



**WASHINGTON LAWYERS' COMMITTEE**  
**FOR CIVIL RIGHTS AND URBAN AFFAIRS**

## **D.C. Women in Prison: Continuing Problems and Recommendations for Change**

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**March 25, 2016**

**A report of the Washington Lawyers' Committee  
for Civil Rights & Urban Affairs  
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# D.C. Women in Prison: Continuing Problems and Recommendations for Change

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## PREFACE

The overwhelming challenges faced by D.C. women who are incarcerated are a key criminal justice and civil rights concern for the District. This is the fourth in a series of reports by the Washington Lawyers' Committee for Civil Rights and Urban Affairs focusing on criminal justice reform and civil rights issues.

We express our appreciation for the invaluable assistance in researching and writing this report provided by a team of lawyers from Covington & Burling LLP: Carolyn Corwin, Lucille Andrzejewski, Meghan Monaghan, Philip Peisch, and Lily Rudy, who were the principal authors of this report, as well as Kara Azocar (formerly) and paralegal Diondra Hicks. Other Covington lawyers who contributed include Richard Hertling, Eric Holder, Alan Pemberton, Margaret Richardson, and Simone Ross, with additional assistance from pro bono counsel Kelly Voss and pro bono manager Sharmaine Heng, as well as summer associates Habin Chung, Michael Clemente, Patrick Gavin, Justin Howell, Claire O'Brien, and Peter Rechter.

All these reports are dedicated to Judge Louis F. Oberdorfer, the distinguished jurist, who inspired the creation of the Washington Lawyers' Committee in 1968 while a partner at Wilmer, Cutler & Pickering. Judge Oberdorfer served on the Committee's Board of Trustees until his elevation to the bench in 1977. Throughout his long career, Judge Oberdorfer, who died in February of 2013, spoke eloquently in support of civil rights and criminal justice reform. In his memory, the Louis F. Oberdorfer Fund has been established to support the Committee's ongoing work on criminal justice reform and civil rights advocacy. We are pleased to note that one of the significant contributors to this report was Elliot Minberg, who is serving as the Louis Oberdorfer Senior Counsel on the Washington Lawyers' Committee staff. A stipend to support his work is provided by the Oberdorfer Memorial Fund.

The Washington Lawyers' Committee also acknowledges with particular gratitude the service of the following retired and senior Federal and District of Columbia Judges who comprised the Advisory Committee assisting with this study:

*John M. Ferren*, Senior Judge, District of Columbia Court of Appeals

*Rufus G. King III*, Senior Judge, Superior Court of the District of Columbia

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*Ricardo M. Urbina*, Retired Judge, United States District Court for the District of Columbia

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We also acknowledge valuable assistance provided by the National Association of Women Judges, including in particular contributions from Julie Frantz

(NAWJ Past President); Brenda Murray (Co-Chair of NAWJ's Women in Prison Committee); Vanessa Ruiz (member of the NAWJ Women in Prison Committee); and Anna Blackburne-Rigsby.

We express appreciation for assistance the Covington team received from many other individuals affiliated with a variety of organizations and agencies, too numerous to name. We are particularly grateful to the returned citizens who took time to speak with Covington team members about their experiences while incarcerated.

Roderic V.O. Boggs, Executive Director

Deborah M. Golden, Director, DC Prisoners' Rights Project

March 25, 2016

# EXECUTIVE SUMMARY

## KEY CONCLUSIONS

- **D.C. women face many challenges at the outset** – D.C. women enter prison with very significant disadvantages in many areas, including education levels, employment experience, economic status, and physical and mental health. A high percentage of women who are incarcerated have mental health problems or substance use disorder, or both. They are particularly likely to have experienced abuse in the past and to be suffering from trauma as a result. A woman’s incarceration often disrupts family ties, since many women entering prison have been the primary caretakers of minor children.
- **D.C. women housed in federal prisons bear special burdens** – D.C. women convicted of felonies and sentenced to confinement face special challenges. Under a unique statutory scheme, most women sentenced to confinement for a felony in D.C. Superior Court are housed in federal prisons far from the District. These women experience particular difficulty keeping in touch with their families and maintaining other ties that would help them reestablish themselves in the community after they are released.
- **D.C. women have significant problems maintaining contact with their children while they are in prison** – It is a struggle for mothers to maintain contact with their children during periods of incarceration. Particularly when D.C. women are housed at federal prisons hundreds of miles from the District, it may be impossible for family members to visit. Introduction of email capability and videoconferencing at federal prisons has helped, but this is not a substitute for in-person contact. A woman who is incarcerated for a long period may face the prospect of having her parental rights terminated.
- **Availability of quality medical care, particularly mental health and substance abuse treatment, is a continuing concern** – Medical care of incarcerated women presents a special challenge due to the extensive physical and mental health problems they experience. The care available to women at CTF and in federal prisons has improved, but there is a continuing need for better availability and coordination of medical services – particularly mental health and substance abuse treatment.
- **Educational and job training programs in federal facilities fall short** – Correctional facilities offer GED classes and various job training programs, but these programs fall short, particularly in federal facilities. Long waitlists at federal prisons discourage those who want to take advantage of these programs. Moreover, job training offered at distant federal facilities may not match employment opportunities in the District.

- **There is a continuing need for close monitoring to deter sexual abuse in prisons** – On this subject, conditions for incarcerated D.C. women have improved significantly over the past few decades. Litigation and the implementation of the Prison Rape Elimination Act have led to better procedures and some culture change. But in the past enlightened policies and procedures have not always been enough to eliminate sexual abuse. Constant vigilance is essential.

## RECOMMENDATIONS (HIGHLIGHTS)

- **House More D.C. Women in or Near the District** – D.C. women housed in prisons far from the District are severely disadvantaged due to the distance from their children and other family members and from community resources. BOP officials should find ways to house more D.C. women (particularly those with minor children) in or close to the District.
- **Make It Easier to Maintain Contact with Family** – DCDOC, CCA, CSOSA, and BOP should make it easier for women with minor children to contact their children and for all women to contact other family, friends and community resources on a regular basis.
- **Expand Opportunities for Mothers to Live with Their Newborns** – BOP should extend to at least six months the time a mother may stay with her newborn under the Mothers and Infants Together program, and continue to allow mothers to stay with their newborns for a longer period if resources permit. DCDOC and CCA should introduce a program to allow mothers at CTF to live with their newborns in a residential facility for at least six months.
- **Protect the Rights of Mothers Who Can Show They Are Fit Parents** – This recommendation covers procedures governing custody and termination of parental rights.
- **Expand Eligibility for and Availability of Diversion Programs** – The eligibility criteria for the D.C. Superior Court Drug Court and Mental Health Court diversion programs operate to exclude many who need them most. The U.S. Attorney’s Office should modify the criteria so that most or all offenders with substance abuse or mental health problems will be able to participate.
- **Expand Access to Drug Treatment Programs** – BOP should ensure that women have prompt access to the Residential Drug Abuse Program and should consider providing women with access to medication-assisted therapy for substance abuse.

- **Expand Access to Mental Health Treatment** – DCDOC, CCA, and DBH should work to better connect women at CTF to core service agencies in DBH's Mental Health Rehabilitation Services program. DBH should work with BOP to identify D.C. women in federal prisons with upcoming release dates and, where appropriate, connect them to core service agencies prior to their release.
- **Provide Additional Resources for Educational and Job Training Programs** – BOP should allocate more resources to expanding GED instruction and job training in order to reduce waiting times. Job training options at Hazelton SFF should be expanded, with more focus on technology, business skills, and other fields that correspond to demand in the D.C. area. BOP should work with FPI to ensure that UNICOR factories are located at more female facilities.
- **Closely Monitor Compliance with PREA Standards and Other Policies Designed to Prevent Sexual Abuse and Harassment** – Past experience shows that good policies are not enough to eliminate sexual abuse or harassment of incarcerated D.C. women. Continued vigilance is needed.
- **Increase Funding for Certain Agencies or Agency Components** – BOP should increase the resources allocated to its Female Offender Branch. The District should allocate more funds to the Corrections Information Council, and the U.S. Justice Department should provide federal funds as well. The District should allocate additional funds to the Mayor's Office for Returning Citizen Affairs so that office can perform more effective outreach to D.C. women prior to their release.
- **Increase Public Access to Information** – DCDOC and BOP leadership and their contractors should adopt a more transparent approach to information about correctional facilities and their operations.

## INTRODUCTION AND OVERVIEW

Over 20 years ago, in litigation challenging conditions for women in District of Columbia prisons, a federal district court found widespread violations of the women's rights, citing unsanitary and otherwise substandard living conditions, inadequate medical care, and educational, recreational, and religious opportunities that were inferior compared with those available to men housed in the same facilities.<sup>1</sup> The court also found evidence of “a level of sexual harassment which is so malicious that it violates contemporary standards of decency,” with reports of rape, “general acceptance of sexual relationships between staff and inmates,” unconsented sexual touching, and degrading remarks.<sup>2</sup>

There have been changes – in many cases for the better – since the court made these findings in 1994. But D.C. women who are incarcerated continue to encounter serious challenges, both during their imprisonment and when they return to the community. This report addresses conditions these women currently face and discusses some of the more significant problems they experience during incarceration. The report focuses primarily on the Correctional Treatment Facility (CTF), a jail facility located in the District that is operated by Corrections Corporation of America (CCA), and the Hazelton Secure Female Facility (SFF), a federal prison in West Virginia where the largest number of D.C. women convicted of felonies are housed.

- **D.C. women face many challenges at the outset.** D.C. women enter prison with very significant disadvantages in many areas, including education levels, employment experience, economic status, physical and mental health, and other life experience. Among other things, a high percentage of women who are incarcerated have mental health problems or substance use disorder, or both. Incarcerated women are particularly likely to have experienced abuse in the past and to be suffering from trauma as a result. A woman's incarceration often disrupts family ties. Many women entering prison have been the primary caretakers of minor children and must relinquish care of these children to others during the period of incarceration.

- **D.C. women housed in federal prisons bear special burdens.** D.C. women convicted of felonies and sentenced to confinement face special challenges. Under a unique statutory scheme, most women sentenced to confinement for a felony in D.C. Superior Court are housed in federal prisons far from the District. Due to the distance and isolation of the federal facilities, D.C. women experience

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<sup>1</sup> *Women Prisoners of District of Columbia Dept. of Corrections v. District of Columbia*, 877 F. Supp. 634 (D.D.C. 1994), *rev'd in part and remanded*, 93 F.3d 910 (D.C. Cir. 1996), on remand, 968 F. Supp. 744 (D.D.C. 1997) [*“Women Prisoners”*]. A consent motion to dismiss this litigation with prejudice was granted in 2004, and the parties agreed to terminate all orders for prospective relief at that time. *See* Dkt. 348, at 5.

<sup>2</sup>*Women Prisoners*, 877 F. Supp. at 665.

particular difficulty keeping in touch with their families and maintaining other ties that would help them reestablish themselves in the community after they are released.

- **D.C. women have significant problems maintaining contact with their children while they are in prison.** It is a struggle for mothers to maintain contact with their children during periods of incarceration. Particularly in the case of D.C. women housed at federal prisons hundreds of miles from the District, it may be impossible for family members to make in-person visits. Introduction of email capability and videoconferencing at federal prisons has helped, but this is not a substitute for in-person contact. In some cases a woman who is incarcerated for a long period may face the prospect of having her parental rights terminated.

- **Availability of quality medical care, particularly mental health and substance abuse treatment, is a continuing concern.** Medical care of incarcerated women presents a special challenge due to the extensive physical and mental health problems they experience. The care available to women at CTF and in federal prisons has improved, but there is a continuing need for better availability and coordination of medical services — particularly mental health and substance abuse treatment.

- **Educational and job training programs in federal facilities fall short.** Correctional facilities offer GED classes and various job training programs, but these programs fall short, particularly in federal facilities. Long waitlists at federal prisons discourage those who want to take advantage of these programs, particularly job training. Moreover, job training offered at distant federal facilities may not match employment opportunities available to women who will return to the District.

- **There is a continuing need for close monitoring to deter sexual abuse in prisons.** On this subject, conditions for incarcerated D.C. women have improved significantly over the past few decades. Litigation and the implementation of the federal Prison Rape Elimination Act have helped shine a light on abuses in prison and have led to better procedures and some culture change. But in the past issuance and implementation of enlightened policies and procedures have not always been enough to eliminate instances of sexual abuse, and this is an area in which constant vigilance is essential.

We are well aware that the fundamental concerns regarding women in the criminal justice system are far broader than the issue of incarceration. There are important issues about the impact of sentencing policies and practices, but we have not sought to explore that subject in any depth here. More broadly, both nationally and in the District, there is a vicious cycle of poverty, criminal activity, incarceration, recidivism, and breakdown of families and communities — a cycle that sweeps in a segment of D.C. women. For women in particular, mental health problems and substance abuse often play a role in their criminal involvement. The significant growth in incarceration of women in recent decades — taking many mothers away from their minor children for long periods — has contributed substantially to the breakdown of families and other community institutions, reinforcing the cycle of poverty and recidivism.

If policymakers and correctional officials find ways to help more D.C. women overcome the problems that pull many of them into the correctional system in the first place, there is a better prospect for reversing this disastrous cycle. If the District could successfully address the persistent poverty that plagues many D.C. neighborhoods, and if more resources were allocated to help residents overcome mental health problems and substance abuse, we are confident that fewer D.C. women would end up in prison. In this report, however, we focus primarily on the conditions D.C. women face during their incarceration.

Of course, many of the challenges we discuss in this report are not unique to D.C. women; most incarcerated women face these challenges. But particularly because of the unusual arrangement under which many D.C. residents who commit local crimes are sent to distant federal prisons, D.C. women bear some unique burdens.

We recognize, too, that many of the points made in this report and many of the recommendations presented at the end apply to incarcerated men as well as incarcerated women. We believe, however, that most of the points have special relevance for women due to factors such as the greater role of women entering prison as primary caretakers of minor children, the higher incidence of substance abuse and mental health problems among incarcerated women, and the particular vulnerability of women to sexual abuse in the prison setting. Moreover, because women constitute a relatively small percentage of the incarcerated population, there may be a misperception that women do not face as many challenges in prison as men. It is therefore important to focus attention on the issues as they apply more particularly to women.

The issues we address in this report demand the attention of policymakers and the broader D.C. community. Forty years ago, there were very few women in the criminal justice system, and little attention was paid to the plight of women in prison — out of sight, out of mind. A few organizations, including the National Association of Women Judges, have pressed for better conditions for incarcerated women over the years, but they have found it difficult to raise awareness of and broad interest in the subject. Yet the number of women in correctional facilities has expanded significantly, and humane treatment and rehabilitation of these women are critical steps in any broader effort to enhance public safety, reduce public expenditures, and rebuild communities in the District.

Gathering information for this report presented a significant challenge. While some information about D.C. women who are incarcerated is available on the public record, the material is scattered, and it proved difficult to unearth information on some subjects. We received assistance from a number of knowledgeable individuals and some help from D.C. and federal corrections agencies. However, we also faced a number of delays and obstacles in our efforts to obtain information from these agencies, and the report is therefore limited in various respects. And while we were ultimately able to speak with some D.C. women who have been incarcerated, it was a very limited sample. The D.C. Department of Corrections declined to allow us to speak with any women when we toured CTF, and the Bureau of Prisons provided only limited contact with a few women at Hazelton SFF. Our concerns about lack of transparency are discussed further in the recommendations at the end of this report.

After providing some basic information and describing the broader landscape, this report focuses primarily on four aspects of incarceration that we identified as particularly critical for D.C. women: (1) connections with children and families; (2) medical care; (3) education, job training, and life skills programs; and (4) sexual abuse and harassment. At the end of the report, we present a number of specific recommendations for action directed to the District and the federal government.

## I. Background Information

### A. Correctional Facilities Housing D.C. Women

Currently, at any given time close to 300 D.C. women are housed at correctional facilities, with a little over one-third in D.C. facilities and the rest at various federal facilities outside the District.<sup>3</sup> Women who are incarcerated at the pre-trial stage are housed primarily at the Correctional Treatment Facility (CTF) in the District. Women convicted in D.C. Superior Court of a misdemeanor and sentenced to confinement are also housed at CTF, as are women with short-term felony sentences who are designated by the Federal Bureau of Prisons (BOP) to serve their sentences at CTF.

D.C. women with longer felony sentences are sent to prisons far from the District. Under a federal statute, the National Capital Revitalization and Self-Government Improvement Act of 1997, various local responsibilities of the District government were transferred to the federal government.<sup>4</sup> Among other things, this statute required closure of the District's Lorton Reformatory, located in Laurel Hill, Virginia, and that facility closed in 2001. Under the terms of the statute, individuals convicted of a felony under the D.C. Code and sentenced to a year or more of imprisonment are transferred to BOP custody and housed in federal correctional facilities. Because there are no BOP female facilities in or near the District, most D.C. women convicted of a D.C. Code felony are incarcerated far from home. A smaller number of D.C. women convicted of federal crimes are also housed in BOP facilities around the country.

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<sup>3</sup> This number provides just a snapshot of D.C. women incarcerated at a given time. There is considerable turnover in the local jail population, with some women released in a matter of days. There is also turnover among women with longer sentences as some complete their sentences and others begin their confinement.

Thus, the number of women who experience incarceration over the course of several years is considerably greater. For example, according to data from the D.C. Sentencing Commission, approximately 580 D.C. women were convicted of felonies and sentenced to a period of confinement during the 2012-2015 period. This total does not include D.C. women incarcerated following a misdemeanor conviction or women who were incarcerated at the pretrial stage but never convicted or sentenced to confinement.

<sup>4</sup> See Pub. L. No. 105-33, 11 Stat. 712. Congress enacted this statute during a period when the District was under severe financial pressure. Transfer of some local functions to federal agencies was intended to ease the financial strain on the District.

Women incarcerated at CTF or a federal prison may spend a period of time at The Fairview, a halfway house located in the District, near the end of their sentences. In addition, some women are housed at The Fairview at the pretrial stage.

## **1. Correctional Treatment Facility**

At any given time, approximately 100 women are housed at CTF, located adjacent to the Central Detention Facility (D.C. Jail) in southeast D.C.<sup>5</sup> CTF, a medium-security facility that opened in 1992, houses women who are confined at the pre-trial stage or who have been convicted of misdemeanors. The CTF population also includes a few women with felony convictions who have been sentenced to a period of confinement but have nine months or less remaining in their sentences,<sup>6</sup> as well as women awaiting transfer to a BOP facility following sentencing.<sup>7</sup> Since 1997, CCA, a private corporation, has operated CTF for the District. CCA's contract to operate CTF will expire in 2017. At this point it is unknown whether the contract will be renewed.

CTF is comprised of five separate, adjacent buildings. All women at CTF are housed in one of five units located in the same building. Three of these units are general population units, one is the Residential Substance Abuse Treatment (RSAT) unit, and one is the Reentry unit. According to DCDOC personnel, at both the pretrial stage and after sentencing, women charged with felonies are generally placed in one of the general population units, and women charged with misdemeanors are generally placed in the Reentry unit.

Every room at CTF has a window, and each 50-room unit has a television room, a communal space, several smaller classroom spaces, the case manager's office, at

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<sup>5</sup> CTF also houses almost three times as many men, in separate units.

Prior to the opening of CTF, women awaiting trial or convicted of misdemeanors were housed at the D.C. Jail. For some years after CTF opened, women were housed at both the D.C. Jail and CTF. Today the D.C. Jail houses only men.

<sup>6</sup> At a congressional hearing in July 2010, the BOP Director testified that, under the terms of a then-recent memorandum of understanding (MOU) between BOP and the D.C. Department of Corrections (DCDOC), BOP would contract to house at CTF individuals with D.C. Code felony convictions who were scheduled to complete their sentences in less than 180 days. *Female D.C. Code Felons: Unique Challenges in Prison and at Home: Hearing Before the Subcomm. on Fed. Workforce, Postal Serv., & the D.C. of the H. Comm. on Oversight and Gov't Reform*, 111th Cong. 69 (2010) (statement of Harley Lappin, Director, BOP). DCDOC personnel recently told us that BOP now uses a remaining sentence of nine months or less as the criterion for keeping women with felony convictions at CTF. A DCDOC official told us that in 2015 an average of 10 women per day in CTF had short-term felony convictions and that the number had dropped to three or four in the first two months of 2016.

<sup>7</sup> CTF also houses a few women adjudicated in federal court in Maryland and housed under a contract with the U.S. Marshal's Service.

least three telephones for making collect calls, and a communal microwave.<sup>8</sup> As of August 2015, every woman housed at CTF had her own room.<sup>9</sup> The small individual rooms contain a bed, a desk and chair, and a sink and toilet. For part of the day, women in each unit are free to move around the common area of the unit.

CTF's total operating capacity (for both men and women) is between 1,400 and 1,500 persons. As of February 2016, the facility housed approximately 560 people (including around 105 women).<sup>10</sup> The number of women confined in jail facilities in the District has decreased significantly over the past ten years. In 2006, the D.C. Jail held 95 women, and CTF held 224 women.<sup>11</sup> By fiscal year 2012, no women were housed at the D.C. Jail, and the daily average population of women at CTF was 199.<sup>12</sup> The current figure of 105 women at CTF (and no women at the D.C. Jail) is approximately one-third of the total number of women confined in D.C. jail facilities a decade earlier.

Based on a tour of CTF in August 2015 and anecdotal reports we heard from several women formerly housed there, it appears that physical conditions at CTF are considerably better than at the D.C. Jail.<sup>13</sup> However, reports from a few women with whom we spoke suggest that conditions vary over time and with the particular area within the facility.<sup>14</sup>

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<sup>8</sup> CTF staff told us that the women have one hour of recreation daily, Monday through Friday, and that the women may spend time in an outdoor recreation yard when weather permits.

<sup>9</sup> Information provided during a tour of CTF on August 28, 2015.

<sup>10</sup> *Daily Operating Population Counts by Facility*, D.C. Dep't of Corr., week ending February 26, 2016 (Feb. 26, 2016), <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/February%2020%20through%20February%2026%202016.pdf> (CTF population ranged between 547 and 567 during the week) [*"Daily Operating Population"*].

<sup>11</sup> The 2006 figures were provided by the then-Director of DCDOC at a June 2006 meeting with several representatives of the National Association of Women Judges. *See also* D.C. Prisoners' Legal Services Project & John Hopkins Bloomberg School of Public Health, *From the Inside Out: Talking to Incarcerated Women About Health Care* (2005) [*"From the Inside Out"*], at 3 (suggesting that in 2004-05 approximately 330 women were held at D.C. Jail and CTF).

<sup>12</sup> D.C. Corrections Information Council, *Annual Report Fiscal Year 2012* (Nov. 30, 2012) [*"CIC Annual Report FY2012"*], at 12.

<sup>13</sup> Our prior report described the appalling physical conditions at the D.C. Jail in the 2014-2015 period. *See* Washington Lawyers' Committee for Civil Rights and Urban Affairs, *D.C. Prisoners' Conditions of Confinement in the District of Columbia* (2015) [*"Conditions of Confinement"*]. The CTF building is a much newer facility, but it is now over 20 years old.

<sup>14</sup> In addition to references to mice and mold at CTF, we heard particular criticism of the condition of the intake areas at both the D.C. Jail and CTF from a few women who went through the intake process four or five years ago. (Women entering CTF go through an

The wardens and higher level staff involved in educational programs and the residential substance abuse treatment unit with whom we spoke at CTF appeared conscientious and well qualified. Several women with whom we spoke who were formerly housed at CTF did not express significant complaints. However, others who were at CTF four or five years ago reported that at times they experienced invasions of privacy (through spread of their confidential information), disrespectful conduct by correctional officers, and a generally unprofessional atmosphere. One woman cited as a partial explanation the fact that some of the CTF correctional officers hail from the same D.C. neighborhoods as the women they supervise.

## **2. BOP Facilities**

As required by the 1997 federal statute described above, D.C. women convicted of felonies in D.C. Superior Court are transferred to BOP jurisdiction and (except for those with nine months or less remaining in their sentences) are housed in a federal women's correctional facility.<sup>15</sup> According to BOP, as of February 18, 2016, a total of 141 women adjudicated in D.C. Superior Court were housed in eight BOP facilities and several halfway houses or other community placements. In addition, 39 women adjudicated in the U.S. District Court for the District of Columbia were housed in eleven BOP facilities and several halfway houses or other community placements. In this report we focus primarily on the women adjudicated in D.C. Superior Court because they are the larger group and are uniquely situated — local court offenders who are transferred to federal facilities around the country.

A 1998 memorandum of understanding between the District and the BOP (IGA 582-00) provides that BOP will attempt to house persons adjudicated in D.C. Superior Court within 500 miles of the District, with efforts to keep most within 250 miles. BOP declined to provide us with the numbers of D.C. women currently housed at individual federal facilities, so we do not have precise information about how far from the District D.C. women are housed. BOP staff did inform us that 112 of the 141 women adjudicated in D.C. Superior Court and under BOP jurisdiction as of February 2016 (approximately 79%) are housed within 500 miles of the District. So far as we have been able to determine, a significant majority of this group is housed within 250 miles of the District, with the highest number (65 to 70 women) at the Hazelton Secure Female Facility (SFF) in West Virginia.<sup>16</sup> Hazelton SFF, part of the Federal Correctional Complex at Bruceton Mills, West Virginia, is the federal women's prison closest to the District. It

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initial intake process at the D.C. Jail, followed by another intake process in the CTF building.)

<sup>15</sup> Prior to its closure in 2001, the Lorton Reformatory in Virginia housed the D.C. women convicted of felonies.

<sup>16</sup> Over time, there have been shifts in the BOP facilities where D.C. women are concentrated. In 2012 over 70 D.C. women were housed at the BOP women's facility in Danbury, Connecticut. *See CIC Annual Report FY2012, supra* note 12, at 15. When BOP decided to close that facility, many of the D.C. women were moved to Hazelton SFF or to the Federal Detention Center in Philadelphia.

is located in a remote area approximately 185 miles from the District, near the Maryland-West Virginia border. Hazelton SFF is currently over capacity, with triple bunking for some women.

We believe the next largest group of D.C. women (around 20) is at the Philadelphia Federal Detention Center (FDC), while just a few are at the Brooklyn Metropolitan Detention Center. As noted above, a few women with short felony sentences are housed at CTF, and BOP data suggest that a small number are at halfway houses in the District, or the Baltimore or Pittsburgh areas. Between five and 10 women are housed a little more than 250 miles from the District, at Alderson Federal Prison Camp in West Virginia or a halfway house near Raleigh, NC.

Some D.C. women are housed much farther from the District. We believe around 15 are at the Carswell Federal Medical Center in Fort Worth, Texas. Carswell, located approximately 1370 miles from the District, is the only specialized medical facility serving women in the BOP system.<sup>17</sup> Smaller numbers of D.C. women are housed at BOP facilities in Alabama, Florida, and Minnesota, all much farther than 500 miles from the District. According to BOP staff, as of February 2016 15 D.C. women (presumably those at BOP facilities in Aliceville, AL and Tallahassee, FL) were housed between 500 and 1000 miles from the District, and 14 women (presumably those at Carswell and a BOP facility in Waseca, MN) were housed more than 1000 miles from the District.<sup>18</sup>

The locations of the BOP facilities where women adjudicated in D.C. Superior Court were housed as of February 2016 and their distances from the District are shown in the table below and on the following map<sup>19</sup>:

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<sup>17</sup> Carswell also houses women who present special disciplinary problems. We believe most or all of the D.C. women housed at Carswell are there due to a serious medical condition.

