

The Coalition for Women Prisoners

2008 PROPOSALS FOR REFORM

- 1. Allocate at least \$1.5 million for programs that help keep incarcerated mothers and their children connected, and enact A.8465-A, legislation that would give foster care agencies discretion to make appropriate and fair determinations about termination of parental rights when a parent is incarcerated.**
- 2. Require New York State to file and process Medicaid applications for incarcerated people who entered prison without Medicaid coverage already in place.**
- 3. Enact A.3787, legislation that would require the New York State Department of Health to oversee and monitor HIV and Hepatitis C care in prison.**
- 4. Enact A.6150/S.3164, legislation that would allow domestic violence survivors who are incarcerated for committing violent crimes as a result of abuse to be eligible for merit time and early release.**
- 5. Enact A.4342, legislation that would repeal New York's Rockefeller Drug Laws, and increase funding for community-based drug treatment and other alternative to incarceration programs for women.**

What is the Coalition for Women Prisoners?

The Coalition for Women Prisoners is a statewide alliance of more than 1,000 individuals from over 100 organizations dedicated to making the criminal justice system more responsive to the needs and rights of women and their families.

Created in 1994, the Coalition is coordinated by the Women in Prison Project of the Correctional Association of New York. Members include formerly incarcerated women and men, social service providers, academics, attorneys, city and state agency staff, women's and human rights organizations, faith and community leaders, and concerned individuals.

1

Allocate at least \$1.5 million for programs that help keep incarcerated mothers and their children connected, and enact A.8465-A, legislation that would give foster care agencies discretion to make appropriate and fair determinations about termination of parental rights when a parent is incarcerated.

A.8465-A is sponsored by Assemblymember Jeffrion Aubry, Chair, Committee on Corrections

Nationally, more than 8.7 million children have parents either in prison or jail, or on probation or parole. In New York alone, more than 80,800 children have a parent in state prison. About 72% of women in New York's prisons are mothers. Over 5,180 children have a mother in state prison.

Even though a majority of children with mothers in state facilities live in the New York City area, 41% of New York's women inmates are housed at Albion Correctional Facility – an eight-hour bus ride from Manhattan.

“Children need to see their mother. Even if it's painful, you need to have the connection. ... I needed them to know that mommy didn't abandon them. Mommy made a mistake and I am coming back for you and I'm fighting for you.”

“It's very important for kids to know what you are doing and where you are. ... When you start on the inside, you build your relationship ahead of time – before you come out.”

The incarceration of a parent – especially one who is a primary caregiver, a role most mothers in prison played before their arrest – is traumatic for children and parents alike. Without appropriate services and support, children of incarcerated parents are more likely to have difficulties in school, experience emotional troubles, and become involved in the criminal justice system themselves.

Regular, quality visits can lessen the harsh effects of incarceration on families. They help children process a parent's absence and maintain healthy emotional development, ease family reunification after prison, and decrease the likelihood that a mother will return to prison.

Although New York State has a handful of excellent programs that facilitate visits between incarcerated mothers and their children, these programs do not have sufficient resources to provide services for many children of incarcerated parents who need them. In addition, Albion is currently the only women's prison to which the State Department of Correctional Services (DOCS) sends free buses from New York City.

New York State should allocate at least \$1.5 million to programs that facilitate mother-child prison visits and provide services that support family bonding and reunification after incarceration.

While visiting services are important for all families, they are particularly critical for incarcerated parents with children in foster care who are at serious and disproportionate risk of having their parental rights terminated and being separated from their children forever. This situation is largely the result of New York's Adoption and Safe Families Act (ASFA), which almost always requires a foster care agency to file a petition to terminate parental rights if a child has been in foster care for 15 of the last 22 months.

To prevent a termination from being filed, ASFA requires parents to fulfill certain responsibilities within a 15-month period, including maintaining consistent contact with and finding an appropriate non-foster care home for children. ASFA's requirements apply to incarcerated and non-incarcerated parents in the same way, even though it is considerably harder for incarcerated parents to fulfill their legal responsibilities from prison.

Unlike mothers in the community, incarcerated mothers have limited family visiting opportunities; restricted access to telephone and mail services; little to no ability to participate in foster care planning meetings; and difficulty accessing their lawyers and participating meaningfully in Family Court proceedings.

In addition, the median sentence for women in New York's prisons is 36 months.

“I don't want to be adopted, I want to stay with my mother. ... But the agency was pressuring my foster mother. ... They should consider how it would feel to a kid. ... You know your mother is alive, you see her, but you are not able to do anything.”

