminiscent of rape), and limited or no use of restraints during pregnancy and delivery.
- Gender-responsive risk and needs assessments (such as the Women's Risk and Needs Assessment developed by Dr. Pat Van Voorhis and colleagues at the University of Cincinnati) should be used to identify specific risk factors

¹⁴ National Resource Center on Justice Involved Women, Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities, Exhibit 1: Benefits of Implementing Trauma-Informed Approaches at MCI Framingham Frequency of Incidents in 2011 and 2012 ,n.d., *available at* <http://cjinvolvedwomen.org/sites/all/documents/DisciplineGuideSection1Overview.pdf>

such as past trauma, abuse and anger. Treatment programs should be available that address the risks and needs identified through these assessments.

It is critical for the Bureau of Prisons to address the unique situation of women in prison when making choices about policies and programming for institutions that hold them. In addition to the roadmap to system-wide implementation that Washington State offers, the National Resource Center on Justice Involved Women – funded by the U.S. Department of Justice Bureau of Justice Assistance in partnership with the National Institute of Corrections – is an organization that the BOP can collaborate with to work for rapid adoption of gender-responsive policies and programs. Additionally, the Adult and Juvenile Female Offenders Network¹⁵ – a national network of corrections workers, academics and community practitioners – has been working for decades to establish gender-responsive policies and programs in American prisons and jails, and its members should prove valuable advisors to the BOP if it wishes to fulfill its responsibilities to the women in its custody.

One of the biggest needs is to keep these women, many of whom are single moms, close to their kids. When I was incarcerated at Danbury FPC, I met women who were raising their children in the visitors' room during brief visits, fending off sexual harassment, and struggling to get a high school education so when they got out they stood a chance at surviving. I saw women denied necessary medical care, and I saw women with mental health issues wait for months to see the one psychiatrist who was available for 1,400 women.

During my time in prison, I was transferred from Danbury to the federal Metropolitan Correctional Center in Chicago (MCC) to serve as a witness in a federal trial there. The Chicago MCC is 26 stories high and houses approximately 700 men. There were approximately 35 women in the female unit there and the conditions were abysmal. Federal jails are not intended for long-term housing, and thus lack programming, physical plant and other acknowledged essentials for a person serving a prison sentence, which are intended to hold them accountable and rehabilitate them so they can return safely to the community. Despite this, people often spend long periods of time locked up in federal jails. When I was in the MCC, there was a woman who had been held there for *two years*.

¹⁵ Association on Programs for Female Offenders (APFO), an American Correctional Association, available at <http://www.ajfo.org/>

At the Chicago MCC, women were kept locked on the 12th-floor unit for many days at a time; access to the library and to physical recreation and the outdoor area was sporadic at best; no women were allowed to participate in GED programs or any educational opportunities; female prisoners were not allowed to work and earn money; we had no direct access to any medical staff, or in fact any administrative staff; and we were largely reliant on a single correctional officer to get any concerns addressed. Many women on the unit were severely mentally ill. The last two months of my incarceration were exponentially more difficult than the first 11 because of the conditions in the Chicago MCC, and I have many more resources and opportunities than most women incarcerated in federal prisons.

Women in federal custody have less access compared to male federal prisoners to important rehabilitative programs like UNICOR (vocational training in prison industry programs that provide the highest compensation among federal prisoner jobs) and the Residential Drug & Alcohol Program (an intensive program that cuts a year from a prisoner's sentence).

Many women have been sent far from their families and communities, much further than the BOP's stated parameter of 500 miles from a prisoner's home.¹⁶ For a family that lives in poverty in New Hampshire, the Bronx or Pennsylvania, a place like Aliceville, Alabama, Dublin, California or Waseca, Minnesota might as well be the moon in terms of children and other family members being able to visit. The majority of women in prison were their children's primary or sole caregiver prior to incarceration.¹⁷ When these women are incarcerated, maintaining any semblance of a relationship with their children largely depends on regular visitation.¹⁸ A child's need to see and hold his or her mother is one of the most basic human needs.

Important things to consider about women in federal custody are disconnection from young children and family who rely heavily on these mothers prior to incarceration; vastly and disproportionately inadequate living conditions compared with male prisoners; and, a marked lack of rehabilitative programming or work opportunity that is tailored to address women's pathways into prison, which is the

¹⁶ Federal Bureau of Prisons, Custody and Care: Designations, July 30, 2015, available at http://www.bop.gov/inmates/custody_and_care/designations.jsp

¹⁷ Lauren E. Glaze & Laura M. Maruschak, Parents in Prison and Their Minor Children, U.S. Dep't Of Justice, Of Justice Statistics Special Report, 4, (2008), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>

¹⁸ Susan D. Phillips, The Sentencing Project, Video Visits For Children Whose Parents Are incarcerated: In Whose Best Interests? 1-2 (2012), available at http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf (describing the importance of and barriers to visitation of incarcerated parents).

best way to ensure their safe and permanent return home. These realities are emblematic of the BOP's indifference to the situation and outcomes of female prisoners. The BOP is currently seeking to appoint a new Director; a commitment and ability to implement gender-responsive policies and programming should be a requirement for the job. To fulfill its public safety mission and to avoid discriminatory practices, the BOP must adopt gender-responsive policies, programs and facility design, following the best practices of corrections departments in states like Washington and Iowa. At the Washington Corrections Center for Women for instance, the Gender Responsiveness Action Plan allows female prisoners to attend seminars focusing on healthy relationships, safety awareness, health, nutrition, handling anger and stress, and goal setting¹⁹.

The BOP has a legal and moral obligation to ensure that time in custody is equitable, safe, and rehabilitative for women. In addition, Congress should use all measures available to facilitate the BOP's early release of currently incarcerated people who are eligible to return to their communities.

The BOP could exercise greater discretion, granted in the Second Chance Act and the First Step Act, to move thousands out of federal prison facilities to complete their sentences in their communities. In addition to reducing overcrowding, utilizing the Second Chance Act and the First Step Act would keep incarcerated people closer to their homes, creating benefits for prisoners and their communities. They would be following the precedent of the U.S. Sentencing Commission's 2014 decision to reduce the length of time that certain federal prisoners are spending in incarceration.²⁰

The bottom line is that mass incarceration in America is a failed policy experiment, not a legitimate response to violence or crime in our communities. Current legislators have a responsibility to make our criminal legal system fairer, more effective, and more just, and they have an opportunity to do so now when public understanding and opinion on these issues has changed. There is abundant data and evidence proving we have better responses to addiction, mental illness and even violence than reliance on prisons and jails.

¹⁹ Jennifer Sullivan, Female Inmates Treatment is Evolving, The Bulletin, November 7, 2013, *available at* <http://www.bendbulletin.com/news/1262705-151/female-inmates-treatment-is-evolving>

²⁰ Hearing before the Senate Judiciary Committee, Oversight of the Bureau of Prisons Hearing, Liman Statement for the Record, November, 12, 2013, *available at* http://www.law.yale.edu/documents/pdf/Liman/Senate_Judiciary_Committee_BOP_Oversight_Hearing_Liman_Statement_for_the_Record_Nov_12_2013.pdf_website.pdf

There is no population of people where reform can more obviously be implemented than women and girls in the criminal justice system. Research, case studies, and a host of programs and organizations that demonstrate the value and efficacy of gender-responsive policies and programs provide the map to solutions that do not rely on incarceration. This map is vital not just to the thousands of women who currently churn through American prisons and jails each year, but to the families and communities to which they return. It is long past time for Congress to lead the way and make common-sense criminal justice policy that reflects smart and humane ideas and values about justice and accountability.