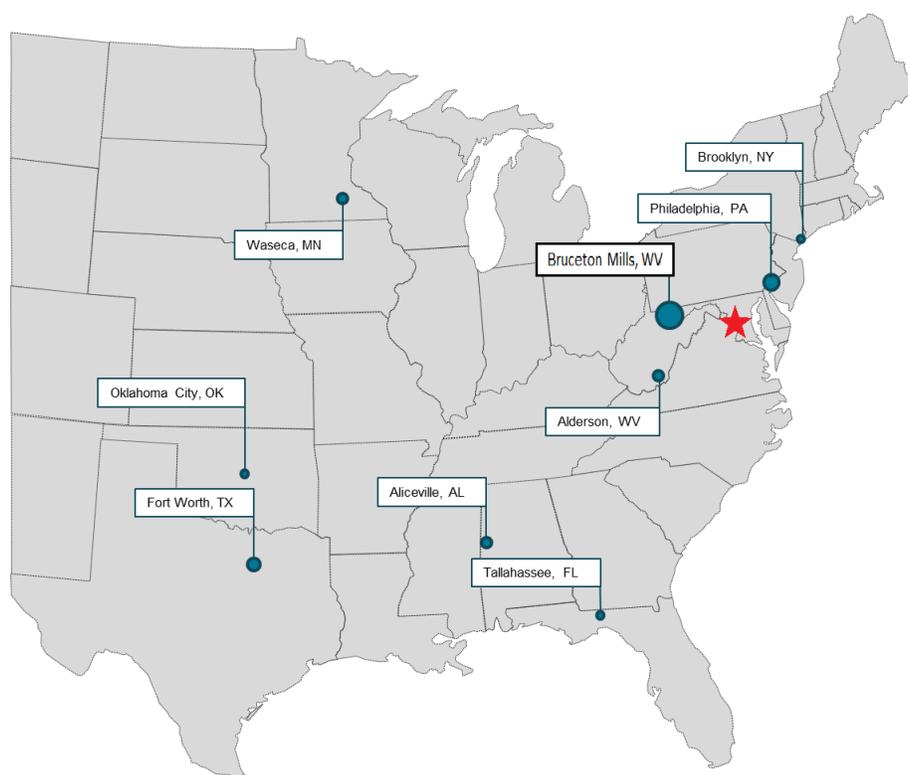
<sup>18</sup> Lists BOP provided suggest that a few D.C. women are housed in the Raleigh, NC area, probably at a halfway house. A BOP official advised us that D.C. women could have been placed at the Minnesota, Florida, and Alabama prisons due to a need to separate them from particular individuals. We believe that at least some women were moved to the Alabama facility (which opened a few years ago) in order to relieve overcrowding at other facilities or because the Danbury women's facility was scheduled to close.

<sup>19</sup> This list is based on information provided by BOP staff. It does not include CTF or halfway houses, which are generally operated by contractors. The facilities are listed in an order that reflects our understanding of which ones house more of the D.C. women adjudicated in D.C. Superior Court, with Hazelton SFF housing the most and Tallahassee FCI the fewest. The map also shows the Federal Transfer Center in Oklahoma City, where federal prisoners are held pending transfer to another BOP facility.

Most of the 39 D.C. women who were adjudicated in federal court were also housed in the facilities listed below. However, a separate list BOP provided showing the number of women adjudicated in federal court in the District indicates that a few were housed at other federal prisons in Florida (Coleman and Marianna) and California (Dublin). According to BOP, 27 of the 39 D.C. women adjudicated in federal court were housed

## Location of BOP Facilities Housing D.C. Women As of February 2016

BOP Facility
Federal Correctional Institute Hazelton; Bruceton Mills, WV (185 mi.)
Federal Detention Center; Philadelphia, PA (138 mi.)
Federal Medical Center Carswell; Fort Worth, TX (1370 mi.)
Federal Prison Camp; Alderson, WV (279 mi.)
Federal Correctional Institution; Waseca, MN (1107 mi.)
Federal Correctional Institution; Aliceville, AL (855 mi.)
Metropolitan Detention Center; Brooklyn, NY (224 mi.)
Federal Correctional Institution; Tallahassee, FL (865 mi.)



In some respects, D.C. women housed at BOP facilities form a distinct population, standing out from the other women in these facilities. Unlike other women in federal prisons, most D.C. women housed there were convicted of offenses that are local

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within 500 miles of the District; six were housed between 500 and 1000 miles from the District; four were housed between 1000 and 1500 miles from the District (presumably at Carswell or Waseca, MN); and two were housed more than 1500 miles from the District (presumably at Dublin in California).

in nature.<sup>20</sup> The great majority of the D.C. women are African-American, a much higher percentage than in the overall female population in federal prisons. Most are from inner city neighborhoods.<sup>21</sup>

We do not know how many additional D.C. women transferred to BOP jurisdiction were “in transit” at the time BOP provided the numbers above.<sup>22</sup> Women who are in the process of being moved to or from a federal facility are housed at various locations where BOP has contracted for space, including state and local jails and private correctional facilities. For example, some D.C. women being transferred from CTF to a federal prison have been moved to the Northern Neck Regional Jail in eastern Virginia for several weeks and then to the Federal Transfer Center at Oklahoma City before arriving at the prison where they will be housed for the longer term.

We understand that in some cases “in-transit” status may last for a longer period. For example, women who have originally been released from a BOP prison to a halfway house, then violated a rule (e.g., failed to return to the halfway house on time), may be returned to BOP custody. Rather than moving such women back to the federal prisons where they were originally housed (or to another federal prison), we understand that BOP may place them in a state or local jail or private contract facility for the remaining term of confinement. There are several potential concerns with such a practice. We are told that the families of these women have difficulty locating them because the women do not appear in the BOP system locator. In addition, while in the contract jail facilities, the women would not have access to reentry services or other BOP programming that would prepare them for their eventual return to the community.

We have attempted to learn more about how many D.C. women are in a transit facility at any given time and how long they remain in “in-transit” status. However, BOP has not provided information on this point. To the extent D.C. women are being held at transit facilities for longer periods, BOP should take steps to end this practice, preferably by housing the women at CTF (or in some other supervised status in the District), rather than in contract jail facilities outside the District.

### **3. The Fairview Halfway House**

Women nearing the end of their sentences may be transferred to a halfway house, known as a Residential Reentry Center (RRC) in the BOP system. In addition, some women are placed at a halfway house during the pretrial stage.

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<sup>20</sup> As noted above, in housing offenders adjudicated in D.C. Superior Court, BOP is handling what is essentially a local government function for the District.

<sup>21</sup> See D.C. Dep’t of Corr., *Facts and Figures January 2016* [“*Facts and Figures January 2016*”] (DC Inmates by Census Tract of Residence).

<sup>22</sup> BOP told us that women “in transit” are not included in the figures they provided for D.C. incarcerated women. One source we have seen suggests that as many as 50 D.C. women have been in transit facilities on certain dates, but we have been unable to confirm this information.

The Fairview, located in northeast D.C., is the only halfway house for women in the District. This facility is operated by Reynolds & Associates under contracts with DCDOC and BOP. Both contracts expired in 2015, and extensions are currently being negotiated. The Fairview provides programming for women who have been incarcerated and who are transitioning back into the community.<sup>23</sup> The Fairview staff is charged with assisting residents in finding housing, employment, and health-related services.

As of July 2015, The Fairview had a 60-bed capacity and was operated by 14 full-time and two part-time staff.<sup>24</sup> Most of the residents are under BOP jurisdiction, with a smaller number under DCDOC jurisdiction. A Corrections Information Council (CIC) report states that, as of 2013, average BOP occupancy of The Fairview was 36 residents and average DCDOC occupancy was nine residents.<sup>25</sup> The DCDOC number appears to have dropped since that time.<sup>26</sup> DCDOC informed us that it housed a total of 72 women at The Fairview during fiscal year 2015, most of whom were in pretrial status. According to DCDOC, the median length of stay for these women was 22 days, and 90% of the women stayed two months or less at The Fairview.

A DCDOC official told us that some women housed at CTF decline to move to The Fairview because they can earn good-time credits at CTF, but not at a halfway house. Other CTF women are ineligible to reside in a halfway house for various reasons (e.g., a history of domestic violence or prior walkaway or a pending detainer).<sup>27</sup>

## **B. Demographics**

Until the latter part of the 20th Century, relatively few women were incarcerated. After 1980, however, the number rose very significantly – with more than

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<sup>23</sup> *Correctional Facilities*, D.C. Dep't of Corr., <http://doc.dc.gov/page/correctional-facilities> (last visited Mar. 24, 2016) [*“Correctional Facilities”*].

<sup>24</sup> David Kidwell, Auditor, PREA Audit Report for Community Confinement Facilities 3 (Nov. 27, 2015), <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20DOC%20Community%20Confinement%20Final%20Report%2011.27.15.pdf> [*“PREA Audit Report for Community Confinement Facilities”*].

<sup>25</sup> Corrections Information Council, *Annual Report Fiscal Year 2013*, § IV.d. (inspection report for The Fairview RRC) (Feb. 28, 2014) [*“The Fairview RRC”*], at 36.

The Corrections Information Council is responsible for inspecting the prison, jail, and halfway house facilities where D.C. residents are incarcerated in order to ensure compliance with standards governing the operation of those facilities.

<sup>26</sup> A DCDOC document states that during calendar year 2015 a daily average of six women under DCDOC jurisdiction were housed at The Fairview. *Facts and Figures January 2016*, *supra* note 21 (Average Daily Population CY 2015 by Sex and Facility).

<sup>27</sup> See DCDOC Program Statement 8010.1A (Apr. 4, 2012) (Work Release Program), at 8 (eligibility criteria).

a 500 percent increase nationwide from 1980 to 1998.<sup>28</sup> Much of this increase resulted from tougher sentencing laws, particularly provisions designed to crack down on drug offenders.<sup>29</sup>

The male prison population also grew during this period, but the rate of growth was considerably higher for women (an annual increase of 8.5% for women versus 6.6% for men).<sup>30</sup> Although the growth rate slowed after the turn of the century,<sup>31</sup> the United States now accounts for nearly 30% of the world's incarcerated women.<sup>32</sup>

The District followed this national trend, with an increase of almost 800% in the number of incarcerated women from 1980 to 1998.<sup>33</sup> By 1998 the District had a per capita rate of confinement of women higher than any state (173 per 100,000 female residents).<sup>34</sup> More recently, though, the trend has reversed. From 2010 to 2015 the average daily number of women housed in DCDOC facilities dropped from 254 to 106.<sup>35</sup>

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<sup>28</sup> U.S. General Accounting Office, *Women in Prison: Issues and Challenges Confronting U.S. Correctional Systems* (B-280204) (Dec. 1999) ["1999 GAO Report"], at 2.

<sup>29</sup> *Id.* at 2-3; see also E. Ann Carson, *Prisoners in 2014*, Bureau of Justice Statistics (Sept. 2015), at 1 (59% of females in federal prison were serving time for drug offenses on September 30, 2014); Tracy L. Snell, *Women in Jail 1989*, Bureau of Justice Statistics (1992) ["*Women in Jail 1989*"], at 1 (more than half of the increase in women held in local jails between 1983 and 1989 resulted from more women being held for drug violations).

<sup>30</sup> *1999 GAO Report*, *supra* note 28, at 3; see also, e.g., *Women in Jail 1989*, *supra* note 29, at 2 (between 1983 and 1989 rate of growth for female inmates was 138.0%, nearly double the 72.7% rate for male inmates); Lawrence A. Greenfeld & Tracy L. Snell, *Women Offenders*, Bureau of Justice Statistics (1999) ["*Women Offenders*"], at 6 (from 1990 to 1996, felony convictions increased 42% for females compared with 17% for males).

<sup>31</sup> See Todd D. Minton & Zhen Zeng, *Jail Inmates at Midyear 2014*, Bureau of Justice Statistics (June 2015), at 3 (female jail population grew an average of about 1.6% every year between 2005 and 2014, while the male jail population declined by 0.3% every year since 2005).

<sup>32</sup> A. Kajstura & R. Immerigson, *States of Women's Incarceration: The Global Context* (Prison Policy Initiative 2015), <http://www.prisonpolicy.org/global/women/> (last visited Mar. 24, 2016).

<sup>33</sup> Bureau of Justice Statistics, *Sentenced Female Prisoners Under the Jurisdiction of State or Federal Correctional Authorities, December 31, 1978-2014* (July 29, 2015) (showing an increase from 45 female prisoners in 1980 to 359 female prisoners in 1998 for the District of Columbia).

<sup>34</sup> *Women Offenders*, *supra* note 30, at 10.

<sup>35</sup> *Facts and Figures January 2016*, *supra* note 21 (Average Daily Population CY 2015 by Sex and Facility); D.C. Dep't of Corr., *Facts and Figures April 2011* (Average Daily Population CY 2010 by Sex and Facility at Mid-Year). Because BOP began to house D.C. women convicted of felonies around 2000, data on the population of women in DCDOC custody for years after 2000 are not comparable to data from earlier years.

In the same period, the number of D.C. women adjudicated in D.C. Superior Court housed in BOP facilities dropped from 229 to 145.<sup>36</sup>

Despite the long-term growth in their numbers, incarcerated women still constitute a small percentage of the total population of correctional facilities on both a national level and for the District. Women make up around seven percent of the federal incarcerated population and a similar percentage of the population incarcerated in DCDOC facilities.<sup>37</sup> Women currently constitute three percent of the total D.C. population housed in BOP facilities.<sup>38</sup>

As of January 2016, the median age of the women in DCDOC custody was 35.85 years.<sup>39</sup> The median age of D.C. women in federal facilities is likely higher, since those women are serving longer sentences.<sup>40</sup>

The racial breakdown of the total DCDOC population as of 2015 is shown in the table below:<sup>41</sup>

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<sup>36</sup> See Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), Fact Sheet for July 2015, Distribution of District of Columbia Inmates Adjudicated in D.C. Superior Court and Housed in BOP Facilities, by State and Gender; CSOSA, Fact Sheet for July 2010, Distribution of District of Columbia Inmates Housed in a BOP Facility by State and Gender.

<sup>37</sup> Fed. Bureau of Prisons, Reentry Services Division, Female Offender Branch, *Female Offenders in the Bureau of Prisons* (Apr. 2015) [*Female Offenders in the Bureau of Prisons*], at 1; *Facts and Figures January 2016*, supra note 21 (Inmates by Sex); D.C. Dep't of Corr., *PREA Safety and Security Report (2014)* [*PREA Safety and Security Report*], at 4.

<sup>38</sup> See CSOSA, Fact Sheet for December 2015, Distribution of District of Columbia Inmates Adjudicated in D.C. Superior Court and Housed in BOP Facilities, by State and Gender (showing 144 females and 4,502 males).

<sup>39</sup> *Facts and Figures January 2016*, supra note 21 (Age Distribution of Female Inmates).

<sup>40</sup> See *Women Offenders*, supra note 30, at 7 (women in prison are older than their counterparts in local jails).

<sup>41</sup> *Facts and Figures January 2016*, supra note 21 (Inmate Population by Race, Religious Affiliation of Intakes FY 2015).

Race	Percent of population
Black	90%
Hispanic	5%
White	3%
Other	2%

The percentages for D.C. women in BOP custody are likely similar.

DCDOC data show that as of January 2016 57.9% of women in DCDOC custody were in pre-trial status (39.7% pre-trial felons, 18.2% pre-trial misdemeanants); 24% were parole violators; 22.6% were sentenced misdemeanants; 4.1% were sentenced felons; and 2.5% were in writ/hold status (with other charges pending).<sup>42</sup> Most of these women were housed at CTF, with a few at The Fairview.

Most women remain in CTF for a relatively short period of time. As of 2015, the median length of stay for women was 43.42 days, while the median length of stay for women *released* in FY 2015 was eight days, with 71.2% of released women staying less than 31 days.<sup>43</sup> The average length of stay for women in DCDOC custody was 97 days, or a little over three months.<sup>44</sup> Only 7.4% of women remained in DCDOC custody more than one year, and only 13.2% remained in DCDOC custody more than six months.<sup>45</sup>

The average length of stay in custody was longest for women with felony charges and women in writ/hold status. As of January 2016, the average lengths of stay were:<sup>46</sup>

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<sup>42</sup> *See id.* (Percent of Female Inmates in Custody by Legal Status and Average Length of Stay in Days).

<sup>43</sup> *Id.* (Length of Stay Distribution for Inmates in Custody, FY 2015 Releases by Length of Stay).

<sup>44</sup> *Id.* (Percent of Female Inmates in Custody by Legal Status and Average Length of Stay in Days).

<sup>45</sup> *Id.* (Length of Stay Distribution for Inmates in Custody).

<sup>46</sup> *Id.* (Percent of Female Inmates in Custody by Legal Status and Average Length of Stay in Days).

Category	Average Length of Stay
sentenced felons	162 days
writ/hold status	156 days
pre-trial felons	140 days
parole violators	78 days
sentenced misdemeanants	71 days
pre-trial misdemeanants	24 days

As of January 2016, the most common serious active charge for women in DCDOC custody was parole and release violations (28%). The next largest category was assault or domestic violence (17%). Drug offenses were the most serious active charge for just 4% of women.<sup>47</sup> According to DCDOC, as of January 2016, approximately 31% of the women in DCDOC custody were incarcerated for violent or dangerous offenses, lower than the percentage for men in DCDOC custody (39%) in the same period.<sup>48</sup>

It is noteworthy that more than a quarter of the women in DCDOC custody and charged as felons were not incarcerated for any recent criminal activity, but for (in some cases likely technical) violation of parole conditions or failure to appear. It is doubtful that incarceration is appropriate in all of these cases. For at least some of these women, a higher level of community supervision might be sufficient, as opposed to “stepping them back” to confinement.

The majority of women convicted of felonies under the D.C. Code receive sentences of probation or “short split” sentences (involving a relatively short period of incarceration).<sup>49</sup> Felony sentencing data for 2013-2015, provided to us by the D.C. Sentencing Commission, show that in each year over half of those D.C. women who were

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<sup>47</sup> *Id.* (Offenses by Most Serious Active Charge for Females).

<sup>48</sup> *Id.* (Offenses by Most Serious Active Charge for Females, Offenses by Most Serious Active Charge Male Inmates). Most DCDOC quarterly reports over the past five years show that men have a higher percentage of violent or dangerous offenses than women. *See, e.g.*, D.C. Dep’t of Corr., *Facts and Figures April 2015* (32% of men vs. 22% of women); D.C. Dep’t of Corr., *Facts and Figures October 2011* (28% of men vs. 25% of women). Like other DCDOC data, these percentages vary with the population in custody during different periods.

<sup>49</sup> District of Columbia Sentencing and Criminal Code Revision Commission, *2013 Annual Report* 49 (2014) [*“Sentencing Comm’n 2013 Annual Report”*]; *see also* District of Columbia Sentencing and Criminal Code Revision Commission, *2014 Annual Report* 59 (2015) [*“Sentencing Comm’n 2014 Annual Report”*]. A “short split” sentence is defined as a prison sentence in which the court suspends all but six months or less (but not all) of the sentence and imposes five years’ probation to follow the portion of the prison term to be served. *Sentencing Comm’n 2014 Annual Report* at 40 n.26.

convicted of a felony and sentenced to a period of incarceration have received sentences of 24 months or less of confinement.<sup>50</sup>

### **C. The Landscape for D.C. Women Entering Prison**

As a group, D.C. women confront daunting challenges when they enter prison. Several significant circumstances that affect these women's experiences are described below. Later sections of the report focus on several specific aspects of D.C. women's experience during incarceration.

#### **1. Disadvantaged at the Outset**

Most women entering prison start out with many disadvantages. For the most part, these women have low levels of education. A national study showed that only 44% of women entering prison had obtained either a high school diploma or the GED credential, compared with 49% of men entering prison.<sup>51</sup> Among those in DCDOC custody as of January 2016, around 48% of women reported having a high school diploma or the GED credential, compared with approximately 55% of men.<sup>52</sup>

In addition, women entering prison start out with less employment experience than their male counterparts. On a national level, one study found that 40% of women entering prison were previously employed, compared with 60% of men.<sup>53</sup> In a survey of women in DCDOC facilities in 2004-2005, only 16% reported that they were employed at the time of their arrest.<sup>54</sup> Not surprisingly, women tend to have lower incomes than men prior to their arrest.<sup>55</sup>

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<sup>50</sup> Based on data supplied by the District of Columbia Sentencing and Criminal Code Revision Commission in response to a January 2016 request.

<sup>51</sup> Caroline Wolf Harlow, *Education and Correctional Populations*, Bureau of Justice Statistics 5 (Jan. 2003, rev. Apr. 15, 2003). An earlier report provided a higher percentage for women in state and local facilities. *See Women Offenders*, *supra* note 30, at 7 (about 55% of women in local jails and State prisons have completed high school).

<sup>52</sup> *Facts and Figures January 2016*, *supra* note 21 (Self Declared Education Levels for Male Inmates, Self Declared Education Levels for Female Inmates). Another DCDOC report cites an even greater discrepancy. *See PREA Safety and Security Report*, *supra* note 37, at 4 (18% of women and 50% of men reported having a GED or high school diploma).

<sup>53</sup> *Women Offenders*, *supra* note 30, at 8; *see also Women in Jail 1989*, *supra* note 29, at 3 (38% of women employed prior to arrest compared to 68% of men); Tracy L. Snell, *Women in Prison*, Bureau of Justice Statistics (Mar. 1994) [*“Women in Prison”*], at 3 (47% of women working compared with 68% of men).

<sup>54</sup> *From the Inside Out*, *supra* note 11, at 4.

<sup>55</sup> *See, e.g.*, Shawn M. Flower, *Employment and Female Offenders: An Update of the Empirical Research*, National Institute of Corrections (Nov. 2010) [*“Employment and Female Offenders”*], at 4 (compared with men, “women were significantly less likely to

Women who do not speak English are at an extra disadvantage when they enter prison because they have difficulty communicating with prison staff. We did not locate DCDOC or BOP data showing the percentage of D.C. women entering prison who do not speak English. However, data maintained by the Court Services and Offender Supervision Agency (CSOSA) show that approximately four percent of D.C. women under CSOSA supervision do not speak English.<sup>56</sup> CTF staff told us that they use the AT&T Language Line translation service for communications with non-English speakers.

At the time of our visit to the Hazelton SFF in November 2015, the staff informed us that none of the D.C. women there were classified as needing English as a Second Language instruction. Hazelton SFF officials believe they have enough Spanish-speaking staff so that any woman who speaks only Spanish need not depend on other inmates to translate for her.<sup>57</sup> However, the CSOSA data we reviewed show that, of the D.C. women under supervision who do not speak English, only about 12% identify Spanish as their native language. The remaining non-English speakers have a first language other than Spanish or their native language is not recorded. A BOP official told us that BOP facilities use a telephone translation service if they do not have staff who can speak a woman's language. However, a D.C. woman formerly housed at two federal prisons (other than Hazelton) told us that women confined at those facilities often had to rely on other women to translate. In any event, a telephone translation service cannot fully overcome the linguistic barriers, or the cultural and psychological isolation experienced by women who do not speak English.

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have a profession, trade, or skill and were more likely to report having no income in the 30 days prior to incarceration"); *Women Offenders, supra* note 30, at 8 (about 37% of women and 28% of men have incomes of less than \$600 per month prior to arrest); *id.* (just under 8% of men and nearly 30% of women had been receiving welfare assistance prior to arrest); *Women in Jail 1989, supra* note 29, at 3 (55.7% of women had less than \$500 in monthly income prior to arrest compared with 42.3% of men); *id.* (women in jail far more likely than men to report welfare income).

<sup>56</sup> CSOSA, a federal agency, is responsible for supervision of D.C. offenders who are on probation or who have been released from prison on parole or supervised release. The CSOSA data we cite was based on a cohort of women under supervision on November 30, 2015.

<sup>57</sup> We understand from several judges who toured the Hazelton SFF the year it opened (2007) that this was not the case in that early period.

Of particular significance, women entering prison are more likely than men to have a history of mental illness or co-occurring mental health and substance use disorders.<sup>58</sup> Several social workers who work directly with incarcerated D.C. women commented to us that a very high percentage of these women appear to have some type of mental illness. In general, women also enter prison with higher rates of chronic physical health problems.<sup>59</sup>

**“Yes, fortunately for me I haven’t had that experience of sexual abuse and physical abuse in my family and growing up, but I did notice when I was incarcerated that the vast majority of the women that I was incarcerated with had that issue and had that trauma that they was dealing that lead them down that path of drugs and crime. With me, my trauma was violence inside my home, violence outside of my home and mainly the violence in my community. It was kind of like survival of the fittest.”**

Lashonia Etheridge-Bey  
(from transcript of a CSOSA D.C. Public Safety Radio Interview, March 3, 2014)

As illustrated by the quotation from Lashonia Etheridge-Bey (now Lashonia Thompson-El) above, incarcerated women are particularly likely to suffer from trauma. A higher percentage of women than men have experienced physical, emotional or sexual

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<sup>58</sup> See *Mental Health Problems of Prison and Jail Inmates*, Bureau of Justice Statistics (Sept. 2006), at 4 (in State prisons 73% of women have mental health problems, compared to 55% of men). In jails the percentage of women with the most severe mental illnesses is twice that of men. Fed. Partners Comm. on Women & Trauma, *Women and Trauma* 32 (June 2011) [*“Women and Trauma”*]; Neal P. Langan et al., *Gender Differences Among Prisoners in Drug Treatment*, Fed. Bureau of Prisons (2001), [http://www.bop.gov/resources/research\\_projects/published\\_reports/equity\\_diversity/oreprdap\\_gender.pdf](http://www.bop.gov/resources/research_projects/published_reports/equity_diversity/oreprdap_gender.pdf). (women in prison are more likely than men in prison to suffer from depression, to have attempted suicide, and to have taken medication for psychological problems).

Substance abuse also tends to be a bigger problem for women. See, e.g., *Women in Jail 1989*, *supra* note 29, at 7 (in general women in jail used more drugs, and used those drugs more frequently than their male counterparts); *id.* (women were more likely than men to have used a major drug in the month before their current offense); *id.* at 4 (women were far more likely than men to be in jail for a drug offense); *Women Offenders*, *supra* note 30, at 8 (on every measure of drug use women in State prisons reported higher usage than men); see also *Women in Prison*, *supra* note 53, at 1, 7 (women in prison in 1991 used more drugs and used those drugs more frequently than men); Kim White, *Women in Federal Prison: Pathways In, Programs Out*, 14 Wm. & Mary J. Women & L. 305, 309 (2007) (approximately 80% of female inmates nationwide have substance abuse problems).

<sup>59</sup> See, e.g., Laura M. Maruschak, *HIV in Prisons, 2004*, Bureau of Justice Statistics (Nov. 2006), at 1 (in 2004, 2.6% of all women in State prisons were HIV-positive compared to 1.8% of males); *Women Offenders* at 8 (in 1997, about 3.5% of women in State prisons were HIV-positive compared with 2.2% of the male State prison population).

abuse prior to their incarceration.<sup>60</sup> The resulting trauma is likely to have a negative effect on the experience of the women during their incarceration, leading to conduct that triggers disciplinary measures and potentially extends the period of incarceration.

While wom[e]n are incarcerated, trauma may affect their institutional conduct and as a result, may negatively impact their eligibility for treatment and educational programs, increase the likelihood of disciplinary action, and extend release dates . . . . Correctional procedures such as cell searches, escorts, and cell removal can easily retrigger earlier trauma, leading the woman to protest or fight back and often ending up with a disciplinary report.<sup>61</sup>

In some cases a history of abuse and trauma may lead a woman to both substance abuse and crime.<sup>62</sup> For example, a woman may steal or engage in other criminal activity (e.g., prostitution) in order to support her habit, or may be caught up in criminal activity if her family or friends are drug dealers.<sup>63</sup>

Children present a special burden that weighs heavily on women behind bars. Approximately two-thirds of women in prisons and jails are parents of minor children.<sup>64</sup> Women are more likely than men to have been the primary caregiver of a

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<sup>60</sup> See, e.g., *Women Offenders*, supra note 30, at 1 (nearly six in ten women in State prisons had experienced physical or sexual abuse in the past); *Women in Prison*, supra note 53, at 5 (more than four in every ten women reported being abused at least once before current admission to prison); *id.* at 6 (compared to men in prison, women were at least three times more likely to report any prior abuse and six times more likely to report sexual abuse or abuse since age 18); *Women in Jail 1989*, supra note 29, at 1, 10 (about 44% of women reported that they had been either physically or sexually abused at some time in their lives before their current imprisonment); *id.* at 11 (compared to men in jail, women were at least three times more likely to have been abused before age 18 and five times more likely at age 18 or older).

<sup>61</sup> *Women and Trauma*, supra note 58, at 32-33.

<sup>62</sup> See *id.* at 32 (“Women are often introduced to drugs and crime by a partner and frequently use substances to mask the pain of abuse.”).

<sup>63</sup> See *Women Offenders*, supra note 30, at 9 (nearly one in three women serving time in State prisons said they had committed the offense that brought them to prison in order to obtain money to support their need for drugs); *Women in Jail 1989*, supra note 29, at 1 (about one in every four convicted women in jail reported they had committed their current offense to get money to buy drugs); see also *Employment and Female Offenders*, supra note 55, at 6 (citing research finding that a marital or partner relationship with criminal offenders was the strongest predictor of women’s engagement in crime).