– A young woman describing her reaction after learning about the possibility of a termination of parental rights proceeding against her incarcerated mother

More incarcerated mothers than incarcerated fathers report having children who live in foster care homes or agencies. As a result, ASFA likely has a disproportionate impact on mothers in prison.

ASFA does have an exception which allows foster care agencies to refrain from filing termination papers if they document a “compelling reason” why termination

is not in the “best interest of the child.” This exception is very difficult for agencies to employ where a parent is in prison because there are often few opportunities for caseworkers to develop a relationship with an incarcerated parent, to learn about an incarcerated parent’s effort to contact and plan for her child, or to see evidence of a strong bond between an incarcerated parent and her child.

Stigma against incarcerated parents and the challenges of navigating the correctional system also provide incentives for caseworkers to file for termination, rather than allow the family more time to work toward reunification.

Permanently severing the parent-child relationship can add considerably to the trauma children of incarcerated parents experience. Some children would rather reunify with the mother that they know and love when she is released – even if that means remaining in foster care for a longer period of time. Our child welfare system’s goals of serving children’s best interests are undermined by the inflexible way that ASFA is implemented in circumstances where a parent is in prison.

New York State should enact **A.8465-A**, legislation which removes ASFA’s 15-month filing requirement in cases

where the incarceration of a parent is a “significant factor” in why the child has been placed in foster care for 15 of the last 22 months.

A.8465-A would also require foster care permanency plans to reflect the special needs of criminal justice-involved families; expand the ways in which incarcerated parents can participate in important case planning meetings about their children; and instruct foster care agencies to provide incarcerated parents with service referral information.

A.8465-A encourages foster care agencies and Family Courts to recognize the unique and difficult circumstances of incarcerated parents and to make individualized determinations about termination of parental rights that are not inappropriately driven by ASFA’s arbitrary timelines.

By making these amendments, **A.8465-A** provides incarcerated parents and their children a more appropriate and fair opportunity to work toward reunification and safe alternative permanency options that do not involve severing family bonds forever. **A.8465-A** would also save money that the state would otherwise spend on costly and unnecessary termination proceedings.

2

Require New York State to file and process Medicaid applications for incarcerated people who entered prison without Medicaid coverage already in place.

During the summer of 2007, New York enacted legislation requiring the state to suspend, instead of terminate, Medicaid for people entering prison and jail with prior Medicaid enrollment.

This suspension law is a significant step forward. It does not, however, address the whole problem: only an estimated 20 to 25% of incarcerated individuals in New York had Medicaid at the time of their incarceration. Individuals who were not enrolled before prison fall outside the bounds of the suspension law and still must wait until their release to begin the application process, which can take 45 to 90 days.

Incarcerated individuals have disproportionate rates of serious and chronic illnesses. The need for access to health coverage is particularly urgent for incarcerated women, who have specific needs related to their reproductive and gynecological health and who suffer from illnesses at rates significantly higher than both men in prison and individuals in the general public.

About 12% of women in New York’s prisons are HIV positive; more than 22% have Hepatitis C; many suffer from high blood pressure, asthma, diabetes, and epilepsy; more than 88% report having a substance abuse or alcohol problem before arrest; many have sexually transmitted diseases; and, 42% have been diagnosed with a mental illness.

Martha had recurrent breast cancer and had received treatment during her incarceration.

She was released a few days before her scheduled reconstructive breast surgery.

Martha also developed lymphedema, a complication of her mastectomy, which required medical treatment. As a result of the delay in processing her Medicaid application after release, Martha had to wait six months to get the treatment and reconstructive surgery she needed.

The serious health problems individuals face during incarceration persist when they leave prison. In addition, because formerly incarcerated people without immediate access to health insurance may delay seeking care and filling expensive prescriptions, they are more likely to experience a deterioration of their health and to use emergency medical services, which carries a hefty price tag for the state. An emergency hospital visit can cost three to four times more than a regular doctor visit.

Access to health coverage also decreases the likelihood that individuals released from prison will recidivate. A recent *American Journal of Public Health* study confirmed that access to post-release health insurance is “associated with lower re-arrest and drug use.”

One contributing factor may be that substance abuse and other rehabilitative programs often require health insurance. Without a Medicaid card, formerly incarcerated individuals may be denied access to these critical services – which can make or break a successful transition back to the community. That participation in such programs may also be a condition of parole only intensifies the urgency of the situation.

In a recent letter, the Association of State Correctional Administrators – a national organization representing corrections directors across the U.S. – stated that the “investment [in correctional health care] may be wasted, and additional costs incurred by community health systems, if people lose access to services needed to stay in recovery upon release.” New York spends more than \$320 million on health care in state prisons each year.

Requiring DOCS, the Department of Health, and the Division of Parole to build on New York’s suspension policy and facilitate Medicaid enrollment would promote public health, save significant funds on emergency care, and help

ensure that people returning to the community receive timely access to the vital health care services they need.

Immediate access to Medicaid would also enhance formerly incarcerated individuals’ ability to make a successful, crime-free transition to their communities.

At the time of her release, Arlene was already on the liver transplant list for end-stage liver disease as a result of her Hepatitis C infection. Once Arlene was released, she was no longer a transplant candidate and had to find a new doctor and hospital to be re-evaluated for an operation. During this process Arlene was hospitalized several times and her condition worsened. It took months for Arlene’s Medicaid to be activated. Finally, after five months, Arlene was transferred to Mt. Sinai Hospital where she received the transplant that she desperately needed.

3 Enact A.3787, legislation that would require the New York State Department of Health to oversee and monitor HIV and Hepatitis C care in prison.

A.3787 is sponsored by Assemblymember Richard Gottfried, Chair, Committee on Health

Although the New York State Department of Health (DOH) monitors hospitals in the community, it does not oversee medical services in New York’s prisons. In fact, DOCS health services are the only public health services in the entire state that are exempt from DOH oversight.

Medical providers working in correctional facilities are accountable only to DOCS itself. This situation persists even though DOCS medical staff have, in effect, the largest single caseload of HIV positive individuals in the state – and the country.

DOCS has taken steps in recent years to improve its care for incarcerated individuals living with HIV and Hepatitis C (HCV). Notwithstanding this progress, serious problems at many facilities persist, including: extensive wait times to see outside specialists; long delays in transfers to hospitals for critical medical procedures; delays in receiving test results and medication; insufficient continuity in primary care providers; and, lack of HIV and HCV certification among prison medical providers charged with caring for HCV and HIV positive inmates.

Inadequate medical care has particularly devastating consequences for people living with HIV and HCV –

illnesses that require constant monitoring and evaluation, regular treatment by specialists, and adherence to complicated medication regimens.

The need for access to quality HIV and HCV treatment is especially urgent for incarcerated women. The rate of HIV infection among women in prison is double the rate for male inmates and 80 times higher than the rate in the general public. The rate of Hepatitis C infection among women in prison is almost double the rate for male inmates and almost 14 times higher than the rate for people in the general public. Additionally, women with HIV and HCV can experience gender-specific symptoms, including a deterioration of their gynecological health.

To ensure quality care for incarcerated individuals living with HIV and HCV and to help eliminate the inconsistency in treatment at different facilities, New York State should enact **A.3787**, legislation that requires DOH to monitor HIV and HCV care in prisons across the state.

Specifically, **A.3787** would: (1) direct DOH to conduct an annual review of HIV and HCV care in state correctional facilities; (2) authorize DOH to require DOCS to change policies that do not meet community standards;

(3) enable DOH to monitor DOCS to ensure that recommended improvements are implemented; and, (4) allow members of the public to access DOH's annual review reports.

A.3787 would also build on the working relationship already established between DOCS and DOH. For example, DOH's AIDS Institute contracts with prisons throughout the state to provide HIV counseling, testing and support services to incarcerated people and has assisted in developing an HIV quality assurance tool for DOCS.

Although this relationship is constructive, it is not enough. To most effectively work toward quality prison health services, DOH must engage in monitoring and oversight activities in addition to providing support services and technical assistance.

Most incarcerated people will eventually return from prison to the community. More than 27,500 people were released from DOCS custody in 2007.

People living with HIV and HCV who receive quality health services in prison are more likely to seek care and continue treatment after release, and are less likely to pass on illnesses to loved ones and other community members.

The lack of quality health care inside prison hinders New York's efforts to effectively improve community health – particularly in poor communities of color, where a majority of incarcerated people come from and return to after prison.

In essence, good prison health care is good public health policy.

By enacting **A.3787** and directing DOH to perform critical oversight activities, New York State can significantly

improve the health of thousands of people in prison living with HIV and HCV, thousands more who are released each year, and still thousands more family and community members across the state.