<sup>64</sup> See, e.g., *Women Offenders*, supra note 30, at 7 (approximately 70% of women held in local jails had children under 18); *Women in Prison*, supra note 53, at 1 (two-thirds of women in State prisons had children under 18).

We have not located data on the percentage of D.C. women in DCDOC custody who are parents of minor children when they begin a period of incarceration. However, CSOSA

minor child prior to being incarcerated.<sup>65</sup> As a result, many women bear the added burden of arranging care for their children or seeing the children placed in foster care while the women are incarcerated. Women whose lives have already been disrupted by substance abuse, mental illness, and/or prior incarceration may experience deep feelings of guilt at not being present for their children.<sup>66</sup>

It is clear that D.C. women enter correctional facilities with many strikes against them. In some respects, incarceration could theoretically present an opportunity – correctional facilities are in a position to conduct assessments and provide programs (e.g., GED classes, job training, substance abuse treatment, and other medical care) that could help women overcome some of their disadvantages. But there is no question that, at the outset, many D.C. women face a daunting array of problems that make it difficult for them to handle the rigors of prison life, transform themselves into productive citizens, and reenter the community successfully.

## **2. Women As an Afterthought**

Although women entering prison face so many challenges and thus need extra support, they were long treated as an afterthought in correctional systems. As noted above, relatively few women were incarcerated until the 1980s and 1990s. Even after their numbers grew significantly, women in correctional facilities remained a small percentage of the total incarcerated population – both on a national scale and in the District. In addition, women in prison tend to be better behaved than their male counterparts, and thus are likely to be lower on the radar screen of correctional officials.<sup>67</sup>

As a result, correctional officials have focused primarily on male prisoners, developing policies and programs tailored to men’s characteristics and needs. For example, in the past security classification systems took little account of the facts that women tend to be less violent than men and often play a subordinate role in criminal

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data show that over 60% of D.C. women who are on supervised release status following a period of incarceration reported that they had minor children, although at that stage fewer than half of the women reported that they were the primary caretakers of those children. This information is based on self-reporting by a cohort of women under supervision on November 30, 2015.

<sup>65</sup> See, e.g., *Women in Jail 1989*, *supra* note 29, at 9 (two-thirds of women with young children were living with their children before entering jail); *Women Offenders*, *supra* note 30, at 8 (similar percentage for women in State prisons).

<sup>66</sup> See, e.g., Kris Kissman & Ophelia A. Torres, *Incarcerated Mothers: Mutual Support Groups Aimed at Reducing Substance Abuse Relapse and Recidivism*, 26 *Contemporary Family Therapy* 217 (2004) (describing a program aimed at promoting positive thought processes that serve as a catharsis for the guilt associated with incarceration in mothers with substance abuse problems).

<sup>67</sup> See, e.g., Mark T. Berg & Matt DeLisi, *The Correctional Melting Pot: Race, Ethnicity, Citizenship, and Prison Violence*, 34 *J. Crim. Just.* 631, 636 (2006) (finding that men in prison averaged more infractions than women for all racial and ethnic groups).

activity.<sup>68</sup> Some job training opportunities and other programs offered to men were not available to women.<sup>69</sup> In other cases, programs designed for men (e.g., motivational programs or substance abuse treatment) were offered to women with little or no modification.<sup>70</sup>

Over the past few decades some scholars and others involved with the criminal justice system have argued that policymakers and correctional officials should do more to take account of the ways in which women in the criminal justice system differ from men in the system. Fifteen years ago Judge Patricia Wald, formerly Chief Judge of the U.S. Court of Appeals for the District of Columbia Circuit, argued that female offenders should be treated differently in various respects in view of their special characteristics. In a 2001 article, she summarized some of the significant ways in which women offenders as a group differ from their male counterparts.<sup>71</sup>

Judge Wald cited literature showing that, compared with men, women are far less likely to be convicted for violent crimes (and much more likely to have no prior criminal record), tend to play a lesser role in criminal enterprises, have higher rates of substance abuse and mental illness, are far more likely to have been the principal caretakers of young children at the time of arrest, have distinct physical and mental health needs, are more vulnerable to physical and sexual abuse by guards and other personnel, and recidivate less (with different considerations affecting their susceptibility to change in motivation and attitudes). Among other things, Judge Wald urged that correctional officials adjust programs and security regimes to better fit the more typical woman offender and modify correctional practices to allow more contact between mothers in custody and their minor children, both to diminish the increase in children's antisocial behavior that tends to occur when the caretaker parent is incarcerated and to reduce the recidivism rate of the women by preserving family ties.<sup>72</sup>

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<sup>68</sup> See, e.g., Miles D. Harer & Neal P. Langan, *Gender Differences in Predictors of Prison Violence: Assessing the Predictive Validity of a Risk Classification System*, 47 *Crime & Delinquency* 513, 513-14 (2001) (noting the view of a number of criminologists that prisoner risk classification systems originally designed for men may be less accurate in predicting female violent misconduct).

<sup>69</sup> See, e.g., *Women Prisoners*, 877 F. Supp. at 656-62. There is at least a perception among some D.C. women that women continue to be shortchanged compared with their male counterparts. For example, one woman formerly housed at Hazelton SFF complained to us that the men's facilities in the Hazelton complex enjoyed better resources (e.g., more experienced physicians) than the SFF.

<sup>70</sup> According to the Administrator of BOP's Female Offender Branch, BOP's Residential Drug Assistance Program (RDAP) originally appeared less effective for women, but after BOP introduced gender-specific program materials, effectiveness of the program improved for women.

<sup>71</sup> Judge Patricia M. Wald, *Why Focus on Women Offenders?*, *Criminal Justice Magazine*, vol. 16, issue 1 (Spring 2001).

<sup>72</sup> *Id.*

Gradually the arguments for different approaches to managing women in correctional facilities have begun to take hold. A BOP publication now makes many of the same points Judge Wald and other commentators made years ago:

Female offenders differ from male offenders in some significant ways. For example, women are more likely to have histories of trauma and physical or sexual abuse, have higher rates of certain chronic and acute medical conditions, and have greater levels of combined mental health and substance use disorders. . . . Females are also more likely than men to have been the primary caregivers of their children prior to incarceration and to have a history of dysfunctional relationships, both of which pose additional challenges to re-entry.<sup>73</sup>

Corrections officials in both the federal system and the District have come to recognize that it is appropriate to take a gender-specific approach to many aspects of prison life. For example, in its security classification system, BOP gives at least some recognition to the lower security threat posed by most women compared with men.<sup>74</sup> Both DCDOC and BOP provide staff training on gender-responsive concerns in correctional facilities, including “trauma-informed” training to sensitize corrections officers to the effect trauma has on women’s conduct and needs.<sup>75</sup>

Both DCDOC and BOP have created or modified some programs in an effort to respond better to women’s needs. DCDOC has adopted a gender-specific approach to programming for women.<sup>76</sup> In the 2011-2012 period DCDOC engaged a consultant to assess pre- and post-release services to women in its custody. Following the assessment, DCDOC hired a Women’s Program Manager and a female reentry case manager and implemented use of a gender-responsive risk and needs assessment for all women in the RSAT unit and for women sentenced to 60 days or more for a misdemeanor who have at least 45 days left to serve. DCDOC also introduced trauma-informed care for staff who work with women, incorporated gender responsiveness in the parenting and life skills

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<sup>73</sup> Fed. Bureau of Prisons, *About the Federal Bureau of Prisons* 8 (June 2015).

<sup>74</sup> See Fed. Bureau of Prisons, Program Statement P5100.08 (Sept. 12, 2006), at 2. DCDOC’s official security classification policy does not appear to take gender into account.

<sup>75</sup> See, e.g., *Women and Trauma*, *supra* note 58, at 33 (“Correctional staff not trained in trauma-informed practices can unwittingly re-traumatize the women through typical system responses and further entrench her in the correctional system.”).

<sup>76</sup> See D.C. Dep’t of Corr., Policy and Procedure No. 4923.5C (Oct. 20, 2011) (Reentry Program and Services), at 2 (“DOC will insure gender-responsive reentry programs are provided to meet the unique care, custody, treatment and community transition needs for women offenders”); *id.* at 5 (prescribing gender responsive programs and reentry services for pre-trial and sentenced misdemeanor women “that emphasize treatment from a women’s perspective, increasing her self-esteem, improving life management skills, addressing health and co-occurring disorders, reinforcing familial reunification and providing a bridge to community support”).

classes offered at CTF, and established a reentry housing unit and schedule of reentry services (including short term vocational training) for women charged with misdemeanors and women with short-term felony sentences who have been designated to serve their sentences at CTF.<sup>77</sup>

In addition to tailoring a version of its residential drug abuse program to women, BOP has developed the Resolve Program, designed to treat women who have experienced trauma.<sup>78</sup> In 2014 the BOP Director revamped the mission of the agency's Female Offender Branch and relocated the branch to a new Reentry Services Division. Dr. Alix McLearn, a psychologist with extensive corrections experience, was appointed as Administrator of the branch. These moves provided greater visibility and stature to the effort to develop gender-specific approaches in the BOP system. Dr. McLearn has been proactive in advocating for revisions to BOP policies and practices to better address the special problems women face in federal prisons and generally in promoting more gender-specific programs for women.<sup>79</sup>

The federal agencies responsible for pre-trial and post-release supervision of D.C. offenders have also embraced gender-specific approaches. The Pretrial Services Agency for the District lists gender-specific groups as part of its Drug Court program.<sup>80</sup> CSOSA, the federal agency responsible for post-release supervision of D.C. offenders, has been especially proactive in developing gender-specific approaches to working with women returning from prison. Since 2004 CSOSA has sponsored an annual symposium on issues facing women returning to the District from prison. CSOSA staff developed Women in Control Again (WICA), a group therapy program that recognizes the special vulnerabilities of women who have been incarcerated (addressing, among other things, mental health, substance abuse, and parenting issues). In 2011 CSOSA established a single field unit dedicated to women, where the women report and receive gender-specific services and programming from several women-only supervision teams.<sup>81</sup> In its current

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<sup>77</sup> Information provided by DCDOC; *see also Women's Services at DOC*, D.C. Dep't of Corr., <http://doc.dc.gov/page/womens-services-doc> (last visited Mar. 24, 2016).

<sup>78</sup> *See Female Offenders in the Bureau of Prisons*, *supra* note 37, at 5.

<sup>79</sup> As early as 1997, the BOP officially recognized that its programs should be developed or revised to meet the special needs of women. *See* Fed. Bureau of Prisons, Program Statement No. 5200.01 (Aug. 4, 1997) (Female Offenders, Management of). However, it appears that BOP has acted more aggressively on this recognition only in recent years.

<sup>80</sup> *See Benefits of Drug Court*, Pretrial Services Agency for D.C., <https://www.psa.gov/?q=node/518> (last visited Mar. 24, 2016).

<sup>81</sup> This field unit for women is located not far from Union Station. Although a single site may be less convenient for some women, the site is centrally located near a Metro station. The advantage of the gender-specific services CSOSA offers at this site at least partially offsets the loss of convenience for some women.

Strategic Plan, CSOSA states that it “will continue its commitment to gender-specific interventions focusing on the unique issues faced by female offenders.”<sup>82</sup>

The gradual introduction of more gender-specific approaches is a positive development. However, there is significant room for further investigation and implementation of programs that will respond to women’s unique needs. In particular, the BOP should allocate additional funding for its Female Offender Branch, so that more resources can be devoted to this effort.

### **3. Isolation and Distance**

Isolation is a key challenge for many women in prison. Women are less likely than men to have spouses, partners, or other family members who make efforts to visit and otherwise keep in touch while the woman is behind bars. A number of organizations and programs focus on helping men stay connected with their children and make progress toward rehabilitation while they are incarcerated and after their release.<sup>83</sup> But many women have far less support. Staff of agencies and organizations that work with both men and women in correctional facilities told us that in general men receive a number of visitors, while women have very few. Staff at one organization commented that families often bear the heavy burden of caring for a woman’s children while she is incarcerated and as a result are less inclined, and have fewer resources, to make the additional effort to visit or to provide other types of support. And since incarcerated women are likely to suffer from substance abuse or mental illness, many may have become alienated from their families and children prior to their incarceration.

D.C. women with felony convictions, most of whom serve their sentences in federal prison, suffer an especially heavy burden due to the distance of these prisons from the District. At the pretrial stage, D.C. women are housed in the District, at CTF, and thus have some prospect of seeing their children and other family members in the D.C. area. Once convicted of a felony, however, D.C. women are transferred to BOP jurisdiction and most are housed in a federal facility. Because BOP has no female facilities in the District, Maryland, or Virginia, D.C. women convicted of a felony will be housed at least several hours’ drive from the District. The Hazelton SFF in West Virginia, the federal female prison closest to the District, is more than 180 miles away (over three hours’ drive from the District).<sup>84</sup> And some D.C. women are sent to federal facilities as far away as

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<sup>82</sup> Court Services and Offender Supervision Agency for the District of Columbia, *Strategic Plan Fiscal Years 2014-2018*, at 16-17.

<sup>83</sup> Examples include the DC Fatherhood Initiative Program within the D.C. Department of Human Services Family Services Administration; Concerned Black Men-National Organization’s Fatherhood Initiative; the Fatherhood Education, Empowerment, and Development Program; and Hope House D.C. (which sponsors camps that allow D.C. men at some correctional facilities to spend time with their children).

<sup>84</sup> The Federal Detention Center in Philadelphia (where over a dozen D.C. women were housed in 2015) is closer to the District, but it is designed primarily for short-term detention, not long-term incarceration, and thus has fewer programs focused on re-entry.

Minnesota, Florida, Alabama, or Texas. Families with limited resources will find it difficult to visit any of the federal facilities where D.C. women are housed.<sup>85</sup>

We understand that BOP attempts to place most D.C. women at the female facilities closest to the District — Hazelton SFF, FDC Philadelphia, and Alderson prison camp. In some cases BOP may have a special reason to choose another facility (for example, a perceived need to separate particular individuals or a woman’s serious medical problem). Some D.C. women may be housed at more distant facilities because Hazelton SFF is currently over capacity.

As discussed in later sections of this report, the distance between the District and BOP facilities at which D.C. women are housed makes it difficult for the women to maintain ties with children and other family members. The distance also makes it difficult for the women to connect with potential employers in the D.C. area when they are approaching release. There is an urgent need for changes that will keep more D.C. women — particularly mothers of minor children — closer to the District while they are incarcerated, or that will avoid incarceration entirely in favor of a community placement in or near the District.

We include several recommendations focusing on this point at the end of this report. Among other things, BOP should contract with CCA to house more women at CTF (which appears to have extra capacity), and should place more D.C. women at Hazelton SFF, which provides better access to D.C.-based reentry services than other BOP facilities. Based on 2013-2015 data provided by the D.C. Sentencing Commission, it appears likely that extending by 15 months the remaining length of confinement that would permit a woman to serve a felony sentence at CTF (i.e., increasing the cut-off for remaining at CTF from nine months to 24 months) would add in the range of 20 women to the CTF population each year. Because each of these women would stay for an additional period of two years at most prior to release, the cumulative effect should be to increase the CTF population by fewer than 50 women for any given period (taking into account the movement of these women into and out of the CTF population over time). At the same time, such a change would permit more than half the D.C. women convicted of a felony and sentenced to confinement to serve their sentences in the District. So long as BOP contracts for the space at CTF, this expansion of the group of women who serve their

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<sup>85</sup> Of course, some women adjudicated in federal courts around the country are placed in correctional facilities distant from their homes. Indeed, in 2010 the BOP Director testified that 81% of women adjudicated in D.C. Superior Court who were housed in BOP facilities were within 500 miles of home, while 69% of all other women in the federal system were within 500 miles of home. Housing D.C. Felons Far Away from Home: Effects on Crime, Recidivism and Re-entry, Hearing before H. Comm. on Oversight and Government Reform, Subcomm. on Federal Workforce, Postal Service and the District of Columbia (May 5, 2010), at 62 (comments of Harley Lappin, Director, BOP). But women who commit local crimes in other jurisdictions ordinarily will be incarcerated at a facility located in their home state, which in most cases is likely to be closer than a federal facility that is several states away.

felony sentences at CTF should be consistent with the terms of the 1997 statute described above (Pub. L. 105-33).

#### 4. Limited Diversion Opportunities

Keeping women out of prison when there are viable community placements in or near the District (including residential placements providing treatment for substance abuse or mental health problems) should be a priority. This is particularly important in light of the crippling consequences offenders face once arrested or convicted and the impact of incarceration on the families of these individuals and on the broader community. Our 2014 report entitled *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law* describes the serious consequences for D.C. area individuals who have been arrested and convicted, in the areas of employment, housing, other public benefits, and civic and political participation. Other organizations recently issued a report describing more broadly the devastating effects of incarceration on the economic well-being of offenders and their families, on relationships and family stability, on health, and ultimately on the vitality of communities.<sup>86</sup>

Many D.C. women who are arrested, particularly those who commit non-violent crimes and have no criminal record, should be prime candidates for pre-trial release, for sentences of probation, for diversion programs designed to avoid incarceration, or for early release from prison based on good behavior. D.C. Sentencing Commission data confirm that in fact women convicted of felonies in the District are more likely to receive probation or a “short split” sentence (in which all but six months or less of a sentence of confinement is suspended, followed by up to five years’ probation) than a longer sentence of incarceration. In 2013, women convicted of felonies were sentenced to prison 43% of the time, to a “short split” sentence 17.6% of the time, and to probation 39.4% of the time.<sup>87</sup> For 2014, women convicted of a drug offense received a prison sentence 35.5% of the time, a “short split” sentence 19.4% of the time, and probation 45.2% of the time.<sup>88</sup> For violent offenses, women were sentenced to prison 58% of the time, to a “short split” sentence 24% of the time, and to probation 18% of the time.<sup>89</sup> For

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<sup>86</sup> See Ella Baker Center for Human Rights, Forward Together, and Research Action Design, *Who Pays? The True Cost of Incarceration on Families* (Sept. 2015) [*“Who Pays?”*].

<sup>87</sup> *Sentencing Comm’n 2013 Annual Report*, *supra* note 49, at 49.

<sup>88</sup> *Id.* at 58. For comparison, men convicted of a drug offense received a prison sentence 49.4% of the time, a “short split” sentence 18.2% of the time, and probation 32.3% of the time.

<sup>89</sup> *Id.* For comparison, men convicted of a violent offense received prison sentences 74.2% of the time, a “short split” sentence 14.6% of the time, and probation 11.2% of the time. *Id.* There are similar (or even greater) differences between men’s and women’s sentences for property offenses, weapons offenses, and “other” offenses. The D.C. Sentencing Commission report shows that women as a whole have lower offense severity ratings and lower criminal history scores than men. *Id.* at 58-59.

the period 2012 through 2015, women convicted of felonies received a prison sentence 41% of the time, a “short split” sentence 20% of the time, and probation 39% of the time.<sup>90</sup>

Opportunities for D.C. women to avoid incarceration entirely under several formal diversion programs appear limited. The D.C. Superior Court was a leader in developing diversion programs for those suffering from substance abuse or mental illness (or both). The Superior Court Drug Intervention Program (Drug Court) has existed since 1993, and the Superior Court’s Mental Health Division Court program began in 2007. Participation in these programs generally requires that an individual successfully complete a residential treatment program in order to avoid incarceration. According to the Pretrial Services Agency, in fiscal year 2015 31 women successfully completed the Drug Court program and 127 successfully completed the Mental Health Court program.

The eligibility criteria for these diversion programs are restrictive, and many individuals do not qualify, due to the nature of their offense or the extent of their criminal history. For example, a woman with an offense involving PCP use or a history that includes domestic violence will not qualify for a diversion track. A woman who commits burglary to obtain money to support her heroin habit likewise will not qualify. Moreover, women may face special barriers to participation in diversion programs. For example, space in residential treatment programs that admit women is limited, and a woman with children may be unable to participate if she cannot find someone to care for her children for the duration of the program.<sup>91</sup>

These eligibility restrictions and potential barriers deny the benefit of the diversion programs to women who most need the treatment and support they offer. The U.S. Attorney’s Office should consider relaxing the criteria for these programs, so that more individuals with substance abuse and mental health problems could qualify for participation. The Pretrial Services Agency and nonprofit organizations should work to develop practical measures (such as expanding the number of residential programs that can accommodate women with children or otherwise facilitating child care for participants) that would make it easier for women who qualify to complete the programs successfully and thereby avoid incarceration.

Some women should be able to qualify for early release by developing a record of good conduct at CTF or a BOP facility. For example, a woman who successfully completes CTF’s Residential Substance Abuse Treatment Program or BOP’s Residential Drug Abuse Program may be eligible for a sentence reduction of up to six months or a year. However, many women are not eligible for such reductions.<sup>92</sup>

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<sup>90</sup> Information provided by D.C. Sentencing Commission staff.

<sup>91</sup> According to its Director, however, the Pretrial Services Agency has access to spaces in several residential programs that accept women, including one that accepts women with one to two children under the age of 5.

<sup>92</sup> Under the D.C. Code and DCDOC guidelines, only individuals who are serving sentences for misdemeanors are eligible for good-time credits, and the credits may not reduce the sentence by more than 15%. D.C. Code § 24.221.01c; D.C. Dep’t of Corr.,

There are likely some women who could qualify for early release if corrections officials took a close look at individual cases. The experience with women housed at the BOP facility in Danbury, Connecticut supports this expectation. Several years ago, BOP decided to close the female facility at Danbury. There were vigorous protests in response to BOP's plan to transfer many of the Danbury women to a then-new women's facility in Aliceville, Alabama, since this would have placed New England women far from their homes and families. BOP eventually concluded that some of the Danbury women could be moved to halfway houses earlier than their scheduled date, avoiding the need to transfer them to another federal prison.<sup>93</sup>

The Danbury experience suggests that if BOP were to undertake a thorough individual review of D.C. women who are currently incarcerated at BOP facilities, some could be moved into halfway houses or to home confinement earlier than their scheduled date. The federal Second Chance Act permits release to a halfway house as early as 12 months prior to an individual's release date and to home confinement as early as six months prior to the release date.<sup>94</sup> In light of the fact that all D.C. women in federal facilities are housed far from the District, BOP officials should conduct such reviews regularly and exercise their flexibility to the maximum extent, particularly for women with minor children. The numbers we have seen suggest that The Fairview halfway house could accommodate additional women.

Following release, some women (particularly those with continuing substance abuse and mental health problems) may face the prospect of reincarceration if they violate conditions attached to their parole/supervised release. The Reentry and Sanctions Center (RSC) at Karrick Hall (near CTF), sponsored by CSOSA and the U.S. Parole Commission, offers these women an opportunity to avoid reincarceration. Since late 2010, one floor of the RSC has been designated for women. The women receive

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Program Statement 4341.1, § 10(a)-(b) (Aug. 17, 2012). In addition, the credit cannot reduce the minimum sentence for any conviction under the Controlled Substances Act or for a crime of violence. D.C. Code § 24-221.06; D.C. Dep't of Corr., Program Statement 4341.1 § 10(a)-(b), 13(a)-(b). The latter limitations appear short-sighted; they diminish the incentive for individuals to participate in programs that could help them overcome problems that led them to become involved in criminal activity in the first place.

According to DCDOC, 59 women received a combined total of 454 days of credit due to program participation in 2015.

BOP policies for good time credit apply to D.C. women who are housed in federal facilities. A woman must have either a high school diploma equivalent or be making satisfactory progress towards obtaining a GED to qualify for the maximum allowable good time. See 28 C.F.R. § 544.72.

<sup>93</sup> Arthur Liman Public Interest Program, *Dislocation and Relocation: Women in the Federal Prison System and Repurposing FCI Danbury for Men*, Yale Law School (Sept. 2014), at 11.

<sup>94</sup> See 18 U.S.C. § 3624(c)(1)-(2) (2010) (authorizing BOP to send eligible inmates to halfway houses for the final 12 months of their sentences and to home detention for the final six months or 10% of the total sentence, whichever is less).

transitional housing, an intensive needs assessment, a 44-day holistic program, referrals to substance abuse treatment programs, and the opportunity to participate in an aftercare support group.<sup>95</sup> This opportunity for those particularly vulnerable groups of women to avoid reincarceration should be maintained, and expanded if additional space is needed.

## II. Children and Family

**“The children. I think if everybody in America could keep in mind that when women are incarcerated they’re not just incarcerated women, they’re incarcerated mothers. Most of them are the primary caregivers for their children when they become incarcerated. So the children are then abandoned and pretty much left on their own to raise themselves. Even when they have a caregiver it’s not like having your mother, it’s not, . . . .”**

Lashonia Etheridge-Bey

(from transcript of a CSOSA D.C. Public Safety radio interview, March 3, 2014)

The increase in the number of incarcerated women in the United States in the past few decades has resulted in the separation of many children from their mothers.<sup>96</sup> Nationwide, approximately 60% of incarcerated women are mothers of minor children.<sup>97</sup> Most of these women were the primary caretakers of their children. Among those in federal prison, 80.9% of mothers, compared to just 54.7% of fathers, reported living with at least one child just prior to incarceration.<sup>98</sup>

The relationship between a mother and her children during incarceration is significant not only for the well-being of the mothers, but also for the futures of their children. This section describes the effects and mechanics of an incarcerated mother’s separation from her children; barriers to, and mechanisms for, maintaining communication between women and their families throughout incarceration; the

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<sup>95</sup> See CSOSA, *FAQs: Supervision Programs and Initiatives*, <http://www.csosa.gov/about/faqs/programs.aspx> (last visited Mar. 24, 2016).

<sup>96</sup> See Lauren E. Glaze & Laura M. Maruschak, Bureau of Justice Statistics, *Parents in Prison and Their Minor Children 2* (2010) (finding a “faster rate of growth in the number of mothers held in state and federal prisons (up 122%), compared to the number of fathers (up 76%) between 1991 and midyear 2007”).

<sup>97</sup> *Id.* at 14 app. tbl.4 (61.7% of women in state prison reported having minor children, and 55.9% of women in the federal system reported having minor children).

<sup>98</sup> *Id.* at 4, 16 app. tbl. 7. Approximately 52% of mothers in federal prison reported having lived with their children in a single-family household prior to incarceration, compared to only 19% of fathers. *Id.* at 5.

potential loss of parental rights during incarceration; and the situation of women who are separated from a child born during incarceration.

## **A. Separation of Mother and Children Upon Incarceration**

Immediately upon incarceration, mothers suffer a sudden separation from their children. This separation is associated with negative psychosocial outcomes for both the mother and her child. Finding the best caretaker for the child throughout the course of incarceration is also a concern.

### **1. Effects of Incarceration on the Mother and Her Children**

Incarcerated mothers report that separation from their children is perhaps the most stress-inducing aspect of incarceration; a mother behind bars is likely to worry about her inability to fulfill her role of motherhood.<sup>99</sup> Mothers often feel shame and guilt for their incarceration, feelings that correlate with distress, depression, and mental illness.<sup>100</sup>

There are also important impacts on children, who may be left without their primary caregiver. Children with incarcerated mothers often suffer lifelong, emotional harm as a result of the separation.<sup>101</sup> Indeed, studies suggest that the children of incarcerated mothers suffer more long-term effects than the mothers themselves.<sup>102</sup> Researchers have found connections between parental incarceration and childhood health problems, grade retention, behavioral problems, and poor mental and physical health in adulthood.<sup>103</sup> Children with an incarcerated parent tend to be more disadvantaged, have more psychological problems (including both depression and aggression) and long-term physical and health problems; they also experience difficulties

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<sup>99</sup> See generally Zelma Weston Henriques, *Imprisoned Mothers and Their Children: A Descriptive and Analytic Study* (1982) (discussing interviews with incarcerated mothers and their children and the mothers' awareness of their inability to fulfill their parental responsibilities).

<sup>100</sup> See, e.g., Julie Poehlmann, *Incarcerated Mothers' Contact with Children, Perceived Family Relationships, and Depressive Symptoms*, 19 *J. of Fam. Psychol.* 350 (2005); Phyllis E. Berry & Helen M. Eigenberg, *Role Strain and Incarcerated Mothers*, 15 *Women & Crim. Just.* 101 (2003); Nancy J. Harm & Patricia J. Thompson, *Evaluating the Effectiveness of Parent Education for Incarcerated Mothers*, 24 *J. Offender Rehabilitation* 114 (1997).

<sup>101</sup> Julie Smyth, *Dual Punishment: Incarcerated Mothers and Their Children*, 3 *Colum. Soc. Work Rev.* 33, 33 (2012). Smyth argues that children with incarcerated mothers are one of the largest at-risk populations in the United States. *Id.* at 35-36.

<sup>102</sup> *Id.* at 35.

<sup>103</sup> See, e.g., David Murphey & P. Mae Cooper, *Child Trends, Parents Behind Bars: What Happens to Their Children?* 1-2 (2015) [*Child Trends Report*]; Jeremy Travis et al., *Families Left Behind: The Hidden Costs of Incarceration and Re-entry* 3 tbl.1 (Oct. 2003 rev. 2005) [*Travis*].

transitioning to adulthood, as well as problems with schooling, including absenteeism and a higher likelihood of dropping out.<sup>104</sup> Research has shown that children are less likely to complete high school when a parent is incarcerated.<sup>105</sup>

Programs inside and outside of prison facilities that are aimed at reducing the stigma and emotional trauma for children associated with having incarcerated parents may help to reduce these negative outcomes.

## 2. Care of Children During a Mother's Incarceration

**“Children are usually cared for by family when women are in. Some people lose their children to the system and still others give them to friends. My children stayed with family while I was incarcerated and I did not uproot them until I was stable enough to care for them without help. The only problem that I endured while incarcerated as it relates to my children was visitation. I would have liked to see my children at least once or twice a month, but being so far away from home, my family could not afford that, so we had to write one another and I would call as much as I could. It was really hard, but you deal with it the best you can.”**

Jackie Craig-Bey

A mother who is unable to care for a child due to her incarceration will generally make arrangements for the child to be cared for while she is incarcerated, usually by a family member. She can do so either informally or through grant of a custodial power of attorney. The informal approach is problematic, as the third party caretaker ordinarily will need documentation in order to make important decisions or obtain various benefits for the child and might have to revert to obtaining a judicial custody or guardianship order, making it more difficult for the mother to regain her parental rights later.

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<sup>104</sup> Christopher Uggen & Suzy McElrath, *Criminology: Parents Behind Bars – First in a Series: Parental Incarceration: What We Know and Where We Need to Go*, 104 J. Crim. L. & Criminology 597, 600 (2014).

<sup>105</sup> *Who Pays?*, *supra* note 86, at 33-34 (research project examining the effect of incarceration on families found one out of ten reported children were unable to complete high school or attend college due to incarceration of a parent).

The D.C. Council is currently considering proposed legislation, the Assessment of Children of Incarcerated Parents Act (B21-0319), that would require the Mayor to hire a private agency to assess the impact of a parental incarceration on a child's academic performance and formulate policies to meet the needs of children of incarcerated parents who are struggling academically.

Under D.C. law, the mother has the option to grant a custodial power of attorney to a third party without going through a court.<sup>106</sup> This legal document authorizes the designated caregiver to make decisions on the child’s behalf, including obtaining healthcare for the child and enrolling the child in school. We have been told that some D.C. agency staff do not understand the custodial power of attorney and have wrongly advised temporary caretakers that they must seek a court custody order in order to access certain benefits.<sup>107</sup>

The D.C. Child and Family Services Agency (“CFSA”) offers assistance to grandparents exercising a custodial power of attorney through its Grandparent Caregiver Program (“GCP”). Under this program, a grandparent, great grandparent, great aunt, or great uncle can receive a monthly stipend to help care for a child for whom they are the primary caretaker.<sup>108</sup> To qualify, the child must have lived with the grandparent for at least the prior six months. In addition, the total household income must be below 200% of the Federal poverty level. Grandparents will qualify if they have a formal court order granting custody, guardianship, or adoption, but evidence that the grandparent is the primary educational contact for the child or that the grandparent is tending to the child’s medical needs is sufficient proof of status as a primary caretaker.

A mother can also make temporary arrangements for her child while preserving her long-term claim to custody through a revocable, court-approved custody agreement with the third-party caretaker. Under this option, the mother will preserve her parental presumption in favor of custody, and can file a revocation at any time, immediately vacating the custody agreement.<sup>109</sup>

If the mother does not make her own arrangements for care of a child, or if there are concerns about abuse or neglect, CFSA will step in. CFSA will try to place the child with a family member, in a so-called “kinship arrangement,” but if no suitable family member is available, the child will be placed into foster care.<sup>110</sup>

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<sup>106</sup> D.C. Code § 21-2301.

<sup>107</sup> The Children’s Law Center recommends that caretakers bring a copy of the statute to present to the appropriate agency in addition to the signed custodial power of attorney. Children’s Law Center, Caregiver Representation Training Manual: Adoption, Guardianship, and Custody Law and Procedure 456 (2014) [“*Caregiver Manual*”], available at <http://childrenslawcenter.org/sites/default/files/attachments/resources/Introduction--Bundle.pdf>.

<sup>108</sup> D.C. Code § 4-251.01 *et seq.*; 29 D.C. Mun. Regs. § 6801 *et. seq.*

<sup>109</sup> D.C. Code §§ 16-831.06, 16-831.11.

<sup>110</sup> See CSFA, *A Child’s Journey Through the Child Welfare System*, available at [http://64.78.12.79/training/upload/fosterclub\\_212.pdf](http://64.78.12.79/training/upload/fosterclub_212.pdf).

## **B. Maintaining Contact During Incarceration**

Maintaining family ties throughout a mother's term of incarceration can benefit both mothers and their children.<sup>111</sup> For mothers, maintaining these ties is linked to successful reintegration, lower recidivism rates, and improved behavior while incarcerated.<sup>112</sup> For children, researchers have found that contact with their mothers through mail is linked to positive outcomes.<sup>113</sup> In the case of in-person visitation, studies have documented positive outcomes for children 58% of the time.<sup>114</sup>

Incarcerated D.C. women potentially can maintain contact with their children in several ways while they are behind bars. But these options are not always feasible, and for D.C. women in distant federal prisons, it is a major challenge to stay in touch.

### **1. Visitation**

In-person visits are one of the most important means of maintaining the mother-child relationship throughout the course of a mother's incarceration. Children who cannot visit their incarcerated parents are at increased risk for problems related to attachment issues, which could hinder the child's development socially, mentally, and academically.<sup>115</sup> The need for consistent in-person visits is greatest for infants and toddlers: For younger children, attachment must be fostered through contact visits.<sup>116</sup> If

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<sup>111</sup> Charles Colson Task Force on Fed. Corrections, *Transforming Prisons, Restoring Lives: Final Recommendations of the Charles Colson Task Force on Federal Corrections* (Jan. 2016) ["*Colson Task Force Report*"], at 39 (discussing the important positive effects of family visitation).

<sup>112</sup> The Osborne Ass'n, *Fact Sheet: Proximity to Children When a Parent Is Incarcerated* 1 (2012).

<sup>113</sup> See, e.g., Julie Poehlmann, Danielle Dailaire, Ann Booker Loper, & Leslie D. Shear, *Children's Contact with Their Incarcerated Parents*, 65 *Am. Psychol.* 575 (2010).

<sup>114</sup> *Id.* The presence of a program or intervention with the research was linked to more positive outcomes for children, whereas some studies found negative outcomes where visitation occurred without intervention.

<sup>115</sup> Osborne, *supra* note 112, at 1.

<sup>116</sup> *Id.*; see also Rebecca J. Shlafer & Julie Poehlmann, *Attachment and Caregiving Relationships in Families Affected by Parental Incarceration*, 12 *Attachment & Human Development* 395, 395 (2010) ("In addition, our assessments of children nine years old and older revealed that having no contact with the incarcerated parent was associated with children reporting more feelings of alienation toward that parent compared to children who had contact"); Drika Weller Malkariev & Phillip R. Shaver, *Attachment, Parental Incarceration and Possibilities for Intervention: An Overview*, 12 *Attachment & Human Development* 311 (2010) (highlighting the importance of attachment relationships between a mother and her child and the challenges during incarceration); Julie Poehlmann, *Representations of Attachment Relationships in Children of Incarcerated Mothers*, 76 *Child Development* 679 (2005) (same).

a child is under the care of CFSA, the assigned social worker must obtain “the maximum levels of contact” available, provided that the visitation is in the best interests of the child.<sup>117</sup> But because children of incarcerated mothers are often cared for by relatives struggling with poverty, visiting the mother, especially at a distant federal facility, can be nearly impossible; indeed, for some families, “the cost of a visit is more than the family’s food budget for an entire month.”<sup>118</sup>

Visiting hours at correctional facilities are often inconvenient and inflexible. For example, CTF provides visitation only on weekdays, from noon until 6 p.m. There are no evening hours, no weekend or holiday hours, and no video visitation. As a result, visiting a woman may be difficult—even when she is incarcerated in the District.

For women housed in federal prisons, the logistics of traveling far from the District are a major obstacle to in-person visits. A visit to Hazelton SFF, where the largest number of D.C. women in federal custody are housed, ordinarily requires coordinating a six-hour, round-trip journey on a Saturday, Sunday, or Monday. Incarcerated individuals may have visitors only on these days, from 8 am until 3 pm.<sup>119</sup> There is no public transportation between the District and the Hazelton facility, so visitors must arrange private transportation.<sup>120</sup> The one exception, discussed below, involves bus trips CSOSA arranges for families to visit Hazelton twice a year.

In-person visits at a jail or prison can be intimidating and traumatic for children. Children may be afraid of the facility, processing is cumbersome, and searches are intrusive. In some cases, mothers are supervised closely while they visit with their children, which could result in a negative association for the child. CTF has no play space for children in the visiting area. BOP facilities have made some efforts to create a welcoming environment for children. The visiting area at Hazelton SFF includes a small room where children can play. There is a bright mural on the wall, and a colorful carpet covers the floor. Children can play with toys or read children’s books stored in this room.

The U.S. Department of Justice (DOJ), Office of Justice Programs (OJP), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), have launched a grant initiative that will award money to nonprofit organizations to provide services that foster family engagement between the incarcerated parent, child, and caregiver, including services to facilitate communication between parent and child. Among other things, this

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<sup>117</sup> Child and Family Servs. Agency, Policy, Engaging Incarcerated Parents (Dec. 1, 2009).

<sup>118</sup> Arlene F. Lee et al., *Interrupted Life: Experiences of Incarcerated Women in the United States* 68 (Rickie Solinger et al. eds., 2010).

<sup>119</sup> Visitors may stay as long as they like during this period, but may not return after they leave the visiting room. Women are limited to six visitors at a time, but can obtain permission for up to ten visitors in special circumstances.

<sup>120</sup> Some BOP facilities, such as Alderson FPC, have nearby hospitality houses, which provide room and board to visitors in exchange for a voluntary donation, but Hazelton has no such accommodations.

includes transportation to facilities and tele-visiting.<sup>121</sup> This pilot program, which will run through 2017, is intended to foster greater visitation between a parent and child during incarceration, and also to provide reentry services. A BOP official has told us that at least one program under this initiative is being launched at Hazelton SFF.

In any event, visits are not a realistic prospect for many D.C. women, particularly those housed at BOP facilities distant from the District. Some women told us that they were unable to see their children regularly, or at all, during their incarceration. One woman reported that she did not see her son for ten years while she was incarcerated. Another said her children visited regularly when she was housed at CTF, but it was too far for them to travel after she was transferred to federal prisons in Texas and Alabama. Another woman told us that she deliberately avoided having her children visit during her incarceration in order to spare them the experience.

## 2. Remote Communication

Remote communication provides another way incarcerated mothers can maintain contact with their children, at least when they have access to financial resources. Historically, collect phone calls from prison were very expensive and effectively out of reach for poorer incarcerated individuals and their families.<sup>122</sup> In October 2015, the Federal Communications Commission (FCC) imposed a new price cap (\$1.65 for a 15-minute call) for calls made from state and federal prisons.<sup>123</sup> Major providers of phone service to prisons and jails are challenging the FCC's order, and the D.C. Circuit recently stayed the rate caps.<sup>124</sup>

Even with a price cap, there are still many barriers associated with placing phone calls from a jail or prison. There are limits on the amount of time a woman can spend on the phone. We are told that calls from a federal prison are periodically interrupted by announcements that the call is from a BOP facility. And, if there are only certain times during the day that a woman may place a call, and the child is generally

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<sup>121</sup> U.S. Department of Justice, OMB No. 1121-0329, OJJDP FY 2015 Second Chance Act Strengthening Families and Children of Incarcerated Parents, at 5, <http://www.ojjdp.gov/grants/solicitations/FY2015/SCACOIP.pdf>.

<sup>122</sup> See, e.g., Ben Iddings, *The Big Disconnect: Will Anyone Answer the Call To Lower Excessive Prisoner Telephone Rates?*, 8 N.C. J. of Law & Tech. 159 (2006); Travis, *supra* note 103, at 1.

<sup>123</sup> Fed. Comm'n Comm'n, *Inmate Telephone Service*, (Oct. 22, 2015), <https://www.fcc.gov/guides/inmate-telephone-service>. A slightly different structure applies to "jails." See FCC, Press Release, FCC Takes Next Big Steps in Reducing Inmate Calling Rates (October 22, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-335984A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-335984A1.pdf).

<sup>124</sup> See *Global Tel\*Link, et al. v. FCC & USA* (D.C. Cir. Mar. 7, 2016) (No. 15-1461); see also GTL, *GTL Begins Process of Appeal of FCC Order Affecting the Inmate Calling Services Market*, (Dec. 21, 2015), <http://www.gtl.net/gtl-begins-process-of-appeal-of-fcc-order-affecting-the-inmate-calling-services-market/>.

occupied during these hours, it might be nearly impossible to sustain regular communication.<sup>125</sup>

Although not as effective and important as in-person visits, there are now additional methods of remote communication at federal prisons. Women at Hazelton SFF have email access to selected contacts, with terminals in each housing unit. Women pay five cents per minute to use this service. Women at Hazelton SFF also have access to terminals that allow them to connect with their families through videoconferencing (similar to using Skype). A woman must pay \$6 to use this service for 25 minutes, and appointments must be scheduled in advance. Hazelton staff monitor all video visitations. In addition, Hazelton SFF has partnered with CSOSA and Hope House to offer large-screen video visitation for D.C. women each Wednesday. Ten women may participate each week.

CTF does not provide either email capability or video visitation. CTF staff cite public safety concerns associated with the use of email, although federal prisons presumably have found ways to manage these concerns. The D.C. Jail conducts only video visitations, and it is unclear why this option should be unavailable at CTF. While in-person visits are preferable in most cases, video visitation could make contacts easier for those who are unable to visit CTF in person during regular hours or who wish to avoid intrusive security procedures for in-person visits. CCA in consultation with DCDOC should take steps to introduce both email capability and video visitation at CTF.

### **3. Special Family Programs**

BOP now requires federal prisons to hold periodic “Family Days” that include activities for visiting children. During “Family Day” at the Hazelton SFF, held twice a year, women and their families engage in activities such as games, arts and crafts, and face painting, with food catered by the facility’s culinary training program. CSOSA and the Mayor’s Office of Returning Citizen Affairs (ORCA) charter a bus to transport family members from the District to West Virginia for this event. On a different date, women who participate in the parenting program at Hazelton SFF have the opportunity to attend a mother-child luncheon at the facility, where they can bond with their visiting children. Women at Hazelton SFF can also participate in a story-reading program, through which they read children’s books into an audio or video tape recorder and the tape and book are subsequently mailed to their children.

Hope House D.C., a D.C. nonprofit, operates a week-long camp for children of incarcerated fathers at several state and federal prisons (including Hazelton) outside the District. Through this program, children visit with their fathers for several hours each

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<sup>125</sup> According to DCDOC, there are at least three phones in each housing unit at CTF that women can use. The phones are available for approximately 12 hours per day. The latest time that the women can use these phones is 10:45 p.m.

day, engaging in structured activities at the prison.<sup>126</sup> At the end of each day, children travel to a nearby campground for an overnight stay, where they have the opportunity to talk about their experiences and bond with other children of fathers housed at the prison. No similar camp experience is currently offered to children of mothers at Hazelton SFF, and Hope House does not have plans to extend the camp experience to women. We encourage CSOSA and Hazelton SFF staff to set up a similar camp program for mothers.

CTF does not offer Family Days or other family-focused events.<sup>127</sup> Voices for a Second Chance, a nonprofit that assists those housed at CTF and the D.C. Jail, offers CTF women the opportunity to record stories for their children. CTF does offer parenting classes and a family reunification program for women who are preparing to go home.

### **C. Potential Loss of Parental Rights**

There is some risk that a mother could lose her parental rights while she is incarcerated. If the mother has provided a custodial power of attorney to a third-party caretaker, she can revoke this power at any time after signing it, regardless of the language in the document; no court order is required. However, the incarcerated mother could lose her parental rights if the third party files a petition for custody, adoption, or guardianship, or the D.C. government decides to pursue a petition for neglect or termination of parental rights.

Parents have a statutory right to be represented by counsel in all cases alleging neglect or seeking termination of parental rights.<sup>128</sup> However, this right does not extend to custody cases. If the mother is incarcerated at CTF, the court can issue a “come-up” that allows the mother to be brought to the hearing.<sup>129</sup> Most women housed at federal facilities participate in hearings by phone or video-conferencing.<sup>130</sup>

A third party might seek custody or guardianship of a child while the mother is incarcerated. Under D.C. law, guardianship is appropriate when the guardian is suitable and is in a position to provide a permanent and safe home for the child, it is in

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<sup>126</sup> Hope House D.C., *Father to Child Summer Camp Behind Bars*, <http://www.hopehousedc.org/programs/father-to-child-summer-camp-behind-bars/> (last visited Mar. 24, 2016).

<sup>127</sup> According to DCDOC, the average age of women at CTF is 36 years old, and relatively few women in this older population have minor children.

At one point DCDOC offered a mother-child camp experience for mothers housed at the D.C. Jail. See *Press Release, DC Department of Corrections Hosts Summer Camp for Incarcerated Mothers and Their Children* (July 16, 2004), <http://doc.dc.gov/release/dc-department-corrections-hosts-summer-camp-incarcerated-mothers-and-their-children>.

<sup>128</sup> D.C. Code § 6-2304. This includes a right to effective assistance of counsel. *In re Petition of R.E.S.*, 978 A.2d 182 (D.C. 2009).

<sup>129</sup> Caregiver Manual, *supra* note 107, at 179.

<sup>130</sup> *Id.*

the child’s best interest, and adoption, termination of parental rights, or reunification with the parent is not appropriate.<sup>131</sup> A court may award custody to a third party if the petitioner overcomes the rebuttable presumption in favor of parental custody by clear and convincing evidence, and the change in custody is in the best interests of the child.<sup>132</sup> A parent might also consent to a transfer of custody to a third party,<sup>133</sup> but the D.C. Court of Appeals has held that this irrevocable consent waives the presumption in favor of the parent only when the parent has “full knowledge and understanding of what she is consenting to and the consequences of that consent.”<sup>134</sup>

The D.C. government could bring a neglect petition regarding the child of an incarcerated parent. Under the D.C. Code, a “neglected child” includes a child “whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity.”<sup>135</sup> All complaints that allege neglect are referred to the Director of CFSA and trigger a preliminary investigation to determine whether it is in the best interests of the child or the public for a neglect petition to be filed. Based on the preliminary investigation, the Director can recommend the filing of a petition. If the Director does not do so, the complainant may request review by the Corporation Counsel, and a decision of the Corporation Counsel (now the D.C. Attorney General) will be final.<sup>136</sup> The question of neglect is determined in a “dispositional hearing” where the court makes a custody determination.<sup>137</sup> A “permanency hearing” is required after a child has been held in foster care for 12 months, and at least every six months thereafter. A judge may terminate the parent-child relationship only if she determines that it is in the best interests of the child.<sup>138</sup> We understand that it is rare for the District to initiate termination proceedings unless a third party is seeking to adopt the child.

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<sup>131</sup> D.C. Code § 16-2383(c).

<sup>132</sup> D.C. Code §16-831.07-08 (requiring a showing of abandonment, detriment to the physical or emotional well-being of the child, or other “exceptional circumstances” that support the rebuttal over the presumption in favor of parental custody).

<sup>133</sup> D.C. Code § 16-831.05.

<sup>134</sup> *S.M. v. R.M.*, 92 A.3d 1128, 1131 (D.C. 2014) (remanding a custody determination in favor of a third party where the court found that the mother did not understand her consent and thought that she would be able to regain custody easily after her drug treatment).

<sup>135</sup> D.C. Code § 16-2301(9)(A)(iii); *see also In re C.A.S.*, 828 A.2d 184 (D.C. 2003) (finding neglect where the parent was incarcerated at the time of the proceeding).

<sup>136</sup> D.C. Code § 16-2305.

<sup>137</sup> D.C. Code § 16-2319 - 2320.

<sup>138</sup> D.C. Code § 16-2353. The D.C. Code lists best-interest factors that the judge must consider, including the quality of the interaction of the child with his or her parent, the child’s need for timely integration into a stable and permanent home, and the child’s opinion. D.C. Code § 16-2353(b).

Apart from a neglect proceeding, a third party, such as a family member or foster parent, might seek to terminate parental rights through adoption. A petition for adoption may not be granted unless the court finds that consent of the parent is being withheld “contrary to the best interest of the child.”<sup>139</sup> Except when a parent cannot competently make decisions, “a parent’s choice of a fit custodian for the child must be given weighty consideration which can be overcome only by a showing, by clear and convincing evidence, that the custodial arrangement and preservation of the parent-child relationship is contrary to the child’s best interest.”<sup>140</sup>

Application of federal legislation could also lead to termination of an incarcerated mother’s parental rights. In an attempt to promote stability by increasing the placement of foster children in permanent homes,<sup>141</sup> Congress passed the Adoption and Safe Families Act of 1997 (“ASFA”), which requires states and the District to initiate proceedings to terminate parental rights once a child has been in foster care for 15 months in a 22-month period.<sup>142</sup> The 15/22 requirement is the subject of considerable controversy, in part because of its effect on children who are in foster care due to incarceration of a parent for a non-violent offense.<sup>143</sup> A Vera Institute study found that termination of parental rights was granted in 81.5% of cases involving an incarcerated parent convicted of drug-related offenses.<sup>144</sup> We understand that in the District this process is not ordinarily used in the case of incarcerated women, perhaps because the ASFA includes several exceptions, including the kinship exception, which applies where

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<sup>139</sup> D.C. Code § 16-304; *see also* D.C. Code § 16-2353(b).

<sup>140</sup> *In re T.J.*, 666 A.2d 1, 11 (D.C. 1995). This deference is not accorded to parents in a neglect petition action, as these parents are not at risk of having their parental rights terminated; instead the court is deciding whether to bring the child into government custody.

<sup>141</sup> *See* Kristen S. Wallace, *The Adoptions and Safe Families Act: Barrier to Reunification Between Children & Incarcerated Mothers* 2 (2012).

<sup>142</sup> Adoption and Safe Families Act, 42 U.S.C. § 629 et seq.

<sup>143</sup> *See* Patricia E. Allard & Lynn D. Lu, Brennan Center for Justice, *Rebuilding Families, Reclaiming Lives* 14 (2006) (referring to “the permanent destruction of existing families in the eyes of the law”); *id.* at 10; J. Creasie Finney Hairston, *Prisoners and Families: Parenting Issues During Incarceration* 47 (2001) (noting that, as of January 2002, there were no published reports on the impact of the ASFA on prisoners’ children, but speculating that the law “has the strong potential to lead to less, rather than more, stability”); Julie Kowitz Margolies & Tamar Kraft-Stolar, Women in Prison Project, *When “Free” Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State*, Correctional Ass’n of N.Y. (2006), at 17 (noting that because the majority of incarcerated women are imprisoned for non-violent crimes, and because the majority were their children’s primary caregiver prior to incarceration, the ASFA creates the “the real and disturbing prospect” of permanently terminating the parental rights of capable primary caregivers convicted of a solitary non-violent drug offense).

<sup>144</sup> Arlene F. Lee, Philip M. Genty & Mimi Laver, *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents* 64 (2005).

the child is being cared for by a relative during the course of the parent's incarceration, and because family arrangements would keep a child out of foster care altogether.<sup>145</sup>

#### **D. Post-Partum Separation**

In most U.S. correctional facilities, a woman who gives birth while incarcerated has no opportunity to form a bond with her newborn child. The majority of incarcerated mothers are almost immediately separated from their children after birth.<sup>146</sup> As a result, there is no opportunity for attachment, breast-feeding, and bonding, and there is an overall "disruption in the maternal role attainment process."<sup>147</sup> This post-partum separation leads to permanent separation from their children for 50% of incarcerated mothers.<sup>148</sup>

The United States lags behind the rest of the world in developing prison nursery programs.<sup>149</sup> Some U.S. correctional facilities have experimented with methods for facilitating mother-child bonding by allowing certain incarcerated mothers<sup>150</sup> to stay close to their children during the postpartum period. Despite the dramatic increase in the women's prison population over the past three decades, however, as of 2009 only nine states had prison nursery programs or plans to create one: California, Illinois, Indiana, Ohio, Nebraska, New York, South Dakota, Washington, and West Virginia.<sup>151</sup> Initial research conducted on these programs found positive outcomes for the mothers and their

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<sup>145</sup> See 45 C.F.R. § 1356.21(i)(2). Some commentators have argued that the ASFA exceptions allow states considerable flexibility in deciding whether to initiate termination proceedings. See, e.g., Elizabeth Bartholet, *ASFA: Filled with Loopholes and Exceptions*, PBS.org, <http://www.pbs.org/wgbh/pages/frontline/shows/fostercare/inside/bartholet.html> (last visited Mar. 24, 2016).

<sup>146</sup> Angelina N. Chambers, *Impact of Forced Separation Policy on Incarcerated Postpartum Mothers*, 10 Pol'y, Pol., & Nursing 204, 204 (2009).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See Jennifer Warner, *Infants in Orange: An International Model-Based Approach to Prison Nurseries*, 26:1 Hastings Women's L. J. 65, 66 (2014) ("Outside of the United States, only a few countries lack prison nurseries and most have prison nurseries that allow mothers to keep their newborns for an extended period of time.").

<sup>150</sup> *Id.* ("Generally, all incarcerated women who wish to participate in a prison nursery program in the United States must have committed a non-violent crime and have no history of child abuse or neglect.").

<sup>151</sup> Chambers, *supra* note 146, at 204; see also Warner, *supra* note 149, at 66; Women's Prison Ass'n, *Prison Nursery Programs a Growing Trend in Women's Prisons*, Corrections.com (July 13, 2009) ["Prison Nursery Programs"], <http://www.corrections.com/articles/21644-prison-nursery-programs-a-growing-trend-in-women-s-prisons>.

babies, including increased secure attachment and knowledge of child care, and decreased recidivism rates.<sup>152</sup>

Washington State provides one example of a successful nursery program. The Washington Corrections Center for Women has created the “Residential Parenting Program,” which allows a mother at a minimum security level with less than 30 months remaining on her sentence to keep her newborn with her for the remainder of the sentence.<sup>153</sup> The mother and child live together in a special unit and participate in programs with childhood educators.<sup>154</sup> In another example, the Brooklyn District Attorney’s office has implemented a program known as “Drew House” in Brownsville, New York.<sup>155</sup> The participating women live with all of their children in a private apartment and are supervised by specialists — including an on-site house manager — as they fulfill their court mandates. The program provides mothers with a safe environment, some financial security, and “most importantly, avoid[s] the traumatic impact of maternal separation on children.”<sup>156</sup>

BOP currently operates residential parenting programs in Connecticut, Florida, Illinois, Texas, and West Virginia for pregnant women who wish to spend time with their baby after birth.<sup>157</sup> Under the Mothers and Infants Nurturing Together (MINT) program,<sup>158</sup> a woman is transferred to a community-based center during the final trimester of pregnancy and remains with her child for several months after birth. At Hazelton SFF, pregnant women who wish to participate are transferred to a community-based center in Greenbrier, West Virginia. Participating women receive prenatal care at the MINT center, and can remain with their infants for up to three months after delivery, at which point the women will be transferred back to Hazelton SFF.<sup>159</sup> A BOP official told

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<sup>152</sup> Chambers, *supra* note 146, at 204.

<sup>153</sup> See Hendrik DeBoer, *Prison Nursery Programs in Other States*, OLR Research Report (Mar. 30, 2012); Joseph R. Carlson Jr., *Prison Nurseries: A Pathway to Crime-Free Future*, 34 *Corrections Compendium* 17, 18 (2009); Nat’l Inst. Corrections, *National Directory of Programs for Women with Criminal Justice Involvement* [“*National Directory*”], <http://nicic.gov/wodp/?View=Program&P=363> (last modified Sept. 18, 2009).

<sup>154</sup> See *National Directory*, *supra* note 153.

<sup>155</sup> See Smyth, *supra* note 101, at 40. The Drew House project was designed with the purpose of not sending mothers to prison in the first instance, allowing them instead to fulfill their court mandate in a supervised setting that permits them to stay with their children.

<sup>156</sup> *Id.*

<sup>157</sup> *Prison Nursery Programs*, *supra* note 151.

<sup>158</sup> *Female Offenders in the Bureau of Prisons*, *supra* note 37, at 4. We are unaware of any D.C. women who have participated in this program.

<sup>159</sup> We did not visit the Greenbrier facility or speak with any women who had participated in the MINT program.

us that some women in the MINT program are permitted to stay with their newborns for up to a year, but that this depends on bed space. We recommend that BOP consider extending to at least six months the period of time mothers may stay with a newborn, and expand community-based centers to ensure that this length of stay is an option for all mothers. BOP should continue to exercise flexibility in allowing mothers to stay with their newborns for longer if resources permit.

BOP literature states that through BOP's partnership with the Washington State Department of Corrections qualified mothers may be housed with their newborns for up to 30 months after giving birth.<sup>160</sup> Apparently, the incarcerated mother must travel to the State of Washington to participate in this program.

Women who give birth at a federal facility and who cannot participate in the MINT program or the Washington State program face the prospect of having the newborn placed in the custody of the State where the birth occurs, unless a family member is able to travel immediately to pick up the child. If that State gains custody of the child, it will be more difficult for a woman who is later released to the District to pursue legal proceedings to regain custody of the child.

D.C. women who give birth while incarcerated at CTF are separated from the child immediately after birth. The child is placed either in foster care or with kin. CTF now gives women the opportunity to pump milk and give it to the child's primary caretaker for a period of time. There are currently no programs in place to keep the mother with her newborn for any period of time after birth. DCDOC and CCA should investigate creation of such a program.

### **III. Medical Care**

#### **A. Overview of Health Care Delivered in DCDOC and BOP Facilities**

##### **1. CTF**

Pursuant to a contract with DCDOC, Unity Health Care is responsible for health care services for women at CTF.<sup>161</sup> Unity is a private, non-profit provider that operates a network of health centers throughout the District. Inside CTF, Unity operates an outpatient clinic staffed by nurses, physicians, and dentists, among others, as well as

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It is not clear whether women at BOP facilities are permitted to pump and provide breast milk to their infants or whether the issue ever arises, given the distance that women in federal facilities live from their families. According to staff at Hazelton SFF, pumping milk for a newborn is not an option for new mothers there.

<sup>160</sup> *Female Offenders in the Bureau of Prisons*, *supra* note 37, at 4.

<sup>161</sup> See D.C. Dep't of Corr., *Frequently Asked Questions*, <http://doc.dc.gov/page/doc-frequently-asked-questions> (last visited Mar. 24, 2016).

a small acute care unit for individuals in need of certain inpatient services.<sup>162</sup> Unity also refers women to outside specialists as needed.

At intake, women provide a medical history and undergo a health screening.<sup>163</sup> They are asked about mental health history, suicide risk factors, and trauma and sexual abuse.<sup>164</sup> The intake process includes a mental health evaluation; testing for communicable diseases; HIV/AIDS counseling and testing; vital signs; tuberculosis testing; finger stick testing for diabetics; chest x-ray, if indicated; pregnancy testing; tests for rapid plasma reagin (RPR), gonorrhea, and chlamydia (for symptomatic individuals); and an initial discharge treatment plan.<sup>165</sup>

Women with histories of acute or chronic health conditions will undergo an immediate comprehensive physical examination. Any woman who gives a positive answer to any mental health screening question receives a comprehensive mental health assessment by a mental health clinician during the intake process. In addition, within two weeks of admission, all women who have no identified acute or chronic conditions are scheduled for a comprehensive medical assessment with a Unity clinician. Although it is not part of intake, this clinician visit provides a back-up mechanism to ensure that all health needs are identified at the outset of a woman's time at CTF.

## 2. BOP Facilities

The BOP Health Services Division is responsible for providing health care to individuals in BOP facilities. Each BOP facility has a "Health Services Unit" ("HSU") that provides routine, urgent, and ambulatory care, as well as observational services.<sup>166</sup> BOP policy specifies day shift staffing of one physician, three "mid-level practitioners" ("MLP"), a registered nurse, one or two LPNs and/or medical assistants, two health information technicians, and a medical clerical staff person, per 1,000 patients.<sup>167</sup> BOP policy requires an additional MLP and an additional support person for chaperone purposes for any "1,000-bed female institution."<sup>168</sup> It is unclear whether all BOP facilities

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<sup>162</sup> According to DCDOC, in 2015 the medical, mental health, and dental services offered at CTF were found fully compliant with standards issued by the National Commission on Correctional Health Care.

<sup>163</sup> See D.C. Dep't of Corr., Program Manual No. 6000.1H (Medical Management) (Aug. 26, 2013) [*DC Medical Management Manual*], at 23, Ch. 4 Sec. 1.

<sup>164</sup> Lindsay M. Hayes, *Report on Suicide Prevention Practices within the District of Columbia, Department of Corrections' Central Detention Facility* 15-17 (September 13, 2013), [http://doc.dc.gov/sites/default/files/dc/sites/doc/release\\_content/attachments/DC%20JAIL-LH\\_o.pdf](http://doc.dc.gov/sites/default/files/dc/sites/doc/release_content/attachments/DC%20JAIL-LH_o.pdf).

<sup>165</sup> See DC Medical Management Manual, *supra* note 163, at 23, Ch. 4 Sec. 1; Hayes, *supra* note 164, at 13-17.

<sup>166</sup> Fed. Bureau of Prisons, Program Statement 6031.04 (June 3, 2014), at 3.

<sup>167</sup> *Id.* at 14.

<sup>168</sup> *Id.* at 15.

satisfy these standards, particularly in light of the staff turnover at some facilities. At Hazelton SFF, health care providers are either BOP employees, members of the U.S. Public Health Service Commissioned Corps, or private providers under contract with Hazelton SFF.

The BOP Health Services Division also operates “Medical Referral Centers” (“MRC”), which provide comprehensive care to prisoners with serious health needs.<sup>169</sup> Except in the case of emergency or a short-term stay, when a person may receive care at a local hospital, inpatient services are generally available for women in BOP custody only at an MRC.<sup>170</sup> The Carswell MRC in Fort Worth, Texas is the only MRC that serves women.<sup>171</sup> We did not visit the Carswell MRC, and we spoke with only one woman who had been housed there. This report therefore does not discuss the treatment programs offered at Carswell.<sup>172</sup>

BOP’s Preventive Health Care Guidelines recommend that, at intake, all individuals be screened and/or assessed for tuberculosis, HIV, need for drug detoxification, and visual acuity.<sup>173</sup> In addition, it recommends that women be screened for syphilis, chlamydia, cervical cancer (pap smear), and need for the MMR vaccine.<sup>174</sup>

### 3. The Fairview

Women under DCDOC jurisdiction who are living at The Fairview would have transferred from CTF and received health care screening prior to their transfer. Before being discharged from CTF to The Fairview, women meet with a Unity discharge planner to receive any prescriptions and to schedule a medical appointment with Unity’s reentry health services team. Pursuant to its contract with DCDOC, Unity provides

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<sup>169</sup> *Id.* at 4.

<sup>170</sup> *Id.*

<sup>171</sup> *See, e.g.*, Fed. Medical Center Carswell, Information Packet 2015-2016 (October 6, 2014), <http://www.bop.gov/jobs/docs/cpdipcrw2.pdf>.

<sup>172</sup> We note that there have been serious allegations of substandard care and abuse at Carswell in the past. *See, e.g., Morris v. United States*, No. 2:13–2246, 2015 WL 222389 (W.D. La.) (lawsuit alleging that Carswell employees negligently failed to diagnose colon cancer, leading to subsequent death of a former inmate); Betty Brink, *Hospital of Horrors*, Fort Worth Weekly (Oct. 19, 2005), <http://www.fweekarchives.com/content.asp?article=3325>.

<sup>173</sup> *See* Fed. Bureau of Prisons, *Preventive Health Care*, Clinical Practice Guidelines at App’x 1 (2013), <http://www.bop.gov/resources/pdfs/phc.pdf> [“*Preventive Health Care Guidelines 2013*”]; *see also* Program Statement § 6031.04, *supra* note 166, at 23-26.

<sup>174</sup> *Preventive Health Care Guidelines 2013*, *supra* note 173, at App’x 1.

medical care and prescription medications through specialized reentry services available at Unity's Anacostia Health Center.<sup>175</sup>

D.C. women housed at The Fairview who are under BOP jurisdiction are not covered by the DCDOC-Unity contract, and BOP is responsible for their care. Residents at The Fairview are still considered "inmates" for Medicaid eligibility purposes under federal law and therefore are not eligible for federally funded Medicaid coverage.

## **B. Treatment of Mental Health and Substance Use Disorders**

As described above, incarcerated women are disproportionately likely to suffer from mental health and/or substance abuse issues and from trauma. They are also disproportionately likely to have been victims of physical or sexual abuse, which "can contribute to drug or alcohol abuse, depression, post-traumatic stress disorder, and criminal activity,"<sup>176</sup> and to report involvement in abusive relationships.<sup>177</sup> If an individual's trauma is not successfully treated while she is incarcerated, it may affect her re-entry into the community and raise the risk that she will re-offend.<sup>178</sup>

### **1. CTF - Services Provided by Unity**

Unity currently employs 4.5 psychiatrists to deliver mental health services to the population at CTF. Unity's psychiatrists are responsible for mental health medication management and diagnostic services. Mental health clinicians provide counseling at CTF, with one clinician focused on working with women.

Unity works to ensure that women taking medication for mental health conditions in the community continue to have access to those medications while they are at CTF. If an individual reports at intake that she has been prescribed psychiatric medication, Unity schedules an appointment for that person to see an LPN within 24 hours to determine whether an appointment with a psychiatrist is needed. As noted

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<sup>175</sup> See Unity and D.C. Dep't of Corr. Contract, (July 19, 2006) [*"Unity Contract"*] at C.2, C.3.24; *The Fairview RRC*, *supra* note 25, at 4.

<sup>176</sup> National Institute on Drug Abuse, *What are the unique treatment needs for women in the criminal justice system?* (April 2014), <http://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/what-are-unique-treatment-needs-women-in-criminal-j>.

<sup>177</sup> See White, *supra* note 58, at 310.

<sup>178</sup> Summarizing empirical research in 2010, Dr. Shawn Flower noted:

From 77 to 90 percent of incarcerated women report extensive abuse, and those with a greater exposure to childhood trauma experience a younger onset of many behavioral and health problems, including substance abuse, depression, post-traumatic stress disorder, panic, eating disorders, sexually transmitted diseases, poor coping and problem-solving skills, and engagement in prostitution and other criminal behavior . . . .

*Employment and Female Offenders*, *supra* note 55, at 4 (citations omitted).

above, a woman who gives an affirmative answer to any mental health screening question is provided a comprehensive mental health assessment as part of the intake process.

CTF provides some medication-assisted therapy (e.g., methadone, suboxone) to women in CTF. These women are taken to a treatment center at D.C. Jail to receive their medication. However, Unity doctors do not prescribe some drugs that people receive in the community (e.g., Seroquel, Zyprexa).

Unity also operates an acute care unit at CTF for individuals who need inpatient care for serious mental health disorders, such as schizophrenia. Generally, women are admitted to the acute care facility until they are stabilized, at which point they are released into the general population. A “step-down” unit for men is scheduled to open in the D.C. Jail in the spring of 2016; men released from the acute care unit after being stabilized will be placed in this “step-down” unit in order to improve their functioning before they enter the general population. No “step-down” unit is planned for women. As a practical matter, this means that women may sometimes stay longer in the acute care facility than they might otherwise.

Unity provides detoxification treatment to women suffering from withdrawal. If Unity is concerned about their health, these women are placed in the infirmary or, in particularly severe cases, are transferred to an outside hospital. Unity also operates an opiate addiction treatment group for women. Outside of detoxification and the opiate addiction treatment group, Unity does not play a significant role in treating substance use disorders.

## **2. CTF - Services Provided by Other Agencies and Organizations**

Mental health and substance use disorder services are also provided in CTF by agencies and organizations other than Unity.

The D.C. Department of Behavioral Health (DBH) operates the “Mental Health Rehabilitation Services” (MHRS) program, through which it provides mental health services to individuals in the community with mental health diagnoses through several private, community-based “core service agencies,” such as Community Connections and Green Door.<sup>179</sup> DBH provides two full-time staff who work exclusively with women to identify MHRS clients and potential clients and to help connect these women to a core service agency prior to release. The goal is for clients to be seen at their core service agency within seven days of release.<sup>180</sup>

DBH also funds one of the core service agencies, Green Door, to work with its clients inside CTF. Through this program, Green Door staff have access to CTF to visit with Green Door clients, and the agency can bill DBH for services provided to women in

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<sup>179</sup> Department of Behavioral Health, *Adult Services*, <http://dbh.dc.gov/service/adult-services> (last visited Mar. 24, 2016).

<sup>180</sup> Information from DCDOC; see also Joie Acosta et al., *Guide to the Behavioral Health Care System in the District of Columbia*, Rand Health (Aug. 2015), at 65.

CTF. This access allows Green Door to, among other things: provide informal counseling to its clients; arrange for meetings between the client and the Green Door case manager prior to the client's release; and schedule a post-release appointment for the client. Green Door also helps connect its clients to a residential treatment program in the community, if appropriate and if a program is available. Other core service agencies are not able to bill DBH for services provided to women at CTF, but they do have access to their clients at CTF.

DCDOC has provided training for CTF staff on trauma/abuse, conducted by personnel from the federal Substance Abuse and Mental Health Services Administration. Although many incarcerated women suffer from trauma, CTF has not offered a treatment program specifically designed to address trauma. However, DCDOC and CCA have informed us that in March 2016, a four-week program will be introduced. Because most women are at CTF for a relatively short period of time, this program will be limited in nature.

Finally, DCDOC offers women at CTF an intensive, residential substance abuse treatment program (RSAT), run by a licensed social worker employed by DCDOC. RSAT, which occupies a separate women's unit at CTF, serves a maximum of 15 women at any one time. RSAT is a 120-day program, but women may participate for 30, 60, or 90 days as well. Some women who graduate from the RSAT program remain in the unit as mentors.

We spoke with several women who participated in the RSAT program at CTF, and they uniformly spoke highly of RSAT and the DCDOC social worker who ran the program. They reported that RSAT was an effective program in a supportive environment, and they believed the leader of the program was committed to their recovery. One former resident attributed her successful recovery in part to the social worker in charge of RSAT, whom she described as a "wonderful woman."

In general, women are not allowed to participate in RSAT until the end of their sentence approaches. For example, a women serving a nine-month sentence may not enter the program until she has 120 days or less time to serve at CTF.

### **3. BOP Facilities**

BOP provides mental health and substance abuse treatment in all of its facilities.<sup>181</sup> At intake, each individual is assigned a mental health care level ranging from "No Significant Mental Health Care" to "Inpatient Psychiatric Care." Each care level corresponds to a certain level of services that should be provided.

Psychiatric services in regular BOP facilities are overseen by the facility's Medical Director or by a Chief of Psychiatry. In response to written questions we submitted, BOP reported that "[w]omen have access to a variety of psychiatric, medical,

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<sup>181</sup> Much of the information in this and the next paragraph is taken from BOP Program Statement P6340.04 (Jan. 15, 2005) or BOP Program Statement 5310.16 (May 1, 2014).

and psychological services,” “[a]ll institutions have multiple doctoral-level psychologists,” and “[p]sychiatric services are generally delivered through telepsychiatry or contracted services for women in need of psychotropic medication.” BOP Program Statements P6340.04 and 5310.16 provide more detail about the care provided in BOP facilities, but we were not able to determine the extent to which these policies are actually implemented in individual facilities.

BOP also operates “Psychiatric Referral Centers” (“PRC”), which provide inpatient psychiatric services run by a Chief of Psychiatry, usually in an MRC. Carswell MRC has a PRC for women.

Individual facilities have policies governing the provision of care for mental health and substance use disorders. For example, at Hazelton SFF, all women are screened by a psychologist “shortly after” arrival. “Psychologists will outline services available to inmates during the institution’s A&O Program. Mental Health services offered include: brief counseling, group therapy, medication management, and self-guided study.”<sup>182</sup>

BOP offers the Resolve Program to treat individuals who have suffered from abuse and trauma. Several women who participated in this program told us they found it helpful, but one former participant we spoke with was critical of the content of the program and also reported that the program had been cut short at two BOP facilities where she was housed, in each case because the psychologist who directed the program left. When we visited Hazelton SFF in November 2015, the psychologist who ran the Resolve Program there had left several months earlier, and the facility was still attempting to hire a replacement. Hazelton SFF administrators told us that the Resolve Program was not suspended when the director of the program departed; instead, other BOP psychologists were filling in temporarily, pending the hiring of a full-time replacement.

Outside of Carswell MRC, BOP does not offer long-term inpatient care for individuals with serious mental illness. BOP policy is that women in need of inpatient mental health services should be transferred to Carswell, but we are uncertain whether that always occurs. Several D.C. women we spoke with at Hazelton SFF observed that some of the women there appear to suffer from acute mental health issues, and need greater attention and/or observation from medical or correctional staff at Hazelton SFF, especially at night when on-call psychologists are not immediately available to deal with problematic behavior. These women suggested that it would be helpful to have a separate unit at Hazelton SFF with closer monitoring for women with serious mental health issues.

Every few months, BOP sends DBH a list of all D.C. women with serious mental illnesses who are approaching release. DBH works with BOP and CSOSA to connect these women to core service agencies that will work with them after their release back to the District. In addition, CSOSA periodically provides DBH with the names of other D.C. women nearing release who may need DBH services. But there is no system in

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<sup>182</sup> See Fed. Bureau of Prisons Secure Female Facility Hazelton, *Inmate Information Handbook* (2011) [*Hazelton Handbook*], at 18.

place to ensure that DBH is notified about every D.C. woman released from a BOP facility who has any mental health or substance use problem requiring treatment, and DBH staff generally does not meet with D.C. women in BOP facilities prior to their release.

BOP offers a Residential Drug Abuse Program (RDAP) for women. RDAP is an intensive program consisting of over 500 hours over a minimum of nine months. Hazelton SFF did not institute an RDAP program until 2013, six years after the facility opened.<sup>183</sup> Currently, one unit at Hazelton SFF is devoted to RDAP, with (as of November 2015) 96 women participating in the program and approximately 35 more living in the RDAP unit, including some who had recently completed the program and others who were waiting to start the program.<sup>184</sup> Hazelton SFF's RDAP is run by a psychologist, with the assistance of four Drug Treatment Specialists, each of whom has a case load of approximately 25 women. There is currently a waiting list of approximately six months to get into the RDAP program at Hazelton SFF. In view of the high incidence of substance use disorder among incarcerated women and the need for intensive evidence-based treatment to address such disorders, BOP should devote more resources to this program to make it more readily available.

BOP also offers a nonresidential drug and alcohol treatment program, involving 40 hours of treatment over six months. We spoke with one woman who completed this program at Hazelton SFF, and she spoke positively about it.

BOP facilities do not offer medication-assisted therapy for individuals with substance use disorders,<sup>185</sup> even though medication-assisted therapy is widely viewed as an effective form of treatment, particularly for opioid addictions, and the Food & Drug Administration has approved several drugs for use in these therapies.<sup>186</sup> However, BOP

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<sup>183</sup> Several judges who visited Hazelton SFF a few months after it opened in 2007 reported that the women were disappointed that the RDAP program was unavailable then. Apparently some of the women had been told that moving to Hazelton would give them access to this program. We were told that there was a push to offer RDAP at more BOP facilities several years ago. It is unfortunate that it took so long for the program to be offered to women at Hazelton SFF.

<sup>184</sup> To be eligible for RDAP, a woman must be a U.S. citizen; have no detainers; have a verified substance abuse issue in the year prior to committing the crime for which she is incarcerated; have at least 18 months left on her sentence; and be eligible for placement in a halfway house on release. *See also Colson Task Force Report, supra* note 111, at 46 (advocating elimination of restrictions on RDAP participation due to criminal history).

<sup>185</sup> Megan McLemore, Prisons are Making America's Drug Problem Worse, *Politico* (Mar. 11, 2015) ["McLemore"], <http://www.politico.com/magazine/story/2015/03/federal-bureau-of-prisons-medication-assisted-therapy-115998>.

<sup>186</sup> *See, e.g.*, Substance Abuse and Mental Health Services Administration (SAMHSA), *Medication and Counseling Treatment* (last updated Sept. 28, 2015), <http://www.samhsa.gov/medication-assisted-treatment/treatment>. Most jails and prisons in the United States do not offer medication-assisted therapy, perhaps because of cost, concerns about potential abuse of the medications, and/or misconceptions about the medications. *See, e.g.*, McLemore, *supra* note 185.

currently operates a small pilot program in which it offers a small number of individuals certain types of medication-assisted treatment, and the Department of Justice has indicated that, "[i]f the pilot proves successful, the BOP could change its policy to provide medically assisted treatments to eligible inmates as appropriate."<sup>187</sup>

## **C. Gynecological and Reproductive Health Care**

### **1. Preventive Gynecological Care Provided at CTF**

In the mid-1990s, the federal court that presided over the *D.C. Women Prisoners* case found that reproductive health care for women at CTF was inadequate. At that time CTF did not offer pelvic or breast exams; nor did the medical staff perform pap smears or tests for STDs at recommended intervals; and women who had been diagnosed with HIV or HPV were refused medical treatment or faced unnecessary delays in obtaining treatment even when they displayed alarming physical symptoms.<sup>188</sup>

Though challenges remain, reproductive health care at CTF has improved significantly since the 1990s. Today, Unity provides comprehensive preventive gynecological care. At intake women are tested for pregnancy, and symptomatic women are tested for gonorrhea and syphilis. Women who test positive for pregnancy receive counseling on a comprehensive range of options, including emergency contraception and pregnancy termination. Women are able to access contraception, prescribed by a Unity clinician, and can request an appointment with the OBGYN who visits CTF one day a week. Unity can conduct a colposcopy onsite at CTF to investigate any abnormalities that may be found in a pap smear.

### **2. Preventive Gynecological Care Provided at BOP Facilities**

The BOP Preventive Health Care Guidelines recommend that female prisoners have periodic physician visits according to the following schedule:

- *General preventive screening*: every three years for women under age 50 and every year for women age 50 and older. A woman may be screened for ovarian cancer if she has specific risk factors or clinical concerns.<sup>189</sup>

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<sup>187</sup> U.S. Dep't of Justice, FY 2016 Budget Request, Prisons and Detention, available at [http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/01/30/4.\\_prisons\\_and\\_detention\\_fact\\_sheet.pdf](http://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/01/30/4._prisons_and_detention_fact_sheet.pdf) (last visited Mar. 24, 2016).

<sup>188</sup> 877 F. Supp. at 643-45.

<sup>189</sup> *Preventive Health Care Guidelines 2013*, *supra* note 173, at 8.

- *Breast cancer screening*: clinical breast exam every year for all women; mammogram every two years for ages 50-74 for women of average risk and from age 40 for women with increased risk for breast cancer.<sup>190</sup>
- *Cervical cancer screening*: pap smear at intake physical; pap smear without HPV testing every three years for women ages 21-65; pap smear every three years or a combination of pap smear and HPV testing every five years for women ages 30-65.<sup>191</sup>

The Preventive Health Care Guidelines are otherwise silent about the type of gynecological care that facilities should provide to women.

BOP Program Statement 6031.04 states that the following should be provided to women during “routine physical examinations”: pregnancy test; breast and pelvic exams; pap smear; and tests for chlamydia, gonorrhea, as well as other clinically indicated cultures.<sup>192</sup> BOP will provide birth control to women only for “[h]ormonal manipulation for menstrual irregularity [and] [h]ormonal replacement therapy in post-menopausal women as clinically indicated.”<sup>193</sup>

BOP clinical guidelines establish processes for developing and evaluating the facilities’ preventive health programs. Health Service Administrators, Clinical Directors, and Directors of Nursing are responsible for periodically evaluating the local preventive health program.<sup>194</sup>

It is unclear whether the medical care provided to women in BOP facilities conforms to the Preventive Health Care Guidelines and BOP Program Statements. For example, a Hazelton SFF handbook implies that pelvic exams and pap smears are not available for women age 50 or younger, which appears inconsistent with the guidelines, and this should be corrected.<sup>195</sup>

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<sup>190</sup> *Id.* at 15. Several women formerly housed at various BOP facilities told us that BOP does very well at providing mammograms.

<sup>191</sup> *Id.* at 10-11.

<sup>192</sup> BOP Program Statement 6031.04, *supra* note 166, at 27.

<sup>193</sup> *Id.* at 29.

<sup>194</sup> *See Preventive Health Care Guidelines 2013, supra* note 173, at 9.

<sup>195</sup> *See Hazelton Handbook, supra* note 182, at 28; *see also* Federal Bureau of Prisons Federal Medical Center Carswell, *Admission & Orientation Handbook 37* (Nov. 2011) [“*Carswell Handbook*”], [http://www.bop.gov/locations/institutions/crw/CRW\\_aohandbook.pdf](http://www.bop.gov/locations/institutions/crw/CRW_aohandbook.pdf).

### 3. Pregnancy-Related Care Provided at CTF

Of the 2,723 women who were incarcerated at CTF at some point between January 2011 and November 2014, 245 were pregnant.<sup>196</sup> Eleven of these 245 women gave birth while incarcerated.<sup>197</sup>

Under DCDOC policy, pregnant women are “provided confidential and comprehensive ongoing prenatal and postpartum follow-up medical services and linkages.”<sup>198</sup> Women who are pregnant see an obstetrician employed by Unity within one week of intake and regularly thereafter based on gestational age and the obstetrician’s recommendation. Through these visits, women are offered prenatal care typical of what is available in the community. In addition, the DCDOC provides prenatal classes, and CTF provides pregnant women with a special diet approved by a Unity nutritionist.

At 36 weeks, Unity will move a pregnant woman to the infirmary so she can be more closely monitored. When the woman goes into labor, she is immediately transferred to a hospital for delivery. Most women at CTF deliver at United Medical Center, but some (generally those with complicated pregnancies) deliver at Howard University Hospital.

A longstanding concern relating to incarcerated pregnant women is the practice of shackling women during labor. Shackling prevents a woman from moving freely, limiting her ability to shift position and potentially interfering with activities of medical staff. Shackling presents serious risks to the well-being of the mother and her child, including risks of complications for women who are shackled during labor.<sup>199</sup> Shackling during pregnancy can also be dangerous because it limits a woman’s ability to protect herself from falling.

In January 2015, the D.C. Council enacted the Limitations on the Use of Restraints Amendment Act of 2014,<sup>200</sup> which specifies that restraints used on a woman known to be pregnant “must be the least restrictive available and the most reasonable under the circumstances.” Further, “[n]o confined woman who is in the third trimester of pregnancy or in postpartum recovery shall be put in restraints at any time, during

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<sup>196</sup> See Council of the D.C. Comm. on the Judiciary and Pub., Report on Bill 20-468, “Limitations on the Use of Restraints Act of 2014”, at 5 (Nov. 7, 2014), <http://lims.dccouncil.us/Download/29624/B20-0468-CommitteeReport1.pdf>.

<sup>197</sup> *Id.*

<sup>198</sup> See DC Medical Management Manual, *supra* note 163, at 23; see also Unity Contract, *supra* note 175, at C.3.2.2.6.

<sup>199</sup> See, e.g., Amnesty International, “Not Part of My Sentence”: Violations of the Human Rights of Women in Custody (Feb. 28, 1999), <http://www.amnestyusa.org/node/57783> (recounting an interview with a woman who said that her feet were shackled during labor and her attending officer was inaccessible as her baby was on the verge of delivery).

<sup>200</sup> D.C. Act 20-596 (Jan. 26, 2015), <http://www.dcregs.dc.gov/Gateway/NoticeHome.aspx?noticeid=5304074>.

transport to a medical facility or while receiving treatment at a medical facility,” unless the warden or director of the facility finds that “extraordinary circumstances apply and restraints are necessary to prevent the confined woman from injuring herself or others.” The warden or director may not authorize the use of restraints on a woman in labor. A doctor, nurse, or other professional treating a confined woman may overturn the warden’s or director’s determination and remove restraints immediately if medically necessary.

DCDOC’s current policy is to avoid restraints during labor, during delivery, or in the recovery period immediately after delivery,<sup>201</sup> and to avoid restraints on a pregnant woman during the last trimester, unless the woman exhibits assaultive behavior or previously escaped from a correctional facility.<sup>202</sup> Only handcuffs are used during a woman’s first two trimesters.

Women in CTF who give birth remain in the hospital for as long as recommended by their medical team, generally two nights. When released from the hospital, an incarcerated mother is separated from her baby and transported directly to CTF. Upon her return to CTF, the woman is placed in the Unity infirmary for several days for monitoring, after which she is returned to her unit.<sup>203</sup>

#### **4. Pregnancy-Related Care Provided at BOP Facilities**

BOP rules require each facility’s warden to “ensure that each pregnant woman is provided medical, case management, and counseling services.”<sup>204</sup> In addition, BOP medical staff “shall arrange for the childbirth to take place at a hospital outside the institution.”<sup>205</sup> In response to our questions, BOP advised that its policies related to pregnant women “are under revision” and that “BOP follows community standards in this area.”

There are no federal statutes or regulations limiting the use of restraints on women during, immediately before, or immediately after labor. However, under BOP guidelines issued in December 2015:

An inmate who is pregnant, in labor, delivering her baby, or in post-delivery recuperation, or who is being transported or housed in an outside medical facility for treating labor symptoms, delivering her baby, or post-delivery recuperation, should not be placed in restraints unless there are reasonable grounds to believe the inmate presents an immediate, serious threat of

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<sup>201</sup> Information from DCDOC; *see also* DC Medical Management Manual, *supra* note 163, at 37.

<sup>202</sup> *See id.*

<sup>203</sup> Recently, for the first time, a woman in CTF requested to pump breast milk for her baby. CCA accommodated this request by adding a refrigerator to the woman’s cell and allowing her to pass the breast milk directly to a family member on a regular basis.

<sup>204</sup> 28 C.F.R. § 551.22(a).

<sup>205</sup> *Id.* § 551.22(c).

hurting herself, staff, or others, or that she presents an immediate, credible risk of escape that cannot be reasonably contained through other methods. . . . Restraints should not be used during active labor without approval of the Clinical Directors.<sup>206</sup>

For pregnant women in prison who wish to spend time with their newborn, BOP offers the Mothers and Infants Nurturing Together (MINT) program. Under this program, described further in Part II.D. above, a woman transfers to a community-based center during the final trimester of pregnancy. She receives prenatal care at the MINT center, and can remain with her infant for at least three months after delivery.

#### **D. Treatment of Chronic Physical Conditions**

As noted in Part I.C.1 above, women in jail or prison disproportionately suffer from chronic physical conditions. Data on D.C. women show high rates for such conditions. In a 2004-2005 Johns Hopkins survey of over 100 women incarcerated in the District, the researchers found that, at the time of incarceration, 28% of the women reported a chronic condition and 20% reported an infectious condition.<sup>207</sup> According to the survey report, 14% of the women had asthma; 12% had HIV; 10% had high blood pressure; 6% had Hepatitis C; and 6% had diabetes.<sup>208</sup>

##### **1. CTF**

The Johns Hopkins survey conducted in 2004-2005 identified various problems with health care delivery for chronically ill women incarcerated in the District at that time, including delays in the delivery of HIV/AIDS medications. The problems were caused in part by serious overcrowding at the D.C. Jail.

In the decade since this survey was conducted, several changes have produced improvements for D.C. women housed in the District:

- Unity Health Care took over as the medical care provider for both CTF and the D.C. Jail.
- Women are now housed only in CTF, not in the D.C. Jail.

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<sup>206</sup> Fed. Bureau of Prisons, Program Statement 5538.07 (Escorted Trips), material following § 570.45. In addition, at least one federal court has held that, under certain circumstances, shackling a woman to her hospital bed violated the Eighth Amendment right to be free from cruel and unusual punishment. *See Nelson v. Correctional Medical Services*, 533 F.3d 958 (8th Cir. 2008).

<sup>207</sup> *From the Inside Out*, *supra* note 11, at 5.

<sup>208</sup> *Id.*

- The number of persons housed in D.C. facilities has decreased significantly. CTF and the D.C. Jail now house many fewer people than their design capacity.

Management of chronic conditions appears to have improved significantly since the Johns Hopkins survey was conducted. At CTF, if a chronic condition is identified at intake, a Unity health care professional establishes a treatment plan dictating the woman’s medication, diet, and how frequently she will be seen by a health care professional, among other things.<sup>209</sup> Neither CCA nor DCDOC is involved in development of the treatment plan, which is left to the discretion of the health care professionals at Unity.

## **2. BOP**

In BOP facilities, individuals with certain chronic conditions are assigned to “Chronic Care Clinics” (“CCC”) at intake. The staff physician or clinical director will examine all individuals entering the facility with a CCC designation within 14 days of arrival and establish a plan of care. After that, a physician will examine all women assigned to a CCC at least annually, or more often if there is a clinical need.<sup>210</sup> The BOP Preventive Health Care Guidelines recommend standards for evaluating and monitoring individuals with diabetes, hypertension, and osteoporosis.<sup>211</sup>

### **E. Continuing Treatment in the Community**

A woman’s time in custody presents an opportunity to provide her with appropriate health care and, if necessary, a treatment plan for a chronic condition, substance abuse disorder, and/or mental health issue. Assuming a treatment plan is implemented during incarceration, however, it is important that there be a seamless transition of care as the woman reenters the community.

Unity plans for the transition of women at CTF using CCA’s short-term release list. When a woman with a mental health condition is scheduled for release, Unity works with DBH and discharge planners to provide her with information about care outside of the facility. If the woman has a serious mental health condition, Unity tries to help connect her with a DBH core service agency. However, a returning citizen is sometimes not connected to care before her supply of medications runs out, decreasing the likelihood she will continue with treatment in the community.<sup>212</sup>

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<sup>209</sup> DC Medical Management Manual, *supra* note 163, at 28, Ch. 4 Sec. 9.

<sup>210</sup> Program Statement § 6031.04, *supra* note 166, at 18-19. Women who have chronic conditions that require long-term inpatient care will likely be housed at Carswell MRC.

<sup>211</sup> *Preventive Health Care Guidelines 2013*, *supra* note 173.

<sup>212</sup> Unity is able to provide returning citizens with only a 3-7 day supply of medication and a 30-day prescription.

DBH has a helpline for incarcerated individuals in BOP facilities who are nearing release, and a DBH staff member has occasionally traveled to meet with such individuals at some federal prisons, including Hazelton SFF. However, as described above, DBH does not have the sort of infrastructure for connecting D.C. women in BOP facilities to community providers that it has in place for women at CTF.

## IV. Educational, Job Training, and Life Skills Programs

Correctional facilities offer various programs designed to help residents gain education and job skills. Women have a particular need for these programs because, as discussed above, many of them enter prison with significant educational deficits and little employment experience. Effective programs to remedy these disadvantages are essential to help women build a foundation for eventually supporting themselves financially and allowing them to avoid relationships that pulled them into criminal activity in the first place.

CTF and all federal prisons provide educational programs designed to equip those who lack a high school diploma or the equivalent to earn a GED credential. A full-time principal directs educational programs at CTF, and GED and ESL classes are taught by paid CCA staff. At federal correctional facilities, individuals without a high school diploma or GED credential are required to attend at least 240 hours of GED classes, and wardens must establish a system of incentives to encourage these individuals to obtain a GED credential.<sup>213</sup> In awarding good time credits, federal correctional officials must take into account whether an individual has a high school diploma (or equivalent) or is making satisfactory progress toward earning a GED.<sup>214</sup> Individuals who do not have English proficiency at or above the eighth-grade level must take ESL classes.<sup>215</sup>

Both CTF and Hazelton SFF hold recognition ceremonies for individuals who earn the GED credential. Hazelton SFF women receive a financial reward if they earn the credential (\$25) or pass five practice GED tests (\$10). According to Hazelton SFF staff, 50 women earned their GED credential during fiscal year 2015, suggesting that the incentives have been effective.

There are no waiting periods for GED classes at CTF, but there are substantial waiting periods for educational programs in federal prisons.<sup>216</sup> Hazelton SFF staff confirmed that there is a six-month waiting list to join GED classes. During our November 2015 visit to Hazelton SFF, however, several D.C. women told us that women have access to a range of programs and that those who are motivated can fill their time productively, even if their first choice activity is not available right away. The SFF

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<sup>213</sup> 28 C.F.R. § 544.70.

<sup>214</sup> 28 C.F.R. § 544.72.

<sup>215</sup> 28 C.F.R. § 544.40-.41.

<sup>216</sup> See Colson Task Force Report, *supra* note 111, at 36.

Administrator assured us that the facility strives to provide strong programming and noted that some of the women fail to take advantage of what is offered. She observed that women are more likely to begin taking advantage of programs as their release dates approach.

For women at CTF who already have a high school diploma or the equivalent, opportunities for more advanced education are limited. The CTF principal has made some efforts to arrange for correspondence courses for individuals, but the relatively short period most individuals spend at CTF makes it difficult to implement such opportunities. DCDOC recently announced that it would begin to offer a re-entry program in partnership with Howard University modeled on the “Inside Out” program developed by Temple University in 1997.<sup>217</sup> Through this new program, participants took a course taught by a professor of Criminology, with course readings and classroom discussion. Fourteen women participated in this sociology class, entitled Crime and Justice Behind the Wall, during the fall 2015 semester, along with Howard University students who came to CTF for class. The sociology class will be taught for two five-week sessions in the summer of 2016, and the Divinity School will offer a course in the fall of 2016.

At BOP facilities individuals may take correspondence classes at the college level, but the student must bear any costs.<sup>218</sup> Moreover, some colleges and universities require students to take a final examination on campus, making it difficult for prisoners to earn credit. However, women at Hazelton SFF had an opportunity to participate in an “Inside Out” program in which 15 women took a criminal justice course together with 15 West Virginia University students. The program is scheduled to continue in the future, possibly jointly with WVU and Fairmont State University. We understand that Hazelton was the first federal prison to institute an Inside Out program, so similar opportunities may not yet be available to D.C. women housed at other BOP facilities.

Computer classes at CTF are taught by an energetic full-time instructor who works hard to motivate participants. The subject matter includes a range of basic foundational knowledge, with less emphasis on learning particular applications, such as word processing or spreadsheet skills.

CTF staff have observed that some of the women there appear less motivated to pursue educational opportunities. This may be due in part to the relatively short time most remain in CTF. BOP facilities appear to be more successful at motivating

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<sup>217</sup> Press Release, D.C. Department of Corrections Continues to Provide Innovative Re-entry Programming for the Inmate Population (Oct. 22, 2015).

<sup>218</sup> In 1994, as part of broad anticrime legislation, Congress eliminated Pell Grant eligibility for students in federal and state penal institutions, cutting off the ability of most of these students to pursue post-secondary education. The U.S. Department of Education recently announced the Second Chance Pell Pilot program to test new models that would allow incarcerated Americans to receive Pell Grants. Press Release, U.S. Department of Education Launches Second Chance Pell Pilot Program for Incarcerated Individuals (July 31, 2015).

women to take advantage of classes offered. One D.C. woman at Hazelton SFF told us that it took her a long time, but pep talks from prison staff inspired her to persist and eventually succeed in obtaining her GED credential.

Although job training opportunities exist at CTF and BOP facilities, they have been limited, particularly for women. According to women who were at CTF several years ago, the facility offered only industrial cleaning and cosmetology training for women. According to DCDOC, however, computer literacy and graphic design training have always been available. Vocational training opportunities for women at CTF were expanded in 2014, when a culinary program, run by ARAMARK, was introduced. This ServSafe food handling certification program includes a soft skills (employment readiness) component conducted by the staffs of D.C. Central Kitchen and Thrive D.C. Twenty eight women have received certification through this program since it began in November 2014. This and other short-term vocational training programs are open to women accused of misdemeanors at the pre-trial stage and after sentencing, as well as women with short-term felony sentences who are designated to serve their sentences at CTF.

DCDOC recently began to sponsor a career technical educational program in conjunction with the University of the District of Columbia. Beginning in October 2015 the program offered CTF women training in hospitality. In the spring of 2016 women will receive training in retail sales. The program offers men core training in the basics of construction industry work. We encourage DCDOC to investigate whether there is interest in the core construction program among CTF women and, if so, to consider offering that training to women.

There are no waiting periods for women to access vocational training programs at CTF. A high school diploma or GED credential is a prerequisite for women to participate in most vocational training, but the CTF principal may waive that requirement in individual cases. There is no GED or diploma prerequisite for the culinary or UDC training.

A work readiness program Mayor Bowser launched in September 2015 is focused primarily on men at the D.C. Jail. The men receive eight to 12 weeks of training on life skills, communications skills, and other subjects. A small component for women involves visits by D.C. Department of Employment Services (DOES) staff to CTF twice a month to enroll women in Project Empowerment, a transitional employment program for D.C. residents. The Mayor and DOES should consider expanding the work readiness program to include training for women to the extent existing CTF programs do not already provide the sort of training offered to men at the D.C. Jail.

BOP publications describe a range of job training and other skills programs, but the availability of programs varies from facility to facility. The offerings vary according to availability of trainers in the area, interest among those housed at the facility, and other factors.

A key vocational training program within the BOP system – Federal Prison Industries (FPI), also known as UNICOR – is unavailable at the facilities where the great

majority of D.C. women are housed. UNICOR positions pay better than the regular work assignments women hold in federal prisons, and they provide higher level job skills. BOP literature and the UNICOR website represent that women participate in UNICOR programs.<sup>219</sup> But the list on the BOP website shows that, of the facilities where women adjudicated in D.C. Superior Court are housed, UNICOR factories are located only at Fort Worth, TX, Waseca, MN, and Tallahassee, FL, which together house a relatively small percentage of the D.C. women.<sup>220</sup> Hazelton SFF staff confirmed that UNICOR does not currently operate at Hazelton.<sup>221</sup> Even if UNICOR were available at all facilities housing D.C. women, it would offer nothing for most of the women. The Deputy Attorney General reported recently that FPI had a list of 10,800 persons waiting for spots in this program.<sup>222</sup>

According to the Hazelton admission and orientation handbook, vocational training programs available at Hazelton SFF include Administrative Assistant, Start Up Business, Basic/Advanced Horticulture, Culinary Arts Vocational Training, Electrical Apprenticeship, HVAC Apprenticeship, Plumbing Apprenticeship, Industrial Maintenance Repair Apprenticeship, Welding Apprenticeship, and Microsoft Office Vocational Training.<sup>223</sup> Hazelton SFF staff told us that five of these programs (Culinary, MS Office, and Plumbing, HVAC and Electrical apprenticeships) were being offered as of our November 2015 visit. They confirmed that some women have participated in the apprenticeships and have done well. However, the instructor for the culinary program and the apprenticeships recently retired, and the programs will not start up again until a replacement is hired. On the other hand, a horticulture program will begin soon. According to the SFF Administrator, several programs, including Administrative

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<sup>219</sup> See *Female Offenders in the Bureau of Prisons*, *supra* note 37, at 3 (listing UNICOR as a program available to women in federal prisons); UNICOR, *Factories with Fences: 75 Years of Changing Lives* 5, 17, 23, 27 (pictures of women working at UNICOR jobs) [*“Factories with Fences”*].

<sup>220</sup> See Fed. Bureau of Prisons, *UNICOR: Program Details*, [https://www.bop.gov/inmates/custody\\_and\\_care/unicor\\_about.jsp](https://www.bop.gov/inmates/custody_and_care/unicor_about.jsp) (last visited Mar. 24, 2016). UNICOR factories are also listed for locations in Florida and California where a few D.C. women adjudicated in federal court are housed.

<sup>221</sup> Literature on UNICOR’s website states that UNICOR activated a new factory at Hazelton in 2006. *Factories With Fences*, at 29. Apparently that factory no longer operates. Pointing to research showing that earning a working wage in prison industry enhances the effectiveness of such programs in reducing recidivism and improving employment outcomes, the Colson Task Force recently recommended that Congress expand FPI’s authority. See Colson Task Force Report, *supra* note 111, at 36. We agree with that recommendation.

<sup>222</sup> Sally Quillian Yates, Deputy Attorney General, Remarks on Criminal Justice Reform at Columbia Law School (October 29, 2015).

<sup>223</sup> Fed. Correctional Complex – Hazelton, *Inmate Admission & Orientation Handbook*, 23-24 (updated May 12, 2014).

Assistant and Start Up Business, were offered under contract with Pierpont Community College, but that contract is no longer in effect.

A BOP official told us that all job training programs offered at facilities housing both men and women are open to women. However, this does not appear to be true across the board. The Hazelton admission and orientation handbook lists several vocational programs for men’s facilities at Hazelton, but not for the female facility, including the Building Trades Vocational Training program (including Carpentry, Dry Wall, Electrical, HVAC, Masonry, Plumbing, and Welding), Graphic Arts Vocational Training, and Power Plant Mechanic Apprenticeship.<sup>224</sup>

Long waiting lists are a further obstacle, even when a training program is offered to women at BOP facilities.<sup>225</sup> In addition, D.C. women would benefit from a broader range of vocational training options. In view of the employment market in the District, some D.C. women at Hazelton SFF would likely be interested in the Administrative Assistant and Start-Up Business classes that appear to have been eliminated, as well as additional technology training.<sup>226</sup>

Even if CTF and federal facilities provided a more robust set of apprenticeship and vocational training programs, opportunities for D.C. women might still be limited. A significant barrier to job training for many incarcerated women is their generally low level of educational attainment. In many cases women without a high school diploma or the equivalent will be ineligible to participate in a job training program.<sup>227</sup> This reinforces the importance of encouraging women to earn the GED

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<sup>224</sup> *Id.*

<sup>225</sup> SFF staff confirmed that most classes and programs have a wait list. This is consistent with the experience at correctional facilities more generally. *See, e.g., Colson Task Force Report, supra* note 111, at 36; *Employment and Female Offenders, supra* note 55, at 9 (“Unfortunately, more inmates would like to participate in vocational training, but the availability is limited – more inmates were on waiting lists than were enrolled in training programs.”).

<sup>226</sup> Researchers have noted that vocational programs for incarcerated women have traditionally focused on low-paying positions (e.g., cosmetology, food service) and that such programs “should move toward more technology-based enterprises to keep up with current employment demands.” *Employment and Female Offenders, supra* note 55, at 10 (citations omitted). However, at least one D.C. woman at Hazelton SFF very much wants a cosmetology training program there. The SFF Administrator informed us that there is inadequate space to accommodate a cosmetology program at Hazelton, although she agreed that it might be possible to assemble a collection of relevant reading materials for women to study.

<sup>227</sup> At Hazelton SFF an inmate must have earned the GED (or be making good progress toward that end) in order to enroll in an MS Office class. One D.C. woman told us that she was unable to take cosmetology classes while she had been housed at several federal prisons (other than Hazelton SFF) because she had tried but been unable to earn her GED credential.

credential while incarcerated. But BOP officials should consider introducing a few vocational training programs open to those who have applied themselves diligently but been unable to earn the GED.

Based on our discussions with BOP staff and several D.C. women who have been housed in federal prisons, we have the impression that a number of D.C. women have not taken advantage of the job training opportunities there. The reasons are unclear, but long waitlists, the GED prerequisite, and mismatch with employment opportunities in the District may be at least part of the problem.

The difficulty women face in accessing useful vocational training is a significant concern. If D.C. women who are incarcerated cannot obtain a strong foundation for earning a living when they return to the community, they are less likely to develop a stable living situation, reunite with their children, and avoid a return to criminal activity.<sup>228</sup> Without a steady income, a women may be unable to care for her children and may again turn to crime to obtain money or support from others.

Federal prisons provide a range of other programs, including short-term programs that allow individuals to earn various certifications. For example, Hazelton SFF offered a one-day “flagger” workshop, which allowed some women to obtain a certification for highway construction flagger jobs.

Other programs fall into the “life skills” or “motivational” categories. CTF offers women classes on parenting, healthy pregnancy, mindfulness, anger management, family reunification, job readiness, healthy living, expressive writing, and other subjects.

CCA provides access to CTF for some non-governmental organizations that provide services there. For example, Voices for a Second Chance (VSC) conducts life skills groups for women at CTF.<sup>229</sup>

Women at Hazelton SFF can attend classes covering topics such as anger management and grooming/personal hygiene, as well as a faith-based program run by Mennonite volunteers. Courses on health and nutrition are offered quarterly. Hazelton SFF also encourages women to make presentations on subjects of personal interest (e.g., poetry, U.S. Presidents). Women at Hazelton SFF also have access to significant

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We understand that this BOP policy is designed to incentivize individuals to satisfy the GED requirements. But some women do not succeed in earning the GED while in prison despite great effort.

<sup>228</sup> See *Employment and Female Offenders*, *supra* note 55, at 13 (describing studies finding that a woman’s income from post-release employment was associated with lower recidivism).

<sup>229</sup> However, unlike the practice at D.C. Jail, CCA does not provide individuals incarcerated at CTF with VSC referral forms, does not allow VSC staff to use cell phones at CTF, and requires individuals to use their own stamps to send requests to VSC. (DCDOC drives mail to VSC’s offices from D.C. Jail.)

recreational opportunities, including arts and crafts programs, exercise classes, and team sports.

One group of D.C. women under BOP jurisdiction is likely have less access to educational, vocational, and life skills programs, because they are housed not at a federal prison but at a detention center. (As of August 2015, there were over a dozen D.C. women at FDC Philadelphia and several at MDC Brooklyn.) Detention centers are designed for short-term stays, primarily pre-trial detention. These facilities have less reason to offer a full array of educational and job training programs or to focus on helping individuals acquire life skills tailored to eventual re-entry. According to one BOP official, FDC Philadelphia has a solid set of program offerings for women. But this facility almost certainly offers fewer substantial programs tailored to re-entry than Hazelton SFF and other federal prisons where D.C. women are housed.<sup>230</sup>

## V. Sexual Abuse and Harassment

It appears that, among other things, court cases and federal legislation have helped to limit sexual abuse and harassment at CTF and federal prisons in recent years. However, statistical data suggest that sexual abuse of incarcerated D.C. women likely continues to be a problem that requires attention.

### A. Historical Perspective

D.C. correctional facilities have a troubled history in the area of sexual abuse and harassment. In findings issued in 1994,<sup>231</sup> the United States District Court for the District of Columbia recounted a litany of abuses against women at the D.C. Jail and CTF, including rape, forced sodomy, unconsented sexual touching, degrading remarks, and observation by males while women were in bathrooms and changing areas. Further, the court found that D.C. corrections officials “do not adequately investigate the incidents of sexual misconduct because there is no policy and because the investigations are not taken seriously.”<sup>232</sup>

Three days before the district court entered judgment in *Women Prisoners*, the D.C. Council passed the Anti-Sexual Abuse Act of 1994.<sup>233</sup> Among other things, the Act criminalized engaging in a “sexual act” or “sexual contact” with a person who is “in

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<sup>230</sup> According to the admission and orientation handbook, individuals at FDC Philadelphia (other than pre-trial detainees) have access to GED and ESL classes, as well as Parenting and Post-Secondary Education classes. However, there is no mention of any apprenticeship or vocational training programs. Fed. Det. Ctr., Philadelphia, Pennsylvania, *Admission & Orientation Inmate Handbook* (2009). There are no listings for FDC Philadelphia in the BOP Inmate Occupational Training Directory.

<sup>231</sup> *Women Prisoners*, 877 F. Supp. at 639-43.

<sup>232</sup> *Id.* at 641.

<sup>233</sup> D.C. Law 10-257 (approved Dec. 28, 1994; effective May 23, 1995).

official custody.”<sup>234</sup> “Sexual act” and “sexual contact” were defined broadly. The Act provided that consent is not a defense to prosecution for these offenses,<sup>235</sup> mitigating the problems caused by traditional notions of consent within the prison environment.<sup>236</sup> While this legislation was a promising start to correction of an appalling, systemic problem, it was not sufficient by itself to stem the flow of abuse.

In July 1995, weeks after the effective date of the Anti-Sexual Abuse Act, women housed at the D.C. Jail were repeatedly forced to dance in the nude for the entertainment of guards and fellow prisoners.<sup>237</sup> At the behest of a corrections officer, one woman was dragged from her cell, doused in baby oil, thrust before a crowd of jeering guards and prisoners, and forced to dance in her underwear.<sup>238</sup> Similar incidents occurred at least three other times in the same time period. In litigation stemming from these incidents, the D.C. Circuit commented on the “open and notorious nature of the continued abuse”<sup>239</sup> of women and the “culture of routine acceptance of sexual encounters between staff and prisoners.”<sup>240</sup> The Court also noted that, while the DCDOC had issued a policy prohibiting sexual misconduct pursuant to the ruling in *Women Prisoners*, no women had been notified of the policy, no officer had been trained in compliance, and there had been no enforcement.<sup>241</sup>

Fewer reports surfaced after the 1990s, but the problems did not end. In 2006, two women formerly housed at CTF brought suit alleging that during their

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<sup>234</sup> *Id.* at §§ 212, 213.

<sup>235</sup> *Id.* at § 216.

<sup>236</sup> Precluding consent as a defense to an allegation of sexual abuse is critical in the context of correctional facilities, where severe power imbalances between prisoners and guards render traditional conceptions of consent problematic or inapplicable. See Megan Coker, Note, *Common Sense About Common Decency: Promoting a New Standard for Guard-on-Inmate Sexual Abuse Under the Eighth Amendment*, 100 Va. L. Rev. 437, 443 (2014) (“[T]he coercive environment of imprisonment and the position of power guards enjoy over inmates suggest inmates cannot really consent to sexual contact with their guards.”); Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women’s Prisons*, 42 Harv. C.R.-C.L. L. Rev. 45, 56-57 (2007) (“The imbalance between guards and prisoners allows guards to coerce sex through material inducements that are strikingly petty. . . . [A] prisoner who is propositioned by a guard, knowing that the guard will be able to rape or beat her if she refuses, might well judge it wise to comply to see what she can reap from her association with a guard.”).

<sup>237</sup> *Daskalea v. District of Columbia*, 227 F.3d 433, 439 (D.C. Cir. 2000); see also *Newby v. District of Columbia*, 59 F. Supp. 2d 35, 37 (D.D.C. 1999) (noting that D.C. Jail guards forced female inmates to participate “in strip-shows and exotic dancing on three occasions” in July of 1995).

<sup>238</sup> *Daskalea*, 227 F.3d at 439.

<sup>239</sup> *Id.* at 442.

<sup>240</sup> *Id.* at 438.

<sup>241</sup> *Id.* at 437.

incarceration they were raped and sodomized by two guards.<sup>242</sup> The sexual attacks were alleged to have occurred on several occasions when the guards isolated the women from the general population. The women’s suit against the District and the individual guards eventually settled. In 2010, two women brought separate suits alleging that they had been sexually harassed and abused by guards at CTF and that they experienced retaliation after reporting the abuse.<sup>243</sup>

## **B. PREA**

Federal statutory protections for prisoners have increased in recent years. In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA).<sup>244</sup> Among other things, Congress found that there was insufficient research and data regarding the frequent sexual assaults occurring in U.S. correctional facilities.<sup>245</sup> PREA, which applies to federal, state, and local facilities, was passed to establish a nationwide “zero-tolerance standard for the incidence of prison rape,” to increase the available data on the incidence of prison rape, to protect the constitutional rights of prisoners, and to render prison officials more accountable for failure to prevent or punish sexual abuse.<sup>246</sup>

There are three core components to PREA. First, the statute mandates that the Attorney General publish national standards for the “detection, prevention, reduction, and punishment of prison rape.”<sup>247</sup> Second, it requires the Bureau of Justice Statistics (BJS) to conduct annually “a comprehensive statistical review and analysis of the incidence and effects of prison rape.”<sup>248</sup> Third, it provides for financial sanctions against states that do not conform to the PREA National Standards.

The final rule establishing the PREA National Standards was released on May 17, 2012, and took effect on August 20 of that year.<sup>249</sup> Under these Standards, both federal and state corrections facilities must have a “written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the

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<sup>242</sup> *Jane Doe & Jane Roe v. District of Columbia et al.*, (D.D.C. 2006) (No. 1:06-cv-002203-ESH-AK, Docket 3).

<sup>243</sup> One of these complaints was voluntarily dismissed in 2012 after the court granted the plaintiff partial summary judgment. *See Rubio v. District of Columbia et al.*, (D.D.C. 2011) (No. 1:10-cv-00262, Docket. 34, 48). The other complaint was dismissed on grounds related to the District’s policies, not the substance of the allegations. *See Chase v. District of Columbia et al.*, (D.D.C. 2010) (No. 1:10-cv-261, Docket 13).

<sup>244</sup> Prison Rape Elimination Act of 2003, Pub. L. 108-79, 117 Stat. 972 (Sept. 4, 2003).

<sup>245</sup> 42 U.S.C. § 15601(2) (2012).

<sup>246</sup> *Id.* §§ 15602(1), (4), (6), (7).

<sup>247</sup> *Id.* § 15607(a)(1).

<sup>248</sup> *Id.* § 15603(a)(1).

<sup>249</sup> Nat’l Standards to Prevent, Detect, and Respond to Prison Rape; Final Rule, 77 Fed. Reg. 37106 (June 30, 2012).

agency’s approach to preventing, detecting, and responding to such conduct.”<sup>250</sup> Sexual abuse and sexual harassment are defined differently depending on whether the perpetrator is a fellow prisoner or a guard, with a broader definition applying to guards’ actions.<sup>251</sup> In particular, consent is not a factor in determining whether a guard’s conduct constitutes abuse or harassment. In addition to prohibiting sexual abuse and harassment, the PREA National Standards afford some protection to individuals’ sense of privacy and dignity by placing restrictions on cross-gender searches, pat-downs, and observation.<sup>252</sup>

Correctional facilities are also required to implement policies and practices that facilitate the prevention of sexual abuse and harassment. For example, all employees who may have contact with prisoners must be trained regarding the zero-tolerance policy, rights to be free from sexual abuse and harassment, recognition of the signs of threatened and actual abuse, and avoiding inappropriate relationships with prisoners.<sup>253</sup> Facilities must develop staffing plans and, as appropriate, employ video monitoring systems to protect prisoners from sexual abuse.<sup>254</sup> And correctional facilities may not hire or promote any employee who has been criminally, civilly, or administratively adjudicated to have engaged in sexual abuse.<sup>255</sup>

The PREA National Standards require all staff to report immediately any information or suspicion regarding sexual abuse or harassment.<sup>256</sup> Facilities must provide multiple internal avenues for prisoners to report abuse or harassment, and at least one way for them to report offenses to an external public or private entity that can forward the report to facility officials while preserving anonymity.<sup>257</sup> Policies must be established to prevent retaliation against those who report sexual abuse or harassment, or cooperate in an investigation.<sup>258</sup>

The presumptive sanction for staff who engage in sexual abuse is termination. All terminations based on violations of sexual abuse or harassment policies

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<sup>250</sup> 28 C.F.R. § 115.11(a).

<sup>251</sup> *Id.* § 115.6.

<sup>252</sup> *Id.* § 115.15. The cross-gender prohibitions provide insufficient protection for women in one significant respect. BJS data indicate that the majority of substantiated incidents of sexual abuse by correctional staff were committed by females. See Allen J. Beck & Ramona R. Rantala, Bureau of Justice Statistics, *Sexual Victimization Reported by Adult Correctional Authorities, 2009-2011* (Jan. 2014), at 1 [“*Sexual Victimization 2009-2011*”].

<sup>253</sup> 28 C.F.R. § 115.31(a).

<sup>254</sup> *Id.* § 115.13(a).

<sup>255</sup> *Id.* § 115.17(a).

<sup>256</sup> *Id.* § 115.61(a).

<sup>257</sup> *Id.* §§ 115.51(a), (b).

<sup>258</sup> *Id.* § 115.67(a).

must be reported to relevant licensing bodies and, unless the activity was clearly not criminal, to law enforcement agencies.<sup>259</sup>

The PREA National Standards mandate audits and the publication of aggregated data on allegations of sexual abuse and harassment. Every facility must undergo a triennial audit for PREA compliance, during which the auditor will have access to, and will observe, all areas of the facility.<sup>260</sup> The audited facility must publish the auditor’s final report on its website.<sup>261</sup> Facilities must also “collect accurate, uniform data for every allegation of sexual abuse,” and make that data readily available to the public through their websites.<sup>262</sup>

States that fail to adopt and comply with PREA National Standards can be penalized through the withholding of U.S. Department of Justice (DOJ) grants for prison purposes.<sup>263</sup> Each fiscal year, the chief executive of each state must submit a certification that the state has adopted and complied with the PREA National Standards, or an assurance that at least 5% of DOJ grants for prison purposes will be used to achieve compliance.<sup>264</sup>

### **C. Criminal Penalties**

Local and federal laws criminalize sexual acts between staff and prisoners, regardless of consent. The provisions of DC’s Anti-Sexual Abuse Act of 1994 penalize any staff member, contract employee, or volunteer at a “treatment facility, detention or correctional facility, group home, or other institution . . . who engages in a sexual act with a . . . prisoner, or causes a . . . prisoner to engage in or submit to a sexual act.”<sup>265</sup> It is also a criminal offense for staff or contractors to engage in “a sexual contact with a . . . prisoner, or [to cause] a . . . prisoner to engage in or submit to a sexual contact.”<sup>266</sup> As noted above, the statute explicitly states that consent is not a defense to prosecution for either offense.<sup>267</sup>

Federal law provides criminal penalties for federal prison staff who engage in sexual acts with detained persons. Anyone in a federal prison or detention facility who knowingly engages in a sexual act with a person who is “in official detention” and “under the custodial, supervisory, or disciplinary authority of the person so engaging” can be

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<sup>259</sup> *Id.* §§ 115.61(b), (d).

<sup>260</sup> *Id.* §§ 115.401(a), (h).

<sup>261</sup> *Id.* § 115.403(f).

<sup>262</sup> *Id.* §§ 115.87(a), 115.89(b).

<sup>263</sup> 42 U.S.C. § 15607(c)(2) (2012).

<sup>264</sup> *Id.* §§ 15607(c)(2)(a), (b).

<sup>265</sup> D.C. Code § 22-3013.

<sup>266</sup> D.C. Code § 22-3014.

<sup>267</sup> D.C. Code § 22-3017(a).

imprisoned for up to 15 years.<sup>268</sup> The statute makes no mention of consent, but federal courts have treated the statute as criminalizing consensual sexual activity.<sup>269</sup>

## **D. Policies**

### **1. DCDOC and CTF**

DCDOC has promulgated a policy prohibiting sexual abuse and harassment by any person who works at or is confined in a correctional facility.<sup>270</sup> The policy also forbids consensual sexual contact. To further these goals, the policy outlines procedures for screening incarcerated persons for possible sexual victimization, an effort to identify those at risk for sexual victimization and those who may be sexual predators. The policy also provides reporting procedures for allegations of sexual abuse, assault, and misconduct, and for the investigation of such allegations.

DCDOC created a PREA Work Group in 2013, and in 2014 it held a mapping session with several agency partners to educate them about PREA.<sup>271</sup> DCDOC also established a Sexual Assault Incident Review Team to review all sexual abuse and sexual assault incidents that occur at its facilities.<sup>272</sup>

In addition, CCA has promulgated a “zero tolerance policy” for its facilities, including CTF.<sup>273</sup> This policy includes prohibitions on sexual contact between prisoners and between prisoners and staff. The policy outlines procedures for hiring and educating staff and establishes a sexual abuse response team comprising employees who are able to address sexual abuse allegations. The policy outlines prisoner screening procedures and procedures for reports of sexual abuse and investigative responses.

According to the warden, only female correctional officers are now assigned to the female units at CTF, and only female officers may escort women within the facility. When we toured CTF we saw posters in the women’s units that said “No means no and yes is not an option.”

The District has not yet certified that it fully complies with PREA Standards.<sup>274</sup> On May 13, 2015, Mayor Bowser signed and submitted to the DOJ an

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<sup>268</sup> 18 U.S.C. § 2243(b) (2012).

<sup>269</sup> See, e.g., *United States v. Lucas*, 157 F.3d 998, 1001 n.5 (5th Cir. 1998) (noting that § 2243(b) “involves non-coercive conduct and makes criminal *consensual* intercourse with a person in official detention”) (emphasis in original).

<sup>270</sup> D.C. Dep’t of Corr., *Policy and Procedure No. 3350.2G* (Aug. 27, 2014).

<sup>271</sup> *PREA Safety and Security Report*, *supra* note 37, at 8.

<sup>272</sup> *Id.*

<sup>273</sup> Corr. Corp. of Am., *Policy 14-2, Sexual Abuse Prevention and Response*, at 6 (Nov. 3, 2014).

<sup>274</sup> At the end of 2014, an auditor certified that the D.C. Jail was compliant with PREA standards. Melinda D. Allen, *PREA Audit Report for Central Detention Facility* (Dec. 9,

assurance that the District would use not less than 5% of its covered DOJ grants to achieve full compliance with PREA Standards.<sup>275</sup>

## 2. BOP Facilities

The BOP has implemented a Sexually Abusive Behavior Prevention and Intervention Program, last updated on June 4, 2015.<sup>276</sup> The program's stated purpose is to "provide a written policy that implements zero tolerance toward all forms of sexual activity, including sexual abuse and sexual harassment."<sup>277</sup> While some implementing instructions are included, the BOP policy in all material respects tracks the PREA National Standards. The policy requires each federal facility to have a current "Institution Supplement" setting forth facility-specific implementation procedures relating to staffing plans, law enforcement notification, and prisoner monitoring.<sup>278</sup>

### E. PREA Audits and Reports

#### 1. Facility Level Information

PREA Standards have led to monitoring, audits, and publication of data on reports of sexual abuse at facilities where D.C. women are housed. CCA posts annual reports of incidents of sexual abuse and harassment at CTF on its website.<sup>279</sup> The tables

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2014), <http://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/Washington%20DC%20PREA%20AUDIT%20SUMMARY%20Master%20Compliance%20Achieved%2012%2009%202014.pdf>. In addition, a PREA audit found that the District's halfway houses met or exceeded all PREA standards. See PREA Audit Report for Community Confinement Facilities, *supra* at 24.

<sup>275</sup> Bureau of Justice Assistance, *FY 2015 List of Certification and Assurance Submissions*, 156 (June 29, 2015), <https://www.bja.gov/Programs/15PREA-AssurancesCertifications.pdf>. The District also submitted an assurance in 2014. The DOJ has not yet imposed a limit on the number of consecutive years during which a state may submit an assurance in lieu of a certification of compliance in order to avoid a reduction in funding. Nat'l PREA Res. Ctr., *Frequently Asked Questions*, (May 16, 2014), <http://www.prearesourcecenter.org/node/3283>.

<sup>276</sup> Fed. Bureau of Prisons, *Program Statement 5324.12: Sexually Abusive Behavior Prevention and Intervention Program* (June 4, 2015), [http://www.bop.gov/policy/progstat/5324\\_012.pdf](http://www.bop.gov/policy/progstat/5324_012.pdf).

<sup>277</sup> *Id.* at 1.

<sup>278</sup> *Id.* at 3.

<sup>279</sup> Corr. Corp. of Am., *PREA: 2013 Annual Report*, <http://www.cca.com/Media/Default/documents/PREA/CCA-2013-PREA-Report.pdf> (last modified Feb. 11, 2016); Corr. Corp. of Am., *PREA: 2014 Annual Report*, <http://www.cca.com/Media/Default/documents/PREA/CCA-2014-PREA-Report.pdf> (last modified Feb. 11, 2016).

below show the number and disposition of PREA allegations by both male and female prisoners at CTF in 2013 and 2014, as reported by CCA:

2013	Substantiated	Unsubstantiated	Unfounded
Inmate/Inmate Sexual Harassment	0	4	1
Staff/Inmate Sexual Harassment	0	3	0
Inmate/Inmate Sexual Abuse	0	5	1
Staff/Inmate Sexual Abuse	0	3	2

2014	Substantiated	Unsubstantiated	Unfounded
Inmate/Inmate Sexual Harassment	1	3	0
Staff/Inmate Sexual Harassment	0	2	0
Inmate/Inmate Sexual Abuse	0	4	0
Staff/Inmate Sexual Abuse	0	3	0

Because CTF has not yet undergone a PREA audit, there is no independent confirmation of the accuracy of these data, or of CTF’s general compliance with CCA policy, nor PREA Standards. According to the CCA website, CTF’s mandatory PREA audit is scheduled for June 2016.

BOP publishes on its website aggregated data on the incidence of sexual abuse in its facilities.<sup>280</sup> According to BOP data for 2013 for the primary federal facilities in which D.C. women are held, there were eight allegations of prisoner-on-prisoner assault at Carswell (women only), one of which was substantiated; three allegations at

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<sup>280</sup> Fed. Bureau of Prisons, *Annual PREA Report 2013*, (June 17, 2014), [http://www.bop.gov/inmates/custody\\_and\\_care/docs/PREA\\_Report\\_2013.pdf](http://www.bop.gov/inmates/custody_and_care/docs/PREA_Report_2013.pdf); Fed. Bureau of Prisons, *Annual PREA Report 2014*, (June 25, 2015), [http://www.bop.gov/inmates/custody\\_and\\_care/docs/PREA\\_Report\\_2014.pdf](http://www.bop.gov/inmates/custody_and_care/docs/PREA_Report_2014.pdf).

FDC Philadelphia (men and women), none of which were substantiated; and no allegations at Hazelton or Alderson.<sup>281</sup> In 2014, there was one unsubstantiated allegation of prisoner-on-prisoner assault at Hazelton; 14 allegations at Carswell, one of which was substantiated; one unsubstantiated allegation at Philadelphia; and no allegations at Alderson.<sup>282</sup> Neither report provides facility-level data on the incidence of staff-on-prisoner sexual abuse. Except for substantiated allegations, the reports do not indicate the gender of the alleged victim or perpetrator. In both of the substantiated prisoner-on-prisoner incidents at Carswell, both the victim and the perpetrator were female.

PREA audits for Hazelton, FDC Philadelphia, and Alderson found that these facilities met or exceeded all PREA standards.<sup>283</sup> The Hazelton report, based on a June 2015 audit, states that there were 15 administrative investigations conducted in the prior year. According to the report, no staff member had been disciplined or resigned due to violations of sexual abuse and harassment policies, and there were no substantiated or unsubstantiated reports of prisoners engaging in sex with other prisoners. A PREA audit for FDC Philadelphia conducted in November 2013 disclosed one report of sexual abuse (it is unclear whether the alleged abuse occurred at that facility) and found that the facility followed the applicable procedures in response to the report. A PREA audit conducted in July 2015 at the Alderson facility identified two “blind spots”. However, the facility added mirrors during the audit, eliminating these blind spots. The report stated that there was one case of an Alderson staff member engaging in sex with a prisoner, and that staff member was terminated. The audit identified no reports of prisoner-on-prisoner sexual abuse.<sup>284</sup>

A PREA audit conducted of The Fairview and Hope Village found that the facilities either met or exceeded each of the PREA standards.<sup>285</sup> The report noted that the “only substantiated sexual misconduct case was a staff member” and that, while the action did not rise to the level of harassment, the staff member was taken out of service.<sup>286</sup>

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<sup>281</sup> *Annual PREA Report 2013*, *supra* note 280, at 3-4.

<sup>282</sup> *Annual PREA Report 2014*, *supra* note 280, at 3-4.

<sup>283</sup> PREA Report for Hazelton, Fed. Bureau of Prisons, (June 23, 2015), [https://www.bop.gov/locations/institutions/haf/HAF\\_prea.pdf](https://www.bop.gov/locations/institutions/haf/HAF_prea.pdf); Fed. Bureau of Prisons, PREA Report for Philadelphia, (June 29, 2014), [https://www.bop.gov/locations/institutions/phl/PHL\\_prea.pdf](https://www.bop.gov/locations/institutions/phl/PHL_prea.pdf); PREA Report for Alderson, Fed. Bureau of Prisons, (Aug. 5, 2015), [https://www.bop.gov/locations/institutions/ald/ALD\\_prea.pdf](https://www.bop.gov/locations/institutions/ald/ALD_prea.pdf). [“*Alderson PREA Report*”]. There is no PREA report posted on the BOP webpage for the Carswell facility.

<sup>284</sup> Alderson PREA Report (2015), *supra* note 283.

<sup>285</sup> PREA Audit Report for Community Confinement Facilities, *supra* note 24.

<sup>286</sup> *Id.* at 4. The report does not make clear whether the incident occurred at The Fairview or Hope Village.

## 2. BJS Data Reports

BJS reports mandated by PREA provide a useful general overview of reported sexual abuse in U.S. correctional facilities, but the sampling methodology limits the reports' utility for researching conditions faced by D.C. women. Nevertheless, the reports tend to suggest that D.C. women (and D.C. prisoners in general) face a risk of sexual abuse that is substantially greater than the national average.

To fulfill its mandate under PREA, BJS uses several instruments, including the Survey of Sexual Violence ("SSV") and the National Inmate Survey ("NIS").<sup>287</sup> A BJS report analyzing SSV data from the period 2007-2008 indicated that during this period, female prisoners nationwide "were disproportionately victimized" by both other prisoners and staff "in federal and state prisons, as well as local jails."<sup>288</sup> Women represented 7% of those in federal and state prisons, but represented 21% of all victims of prisoner-on-prisoner and 32% of all victims of staff-on-prisoner sexual victimization in those prisons.<sup>289</sup> Similarly, women represented 13% of confined persons in local jails, but represented 32% of all victims of prisoner-on-prisoner and 56% of all victims of staff-on-prisoner sexual victimization in those jails.<sup>290</sup> A BJS report covering the 2009-2011 period showed a similar pattern of disproportionate victimization of women.<sup>291</sup>

The BJS results offer some information that is more specific to D.C. women in prison. The report covering the period 2008-2009, which contains aggregated data for persons housed at CTF and the D.C. Jail, showed that 6.0% of surveyed D.C. men and women reported having been sexually victimized by fellow prisoners or staff,<sup>292</sup> substantially higher than the nationwide rate of 3.1%.<sup>293</sup> Further, 3.1% of surveyed D.C. persons reported suffering prisoner-on-prisoner victimization, while 5.5% reported being victimized by correctional staff.<sup>294</sup> The comparable national averages were 1.5% and

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<sup>287</sup> Bureau of Justice Statistics, *Prison Rape Elimination Act*, <http://www.bjs.gov/index.cfm?ty=tp&tid=20#pubs> (last visited Mar. 24, 2016).

<sup>288</sup> See Paul Guerino & Allen J. Beck, Bureau of Justice Statistics, *Sexual Victimization Reported by Adult Correctional Authorities, 2007-2008* (2011), at 1. "Sexual victimization" is defined as all types of sexual acts, including penetration and touching, and includes both willing and unwilling sexual activity with staff. *Id.* at 2.

<sup>289</sup> *Id.* at 6, 8.

<sup>290</sup> *Id.*

<sup>291</sup> *Sexual Victimization 2009-2011*, *supra* note 252, at 1, 9.

<sup>292</sup> Allen J. Beck et al., Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (Aug. 2010), at 59.

<sup>293</sup> *Id.* at 58.

<sup>294</sup> *Id.* at 67.

2.0%, respectively.<sup>295</sup> Because the data do not break out the female units at CTF, we cannot determine how many of these reported victimizations involved women.

The 2008-2009 BJS report contains no facility-specific data on the federal facilities that house D.C. women. The most recent report, covering the 2011-2012 period, includes the following rates of reported victimization at the principal facilities housing D.C. women: Hazelton SFF (5.2%, women only); FDC Philadelphia (1.8%, men and women); FMC Carswell (4.2%, women only); FPC Alderson (2.7%, women only).<sup>296</sup> The national average percentage for state and federal prisoners reporting sexual victimization during 2011-2012 was 4.0%.<sup>297</sup> Hazelton SFF, which now houses more D.C. women than any other federal facility, had the third highest reported rate of victimization of the 28 federal facilities covered in the report.<sup>298</sup>

It appears that PREA has had a positive impact overall, particularly as a result of the statute's focus on training, monitoring, and data collection. But based on what we heard from women housed at federal prisons in the past few years, the statute has not eliminated sexual activity (including sexual harassment) in the prisons. And in view of the indications of higher-than-average incidence of sexual victimization for D.C. facilities and several federal facilities housing D.C. women, implementation and enforcement of the PREA National Standards should continue to be a high priority.

## **F. Transgender Persons**

Transgender persons in correctional facilities are at particular risk of sexual abuse and harassment. A recent BJS report revealed substantial sexual victimization of transgender persons by other prisoners and staff at state and federal prisons.

- Percentages of transgender individuals who experienced prisoner-on-prisoner sexual victimization: 15.5% in 2007; 23.2% in 2008-09; 33.2% in 2011-12; and 24.1% for the combined periods.
- Percentages of transgender individuals who experienced sexual misconduct by staff: 23.8% in 2007; 12.6% in 2008-09; 15.2% in 2011-12; and 16.7% for the combined periods.<sup>299</sup>

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<sup>295</sup> *Id.* at 66.

<sup>296</sup> Allen J. Beck, Bureau of Justice Statistics, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12* (Dec. 2014), at 48.

<sup>297</sup> *Id.* at 43.

<sup>298</sup> *Id.* at 48.

<sup>299</sup> Allan J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12; Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates*, Bureau of Justice Statistics (Dec. 2014), at tbl. 2. The report does not include D.C.-specific statistics.

There are many reports that transgender persons are placed in protective custody more often than appropriate. In some cases a transgender individual may ask to be placed in protective custody due to safety concerns. In other cases correctional officials may be uncertain how to handle transgender persons or may conclude that administrative segregation is the only way to protect the individual. However, administrative segregation can lead to psychological damage, increased risk of abuse by correctional officers, and lack of access to educational programs and other services and support.<sup>300</sup>

The 2012 PREA regulations include several provisions that promise some protection for transgender women. Among other things, the regulations limit the use of involuntary segregated housing to protect an individual to situations where there are “no available alternative means” of separating the individual from likely abusers.<sup>301</sup> Corrections officials must make “case-by-case” decisions in determining whether a transgender individual will be housed in a men’s or women’s facility, taking into account factors including the individual’s safety, with serious consideration to be given to the transgender individual’s views on her safety and security.<sup>302</sup> The regulations forbid searches of transgender persons for the “sole purpose of determining an inmate’s genital status” and require that searches of transgender persons be conducted in a “professional and respectful” manner.<sup>303</sup>

Both DCDOC and BOP have policies governing classification and housing of transgender persons, and both agencies have some experience with housing of transgender women in female facilities. While policies and practices continue to evolve, it appears that officials of both agencies are taking thoughtful approaches to the issues. In view of the BJS data and the allegations of the “Jane Doe” complaint described below,

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<sup>300</sup> See, e.g., Written Statement of the American Civil Liberties Union before the U.S. Senate Judiciary Subcomm. on the Constitution, Civil Rights, and Human Rights, Hearing on Reassessing Solitary Confinement: The Human Rights, Fiscal, and Public Safety Consequences (June 29, 2012), at 6; Editorial, *Prisons and Jails Put Transgender Inmates at Risk*, N.Y. Times (Nov. 9, 2015), [http://www.nytimes.com/2015/11/09/opinion/prisons-and-jails-put-transgender-inmates-at-risk.html?\\_r=0](http://www.nytimes.com/2015/11/09/opinion/prisons-and-jails-put-transgender-inmates-at-risk.html?_r=0); Drake Hagner, *Fighting for Our Lives: The D.C. Trans Coalition’s Campaign for Humane Treatment of Transgender Inmates in District of Columbia Correctional Facilities*, 11 *Geo. J. of Gender and the Law* 838, 849-50 (2010) [*“Fighting for Our Lives”*].

Jeffrey Light, who represents incarcerated transgender persons, notes that some correctional officers will house in the same cell an individual who has asked for segregation as a protective measure and a dangerous individual who has been placed in involuntary segregation. This practice presents an obvious threat to a transgender woman who has requested segregation for safety reasons.

<sup>301</sup> 28 C.F.R. § 115.43(d)(2).

<sup>302</sup> 28 C.F.R. § 115.42(c),(e).

<sup>303</sup> 28 C.F.R. § 115.15(e),(f).

however, both DCDOC and BOP should continue to monitor the treatment of transgender individuals carefully and to move quickly to address problems.

## 1. DCDOC Policy

The District of Columbia has a decidedly checkered history in its treatment of transgender persons. In the past D.C. police and emergency personnel have been severely criticized for their conduct toward transgender persons.<sup>304</sup> Following several incidents that raised significant concerns about treatment of persons perceived to be transgender, including where individuals were housed following arrest, the D.C. Trans Coalition pressed the Metropolitan Police Department, DCDOC, and the D.C. Office of Human Rights to develop more enlightened policies.<sup>305</sup> In 2009, DCDOC issued a sharply revised policy on the classification and housing of transgender persons in local correctional facilities.

While the new policy has been held up as a model, it appears that it was not effective in ending abuse of transgender women in DCDOC custody. In 2012 a transgender woman who had been housed in the D.C. Jail (a men's facility) and placed in protective custody there reported that she had been repeatedly raped after a correctional officer brought a male to her "house alone" cell.<sup>306</sup>

The current DCDOC policy and procedures regarding the treatment of transgender individuals cover a range of issues.<sup>307</sup> Among other things, this document outlines procedures for the intake of transgender individuals, including a requirement that transgender persons be placed in protective custody during the intake process to ensure the individual's privacy and safety.<sup>308</sup> The policy prohibits physical examination of a transgender person by any staff member other than a physician for the sole purpose of determining the individual's genital status.<sup>309</sup> It provides for establishment of a Transgender Advisory Committee and a Transgender Housing Committee.<sup>310</sup>

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<sup>304</sup> See *Fighting for Our Lives*, *supra* note 300, at 851-54.

<sup>305</sup> *Id.* at 855-62.

<sup>306</sup> The woman ("Jane Doe") filed a civil rights suit against the District based on this experience. *Jane Doe v. District of Columbia*, (D.D.C., Complaint filed June 11, 2013) (No. 1:13-cv-00878). NBC News reported on this incident after the woman filed her complaint was filed. See Jackie Bensen, NBC Wash., *Transgender Woman Suing D.C. Over Jailhouse Rape* (Dec. 16, 2013), [http://www.nbcwashington.com/news/local/Transgender-Woman-Suing-DC-Over-Jailhouse-Rape\\_Washington-DC-236140111.html](http://www.nbcwashington.com/news/local/Transgender-Woman-Suing-DC-Over-Jailhouse-Rape_Washington-DC-236140111.html).

<sup>307</sup> D.C. Dep't of Corr., *Policy and Procedure 4020.3E, Gender Classification and Housing* (May 1, 2014).

<sup>308</sup> *Id.* § 9.

<sup>309</sup> *Id.* § 8.

<sup>310</sup> *Id.* § 7. The Transgender Advisory Committee serves as a liaison between DCDOC and the transgender community. The Transgender Housing Committee includes medical

The procedures also cover housing decisions. The factors to be considered in determining where a transgender person will be housed include safety and security needs, housing availability, and gender identity and genitalia.<sup>311</sup> Transgender persons may be placed with the general population or in protective custody based on a determination by the Transgender Housing Committee. The Committee makes housing determinations after a complete review of the individual’s records and an interview with the individual. The individual will be placed in protective custody if “there is reason to believe the inmate presents a heightened risk to him/herself or to others or where the inmate fears that he or she will be vulnerable to victimization in any other housing setting.”<sup>312</sup> Similar procedures apply to housing determinations for halfway houses. The Transgender Housing Committee must consider, among other things, the resident’s own opinion of his or her vulnerability in the male and female halfway houses.<sup>313</sup>

The wardens at CTF told us that they follow DCDOC policy on housing and classification of transgender individuals, with housing decisions made by the Transgender Housing Committee. They noted that several transgender persons have been moved into or out of the CTF women’s units in response to these individuals’ requests. According to Jeffrey Light, who represents “Jane Doe” in the litigation referenced above, most transgender women in DCDOC custody are currently being housed in the D.C. Jail. In connection with the Transgender Housing Committee’s consideration of the transgender resident’s opinion on where she should be housed, these women apparently sign a written form selecting whether to be housed according to gender assigned at birth or gender expression. The practice of housing some transgender women in the D.C. Jail raises questions about the process surrounding completion of the forms and whether DCDOC will be able to provide adequate protection for the women housed in the D.C. Jail.

## 2. BOP Policy

BOP includes procedures for addressing issues related to transgender persons as part of its broader policy on sexual abuse prevention.<sup>314</sup> Transgender persons

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practitioners, correctional staff, and a volunteer who is a member of the transgender community.

<sup>311</sup> *Id.* § 10.

<sup>312</sup> *Id.* § 10.e.

<sup>313</sup> *See id.* § 11. However, the placement policy that D.C. halfway houses apply appears to differ from that described in the DCDOC policy and PREA regulations. A recent audit report describes the halfway house placement policy as relying solely on anatomy, with no mention of residents’ own perceptions of where they will be more secure or any other factors. *See* PREA Audit Report for Community Confinement Facilities, *supra* note 24, at 10 (“Transgender and intersex residence [sic] will be placed in housing based on their anatomy.”).

<sup>314</sup> Fed. Bureau of Prisons, *Program Statement 5324.11: Sexually Abusive Behavior Prevention and Intervention Program* (Jan. 6, 2014).

are among those considered to be at particular risk for sexual victimization.<sup>315</sup> Decisions regarding the housing of transgender persons must be made on a case-by-case basis (taking into account the individual's health and safety and potential management of security problems), and the housing decision will be reevaluated twice each year.<sup>316</sup> Transgender individuals will be given the opportunity to shower separately from the general population.<sup>317</sup> Facility staff may not search or physically examine a transgender individual for the sole purpose of determining genital status.<sup>318</sup>

Some transgender women are housed at BOP female facilities. The PREA audit report for Hazelton disclosed that one transgender individual is housed in the SFF. Hazelton SFF staff told us that there was extensive consultation with BOP officials when a transgender woman asked to be housed in a female facility and that no problems had arisen after this individual moved into the SFF general population. The BOP is currently evaluating issues relating to housing transgender men at male facilities.

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<sup>315</sup> *Id.*, Att. A.

<sup>316</sup> 28 C.F.R. § 115.42(c), (d).

<sup>317</sup> *Id.* § 115.42(f).

<sup>318</sup> *Id.* § 115.15(e).

## VI. Reentry to the Community

**“It’s definitely a huge challenge. It makes me think about Zora Neale Hurston when she said that women are the mules of the world because in addition to trying to find your place as the matriarch of your family and rebuild your family unit, you’re also trying to rebuild your personal life and gain employment and maybe pursue your academic goals. And women, I think one of the biggest differences with men and women is the need to be safe. I’d like to think that men coming out of prison regardless of how much time they served are not struggling with whether or not they feel safe in an environment that has left them vulnerable and allowed them to be so severely hurt and afraid in the past. Then going in to a system that has further damaged them and further degraded them and coming home, I think that the need to be safe, the need to be a mother, the need to be, like I said, the matriarch of their family, the need to become independent but yet still establish healthy relationships. I don’t think that men, who are returning from incarceration experience that personal trauma that women experience.”**

Lashonia Etheridge-Bey

(from transcript of a CSOSA D.C. Public Safety radio interviews, March 3, 2014)

Eventually most incarcerated D.C. women will complete their sentences and return to the community. This report does not attempt to address the reentry process in any depth. But both DCDOC and BOP officials assert that reentry planning begins at the outset of incarceration, and some programming (such as resume preparation classes) specifically focuses on reentry issues. We therefore describe briefly the significant challenges D.C. women face once their incarceration ends and efforts to address these challenges prior to release.

Most immediately, any returning citizen must obtain food, clothing, and shelter. Returning citizens must act promptly to reconnect with family or friends, to locate housing, to apply for government benefits such as food stamps and health insurance or Medicaid, and to identify and enroll in treatment programs in the community that will build on care they received while incarcerated. To support themselves in the longer term, most returning citizens must find employment. They face the challenge of renewing relationships with family after a lengthy absence, as well as learning how to make decisions and take actions on their own after months or years when correctional authorities dictated most aspects of their lives.

D.C. women face especially steep challenges when re-entering the community. As described in Part I.C.1 above, a high percentage of incarcerated women have histories of mental illness and substance abuse, and these women may encounter difficulties connecting to appropriate care as they transition back to the community. Housing is a particular challenge, particularly for women returning to the District from distant federal facilities after being away for years. There is a severe shortage of affordable housing in the District and the surrounding metropolitan area.<sup>319</sup> Waitlists for public housing are very long, and there is little prospect that a returning citizen could obtain a public housing unit in any reasonable period of time.<sup>320</sup> Women who regain custody of their children after they return must locate housing that can accommodate a family. Staying with others may be an option for some, but women who are estranged from their families and friends due to their criminal conduct and incarceration, or due to longstanding mental illness or substance abuse problems, may not have such options. A woman who sees no choice but to return to an unhealthy living situation runs the risk of falling back into the same abusive relationships that led her into criminal activity in the first place. Women with substance use disorders who return to their old neighborhoods risk being pulled back to using drugs or alcohol.<sup>321</sup>

**“Most of the women who are incarcerated need a job and housing when they come home. Remember a lot of them have burned their bridges and their families don’t want to be bothered with them, so they don’t have anywhere to go. They go to the halfway house and then right back out to the streets and the drugs and hustling. I believe if women had some type of transitional housing and/or apartment that they could call their own, they would do much better. I have found that when women have jobs and housing they tend to do better and recidivism will go down. The bottom line is that everyone merely wants to live in their own place (whether owned or rented), take care of their families and work.”**

Jackie Craig-Bey

Finding employment is a major challenge for D.C. women re-

<sup>319</sup> See Urban Institute, Leah Hendley, Peter A. Tatian, Graham MacDonald, *Housing Security in the Washington Region* 25-52 (July 15, 2014), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413161-Housing-Security-in-the-Washington-Region.PDF>.

<sup>320</sup> See Petula Dvorak, *In D.C., a Public-Housing Waiting List with No End*, Wash. Post (Apr. 11, 2013), [https://www.washingtonpost.com/local/in-dc-a-public-housing-waiting-list-with-no-end/2013/04/11/6073e7d2-a2cc-11e2-9c03-6952ff305f35\\_story.html](https://www.washingtonpost.com/local/in-dc-a-public-housing-waiting-list-with-no-end/2013/04/11/6073e7d2-a2cc-11e2-9c03-6952ff305f35_story.html). Our 2014 report on collateral consequences of convictions described various ways in which a criminal record may interfere with an individual’s ability to obtain public or private housing in the D.C. area. See Washington Lawyers’ Committee for Civil Rights and Urban Affairs, *Collateral Consequences of Arrests and Convictions Under D.C., Maryland, and Virginia Law* (2014), at 14-18.

<sup>321</sup> A saying – “The first week is free” – reflects what we understand to be a practice of drug dealers in the District: target returning citizens and offer them drugs at no cost for the first week following their release.

entering the community. As described above, many D.C. women entering prison lack a high school diploma or significant employment experience. While some women succeed in obtaining the GED credential while they are incarcerated, many do not. Even women who have a high school diploma or the GED credential and who obtain useful vocational training in prison will encounter employers who are reluctant to hire an applicant with a criminal record.<sup>322</sup> And even when employers are open-minded, a woman with limited education and rudimentary job skills (as well as a criminal record) will have difficulty competing against the highly-educated pool of potential employees in the D.C. area.

Women who return to caring for their children may have difficulty finding daycare or making time for job interviews, much less for a full-time job. Returning citizens must juggle responsibilities associated with post-release supervision and accessing services in the community.<sup>323</sup> Other barriers for women seeking employment following incarceration include continuing health issues, time management and self-esteem problems, and limited social networks.<sup>324</sup>

Correctional officials recognize the need to prepare individuals for reentry to the community prior to the time they are released. As described above, CTF has a separate Reentry unit, and the facility offers various vocational training programs. DCDOC told us that it works with community-based providers to connect CTF women participating in vocational training with job opportunities. In particular, D.C. Central Kitchen and Thrive D.C., which provide soft skills training to women as part of the ARAMARK ServSafe Food Handlers Certification program, take applications for enrollment in their long-term food services training, and Thrive D.C. provides employment assistance through its Women in New Directions (WIND) program. Community Family Life Services (CFLS), another nonprofit, sends two case managers into the Reentry and RSAT units to work with the DCDOC case managers on release planning, including referrals to the CFLS employment specialist. (This specialist recently began the process of obtaining clearance to come into CTF and work with women on employment planning prior to release.) Several kiosks at CTF provide information on

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<sup>322</sup> Our 2014 report on collateral consequences of arrests and convictions describes the various obstacles to finding employment, even with “ban the box” legislation that has been enacted by the D.C. Council. *See id.* at 7-10.

<sup>323</sup> In summarizing empirical research on this issue, Dr. Shawn Flower has described the problem:

Employment prospects for most female offenders typically consist of low-wage jobs; even those who have the skills and experience to obtain a better job are often challenged by responsibilities as the primary caretaker of minor children. Demands include “family court, child protective services, and school systems on behalf of their children” . . . and the lack of adequate and affordable childcare . . .

*Employment and Female Offenders*, *supra* note 55, at 6 (citations omitted).

<sup>324</sup> *Id.* at 2.

jobs available in the D.C. area, and a life skills class taught in the Re-entry unit includes job readiness skills such as preparation of a resume.

BOP's reentry strategy is focused more on longer term reintegration, less on short-term employment goals. Women in federal prisons are not housed in separate reentry units. Instead, BOP describes its approach as holistic, with an effort from the beginning of a woman's incarceration to help her build skills relevant to reintegration, through a broad range of programs in the areas of mental health, wellness, parenting, leisure time management, and financial and life skills development, as well as education and vocational training.

Hazelton staff told us that a reentry program lasting eight to 12 weeks is offered to women at least quarterly. The program includes two segments taught by prison staff — life by design and reentry planning. There is also a faith-based life training component conducted by Mennonite volunteers.

Women at Hazelton SFF have access to a job resource center in which they can research employment opportunities in the D.C. area. But there is a limit to how much such resources can help D.C. women who are in federal prisons located far from the District. D.C. employers do not travel to Hazelton SFF (much less to more distant federal prisons) to connect with the D.C. women there.

CSOSA attempts to provide a range of practical information for D.C. residents who are nearing release from federal prison. CSOSA staff organize quarterly Community Resource Days, which provide a forum for conveying extensive information about D.C. resources for returning citizens. This CSOSA program, provided through video hook-up with the prisons, includes presentations by representatives of a number of D.C. agencies and organizations, who provide information on a range of community resources and employment opportunities for returning citizens. In addition, written materials describing services offered by the agencies and organizations and a DVD containing the oral presentations are sent to federal facilities housing D.C. Code offenders.

A staff member from the Mayor's Office of Returning Citizen Affairs occasionally visits the Hazelton SFF to meet with women there. However, ORCA has a very small staff, limiting that agency's ability to visit all facilities housing D.C. men and women or to visit Hazelton SFF on a regular basis. Moreover, there is a limit to what D.C. women can do with information CSOSA and ORCA provide until they are back in the District and able to make more direct contacts.

Halfway houses are intended to play a key role in preparing individuals for release and reentry into the community. According to BOP, these facilities help individuals rebuild their ties to the community, providing "a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs and services."<sup>325</sup> Among other things, halfway houses are

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<sup>325</sup> Fed. Bureau of Prisons, *Completing the Transition*, [https://www.bop.gov/about/facilities/residential\\_reentry\\_management\\_centers.jsp](https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp) (last visited Mar. 24, 2016).

to assist returning citizens with housing, employment, substance abuse treatment, and medical and mental health care.<sup>326</sup>

A number of D.C. women will move from a federal prison (or occasionally from CTF) to The Fairview, the single halfway house for women located in the District. Women released from federal prison may spend up to six months at The Fairview, where they have some limited freedom to move around the city to attend employment interviews or other appointments. During this period women have an opportunity to reacclimatize to life in the community and to take steps to obtain housing, employment, and medical treatment and otherwise connect with community resources. The Fairview staff provides life skills training, assists with efforts to find housing and employment, and provides referrals for mental health and other medical services. The Fairview Resident Handbook lists the following programs: Life Skills groups, Substance Abuse, Job Readiness, Money Management, Women Issues, Conflict Resolution, Self Esteem, Transitioning to Work, Wellness, Stress Management, and Parenting.<sup>327</sup> Computer classes are available, with access to Internet and email for job searching purposes only.<sup>328</sup>

During a 2013 inspection of The Fairview, the CIC did not hear concerns from residents about services provided there.<sup>329</sup> Based on our discussions with several former residents, however, it appears that some have been dissatisfied with The Fairview staff's efforts to help them obtain employment and otherwise reconnect with the community. For example, one former resident complained that a counselor at The Fairview pressured her to take a low-wage position that would have prevented her from attending GED classes or gaining experience in her preferred (and potentially more lucrative) vocational path.<sup>330</sup> However, another who was generally critical of The Fairview staff, noted that a counselor there offered helpful advice on dealing with the effects of trauma. Because we did not have an opportunity to visit The Fairview, our information about its operations is limited.

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<sup>326</sup> *Id.*

<sup>327</sup> D.C. Dep't of Corr., Community Corrections: Resident Handbook (rev. Mar. 2014), at 11-12.

<sup>328</sup> *The Fairview RRC, supra* note 25, at 5.

<sup>329</sup> *See id.* at 1.

<sup>330</sup> According to the report of the Colson Task Force, this type of experience is not uncommon. The report explains that halfway houses have a financial incentive to place residents in paying positions quickly, since the halfway house receives a portion of the resident's wages. *See Colson Task Force Report, supra* note 111, at 53.

## VII. Recommendations

### A. Connecting to the Community and Family

#### **Recommendation 1: House More D.C. Women in or Near the District**

D.C. women housed in federal prisons far from the District are severely disadvantaged due to the distance from their children and other family members and from community support, as well as difficulty accessing D.C. reentry resources and employment from a distance. BOP officials should find ways to house more D.C. women (particularly those with minor children) in or close to the District.

- BOP should amend its memorandum of understanding with DCDOC and its contract with CCA so that more D.C. women serving felony sentences can be housed at CTF. The maximum sentence length for BOP to designate a woman to serve her felony sentence at CTF should be extended to 24 months.
- The District and BOP officials should investigate whether the District could acquire and repurpose a building in the D.C. area to be used to house D.C. women with minor children who would otherwise be transferred to a federal prison, with DCDOC operating the facility under a contract with BOP.
- BOP should release more D.C. women to a halfway house in or near the District in time to allow a full 12-month stay at the halfway house or other D.C. location (such as a recovery program). BOP should conduct six-month reviews for D.C. women, similar to the reviews it conducted when the Danbury female facility was scheduled to close, to determine whether some of the women could be returned to a community setting in or near the District earlier than their currently scheduled time.
- BOP should make greater efforts to place all D.C. women not housed in the immediate D.C. area at Hazelton SFF or Alderson FPC, in order to maximize the extent to which the women can receive D.C.-based services, such as subsidized family bus trips and visits from D.C.-based service providers and case managers. There should be a strong presumption against housing D.C. women more than 300 miles from the District.
- BOP should minimize the amount of time it houses D.C. women in state or local jails or private contract jail facilities outside the District. D.C. women returned to BOP custody due to a release violation (e.g., a violation of halfway house rules) should be either housed at CTF, with access to reentry services, or returned to the federal prison from which they were released.
- Any D.C. women who are housed in a contract facility should be included in the BOP locator system so family and friends can learn where they are. Where possible, BOP should seek to reduce the number of women who are “in transit” and thus are without access to reentry services.

## **Recommendation 2: Make It Easier to Maintain Contact with Family**

DCDOC, CCA, CSOSA, and BOP should take steps to make it easier for women with minor children to contact their children and for all women to contact other family, friends and community resources on a regular basis.

- Visiting hours at CTF and BOP facilities should be expanded to include both Saturday and Sunday, at least two weekdays, and federal holidays (at least six hours each day).

- Although electronic communication cannot replace in-person visitation, the capability to contact family and friends by email should be made available at all facilities, with appropriate security measures similar to those used in federal prisons. DCDOC and CCA should take steps to add this capability at CTF. Video visitation capability should be available at least four times a month and at a range of times at all facilities where D.C. women are housed, including CTF.

- The District and BOP should subsidize the reasonable use of phones, email, and videoconferencing by women who lack the funds required to use these tools.

- BOP should expand programs that connect incarcerated mothers with their children. Facilities housing women should hold more Family Days and mother-child events (at least four each year). CTF should hold several family-focused events.

- BOP and CSOSA should work together to add parent-child camps for mothers at Hazelton SFF.

- The District and CSOSA should subsidize additional bus transportation and other expenses associated with family trips to Hazelton SFF and other BOP facilities within 300 miles of the District that house D.C. women.

## **Recommendation 3: Expand Opportunities for Mothers to Live with Their Newborns**

- BOP should extend to at least six months the length of time a mother may stay with her newborn under the Mothers and Infants Together (MINT) program, and should expand community-based centers to ensure that this is an option for all women who deliver a child while housed in a BOP facility. BOP should continue to exercise flexibility in allowing mothers to stay with their newborns for a longer period of time if resources permit.

- DCDOC and CCA should introduce a program (similar to the BOP MINT program) to allow mothers at CTF to live with their newborns in a residential facility for at least six months.

- BOP and DCDOC should develop pilot programs for prison nurseries or other methods of increasing contact between women and their children, building on successful models adopted by state and local jurisdictions. For example, BOP and

DCDOC should consider allowing eligible mothers to keep their newborns with them until release and provide them with a separate unit and educational programs, similar to Washington State's Residential Parenting Program. BOP and DCDOC should also consider creating programs similar to New York's Drew House program by allowing mothers convicted of non-violent offenses to serve their sentences in a private apartment with their children.

#### **Recommendation 4: Take Steps to Protect the Rights of Mothers Who Can Show They Are Fit Parents**

- The D.C. Pretrial Services Agency, DCDOC, and BOP should ensure that mothers who are incarcerated are aware that a custodial Power of Attorney document (as opposed to a judicial custody or guardianship order) may be used to arrange care of a child during the mother's incarceration and that social services agency personnel recognize that this Power of Attorney document is sufficient to permit an authorized caregiver to obtain benefits for the child.
- The D.C. Council should amend D.C. Code § 6-2304 to extend the right to counsel for parents in custody and guardianship proceedings.
- Congress should amend the Adoption and Safe Families Act (ASFA) to allow courts to consider the fitness of an incarcerated parent and the length of time remaining before the parent's release, as well as time the child has spent in foster care, as factors relevant to whether parental rights should be terminated during a parent's incarceration.

#### **B. Women with Mental Health Problems and Substance Use Disorder**

#### **Recommendation 5: Expand Eligibility for and Availability of Diversion Programs**

- The current eligibility criteria for the D.C. Superior Court Drug Court and Mental Health Community Court diversion programs operate to exclude many of those who need them most. The U.S. Attorney's Office should substantially reduce the number of offenses that are disqualifying and relax the criminal history disqualifications so that most or all offenders with substance abuse or mental health problems will have the opportunity to participate in those programs.
- The Pretrial Services Agency and nonprofits in the District should work together to reduce practical barriers for women who wish to participate in diversion programs or other pretrial treatment services, for example, by expanding residential placements available to women with children and otherwise working to address child care and/or financial resources needs of these women.

## **Recommendation 6: Expand Access to Drug Treatment Programs**

- BOP should ensure that women have prompt access to the Residential Drug Abuse Program. Where necessary, the size and staffing of RDAP should be increased to ensure that all women who want treatment have immediate access to it.
- BOP should consider providing women with access to medication-assisted therapy for substance abuse. We do not suggest that everyone should have access to medication-assisted treatment on demand, but we question the wisdom of a blanket policy that denies all individuals access to a potentially effective treatment tool even when a qualified health care professional concludes that it is clinically appropriate. (It appears that BOP may currently be reconsidering this policy.)
- DCDOC, CCA, and the D.C. Department of Behavioral Health should expand collaboration with and financial support for organizations that provide residential substance abuse recovery programs to returning citizens. For example, N Street Village’s residential recovery program helps women who were housed at CTF build on progress they have made while incarcerated and ultimately establish a stable living situation.

## **Recommendation 7: Expand Access to Mental Health Treatment**

- The great majority of incarcerated women have experienced serious trauma over the course of their lives. Although outside organizations provide some counseling, women in CTF have not had access to an intensive, formal program to address past trauma. DCDOC should continue with plans to offer a treatment program at CTF for women who have suffered from trauma and consider ways to make the program more robust as experience with it is gained.
- The District should allocate additional funds to non-profit organizations (such as Voices for a Second Chance) that provide life skills group counseling at CTF.
- DCDOC plans to offer “step-down” beds for men at D.C. Jail transitioning from an acute care bed to the general population, but there are no “step-down” beds at CTF. DCDOC and CCA should consider establishing a “step-down” unit for women in CTF who are transitioning from acute mental health care to the general population.
- DCDOC, CCA, and DBH should work to better connect women housed at CTF to core service agencies in DBH’s Mental Health Rehabilitation Services program, including expanding the number of core service agencies that DBH pays to work with individuals while they are in CTF and working to improve the extent to which DBH employees are able to successfully connect women in CTF to core service agencies.
- DBH should develop and implement a formal system through which it works with BOP to identify D.C. women with upcoming release dates at Hazelton SFF

and other federal facilities and, where appropriate, connect those women to core service agencies prior to their release.

### **C. Education and Vocational Training**

#### **Recommendation 8: Provide Additional Resources for Educational and Job Training Programs**

- The GED credential is important to a woman's ability to gain employment after release, and earning it can provide a sense of accomplishment and promise for the future that will steer women away from re-offending. CTF and BOP facilities should offer additional incentives and encouragement (either financial rewards or extra privileges or both) for women to obtain the GED credential while incarcerated.
- BOP should allocate more resources to expanding GED instruction and job training in order to reduce waiting times for entry into these programs.
- BOP should work with colleges and universities to expand the availability of Inside Out classes for women at BOP facilities.
- Congress should repeal the statutory provision that makes students who are incarcerated ineligible to receive Pell Grants.
- Job training options at Hazelton SFF should be expanded, with more focus on technology, business skills, and other fields that correspond to demand for employees in the D.C. area.
- BOP should offer several job training programs that do not require a high school diploma or GED credential as a prerequisite, in order to accommodate those who have devoted more than 300 hours to GED classes and otherwise made good faith efforts to earn the GED credential, but have been unable to do so.
- UNICOR jobs could provide women with much-needed experience, and they pay better than other jobs available at federal prisons. BOP should work with Federal Prison Industries to ensure that UNICOR factories are located at more female facilities, including Hazelton SFF (and any other facility at which a significant number of D.C. women are housed), and that women can gain access to UNICOR positions without lengthy waiting times.
- Congress should refrain from enacting legislation that would have the effect of reducing UNICOR operations. Instead, Congress should find ways to encourage expansion of UNICOR, so that more individuals at federal correctional facilities (including D.C. women housed in federal prisons) will have a meaningful opportunity to participate in that program.
- The Mayor and the D.C. Department of Employment Services should expand the work readiness program to include training for CTF women to the extent

existing programs do not already provide women with the sort of training offered to men at the D.C. Jail.

#### **D. Sexual Abuse**

##### **Recommendation 9: Closely Monitor Compliance with PREA Standards and Other Policies Designed to Prevent Sexual Abuse and Harassment**

- While it appears that policies and practices have improved, past experience shows that good policies are not enough to eliminate sexual abuse or harassment of incarcerated D.C. women. Continued vigilance and prompt responses to reports of misconduct are needed. DCDOC, CCA, and BOP should review their policies periodically to ensure that they are effective and that staff understand conduct standards, monitor staff conduct closely to ensure that the policies are preventing sexual abuse and harassment, and impose sanctions promptly where misconduct is found.

- A PREA audit of Carswell FMC should occur soon. If an audit has occurred already, the report should be posted on the Carswell FMC website.

- A PREA audit of CTF should occur in June 2016 as scheduled, and any appropriate follow-up action should be completed promptly.

#### **E. Resources**

##### **Recommendation 10: Increase Funding for Certain Agencies or Agency Components**

- BOP should at least double the resources allocated to its Female Offender Branch, allowing that branch to increase staff and build on its positive progress to date in advocating for gender-responsive programs for women in BOP facilities, monitoring the experience of women in these facilities, and developing other initiatives that will benefit women.

- The District should allocate more funds to the Corrections Information Council, and the U.S. Department of Justice should provide federal funding for the CIC. Among other things, additional resources are needed to allow CIC to eliminate the backlog of inspections and inspection reports called for by its federal and D.C. statutory mandates, to conduct in-depth studies of various issues affecting incarcerated women, and to hire experts to assist with its investigation of subjects such as mental health services.

- Women who return to the community have a wide range of needs and are likely to be overwhelmed with the number of obligations they must address when they return. The District should allocate additional funds to the Mayor's Office for Returning Citizen Affairs to enable that office to better coordinate services needed by returning citizens. The ORCA staff should be expanded so the office can perform more effective

outreach to D.C. women prior to their release and better identify and coordinate the services the women will need once they return to the District.

## **F. Transparency Concerns**

### **Recommendation 11: Increase Public Access to Information**

We had significant difficulty in developing information for this report, similar to our experience in preparing our 2015 report on conditions of confinement in the District. In the final pages of that report, we described the barriers we encountered in obtaining information, especially about operation of the Correctional Treatment Facility.

Several federal and D.C. agencies or individuals were particularly cooperative and helpful to our work on this report. This includes CSOSA (particularly Cedric Hendricks and Marianne Staroscik), the D.C. Sentencing and Criminal Code Revision Commission (particularly LaToya Wesley), the Corrections Information Council (particularly Cara Campani and Michelle Bonner), the D.C. Public Defender Service (particularly Betsy Biben), and the D.C. Pretrial Services Agency (Cliff Keenan). Director Thomas Faust, Sylvia Lane, and Regina Gilmore of DCDOC and the wardens at CTF were ultimately very helpful. Dr. Alix McLearen, Administrator of BOP's Female Offender Branch, was very generous with her time and assistance and readily answered many questions for us.

However, we encountered some obstacles and delays in our efforts to obtain information about CTF, certain BOP policies and practices, the number of D.C. women housed in each BOP facility, and The Fairview halfway house. Among other things, we had difficulty setting up tours of CTF, BOP's Hazelton Secure Female Facility, and The Fairview.

It took several months (and some assistance from the National Association of Women Judges) to set up the visit to CTF, but we ultimately did tour the facility. The CTF Wardens, other CCA staff, and the DCDOC representative who accompanied us on this tour (Ms. Gilmore) were gracious and helpful. However, we were told in advance that we could not speak with any of the women housed at CTF during our visit, and we were initially told that we could not ask about programs during the visit (although we were in fact able to obtain program information in the course of the tour and during a follow-up call).

We were also able to tour Hazelton SFF, but it took several months to set up the visit and the medical staff there were unavailable the day of our visit. The SFF staff who guided us were gracious and helpful, and the SFF Administrator later responded to some follow-up questions. Despite our repeated requests over the course of several months, the BOP Health Services Division declined to make anyone available to speak with us about the medical care offered in BOP facilities, although BOP did provide limited answers to some of our written questions on this issue.

We tried several times to set up a tour of The Fairview halfway house, but Reynolds & Associates was not able to accommodate us.

We were particularly frustrated at BOP's failure to provide either current or historical information about how many D.C. women were housed at each BOP facility and to explain the housing arrangements for D.C. women who are "in transit." We understand that BOP provides this information to CSOSA staff, but BOP was unwilling to send the information to us directly or to authorize CSOSA to provide it to us. We had to rely on high level monthly data sheets CSOSA places on its website and BOP's provision of high level distance information and numbers that were not facility-specific.

Early in the project, we sent Freedom of Information Act requests to BOP, DCDOC, and the Metropolitan Police Department. DCDOC provided a limited amount of material, primarily its annual Facts & Figures documents for the past five years, one Program Statement, and a Resident Handbook for The Fairview. Despite several follow-up contacts, we never received any response to the FOIA request we had sent to the BOP. MPD referred to another agency our request for information on calls the Department had received from CTF in recent periods, and we never received any useful information.

We provided drafts of this report to DCDOC and BOP for their review, and this led these agencies to provide some additional information.

It should not be so challenging to obtain information on an issue of broad public interest and concern like this one. DCDOC and BOP leadership and the contractors responsible for operating correctional facilities for them should adopt a more transparent approach to information about the facilities and their operations.