Rusti was incarcerated during the late 1980s and early 90s. When she first arrived at the prison in upstate New York, she informed the prison doctor about her HIV positive status. The prison doctor was not trained in HIV care and did not send Rusti to an HIV specialist during her entire time at the prison, not even after she had a severe, life-threatening allergic reaction to her HIV medication. After 18 months of problems with her treatment, Rusti and her family convinced prison officials to transfer her to a different facility in Manhattan. The care Rusti received at this prison was significantly better: she was regularly treated by the same prison doctor and she was able to see an HIV specialist outside the facility when she needed to. The significant variation in the quality of care at different prisons continues to this day.

4 Enact A.6150/S.3164, legislation that would allow domestic violence survivors who are incarcerated for committing violent crimes as a result of abuse to be eligible for merit time and early release.

A.6150 /S.3164 is sponsored by Assemblymember Helene Weinstein, Chair, Judiciary Committee & Senator Dale Volker, Chair, Codes Committee

Domestic violence and women's pathways to prison are inextricably linked: an estimated 82% of incarcerated women were severely physically and/or sexually abused as children and 75% suffered severe physical violence by an intimate partner during adulthood.

Nine out of ten women in prison were physically or sexually abused in their lifetimes and more than 37% report having been raped at some point before their incarceration. 93% of women convicted of killing an intimate partner were abused by an intimate partner in the past.

The cumulative effects of repeated abuse can have a terrible influence on the perceptions and behavior of survivors of domestic violence. An abused person may feel

that she is in imminent danger even when a batterer is not actively attacking her, or may feel compelled to comply with the demands of an abuser or to follow an abuser's actions, even if it goes against her better judgment.

Many incarcerated survivors have been convicted of violent crimes – either because they defended themselves against their batterers or because they committed other violent crimes (e.g. robbery, burglary, criminal possession of a weapon) as a result of the abuse they suffered. Even though these crimes stem from repeated abuse, battered women convicted of violent offenses are often sent to prison for long periods of time with little chance to earn early release.

“The question that everyone asks me is ‘why didn’t you leave?’ Answering this question has been part of my therapy for approximately 11 of my 14 years in prison.

Some of the answers I have come to are fear, desperation, addiction, rejection, and sickness. I felt he would change. I felt that I could change him. Since my incarceration I have done nothing but strive to rehabilitate myself. ... I’ve received my Associates Degree and I’m on my way to receiving my Bachelor’s Degree. ... I have taken responsibility for my actions and I am now a changed person.”

Merit time allows DOCS to grant early release to incarcerated people who complete certain activities, such as obtaining a GED or a drug treatment or vocational program certificate. Currently, people convicted of violent offenses, including survivors convicted of violent crimes as a result of abuse, are not eligible for merit time.

Under **A.6150/S.3164**, if a person proves: (1) that she was subjected to substantial physical, sexual, or psychological abuse; (2) that the abuse was inflicted by a member of her family or household; and (3) that the abuse was a “substantial factor” in causing her to commit the crime, she will be eligible to earn up to one-third off her sentence. Final decisions about whether to grant merit time eligibility to survivors would be made, as they are currently, on a case-by-case basis at the discretion of the DOCS Commissioner.

In 2002, New York passed legislation that restored domestic violence survivors’ eligibility for temporary release programs. **A.6150/S.3164** builds on the temporary release exception and on a growing understanding of the devastating effects of repeated abuse and the unique situation of incarcerated women who have experienced domestic violence.

Incarcerated survivors have been punished twice – first when society failed to protect them and then again when they were sent to prison. Survivors who commit crimes as a result of abuse generally should not be incarcerated. If they are, they certainly should not have to serve long sentences.

Additionally, women incarcerated for violent crimes have extremely low rates of recidivism, often do not have prior criminal records, and rarely have a history of violence other than the offense for which they are incarcerated.

Of the 38 women convicted of murder and released between 1985 and 2003, not a single one returned to prison for a new crime within a 36-month period of release – a zero percent recidivism rate.

For too long, society has turned a blind eye to the particular circumstances of domestic violence survivors serving time. **A.6150/S.3164** would help reverse this course by allowing survivors in prison to more quickly begin the important journey of returning to their communities and children, rebuilding their lives, and recovering from abuse.

“I am 42 years old and the mother of two children. In 1997, I was convicted of murder in the second degree. At my trial, none of the information about my abuse was presented to the judge or jury. I was convicted and sentenced to 25 years in prison. I am not a violent person but my actions contributed to a violent crime. Since I have been incarcerated, I have maintained an excellent disciplinary record and have completed all the programs that are available. ... [M]erit time will contribute to an early release and give women the opportunity to resume their roles as productive mothers, sisters, aunts and citizens in society.”

5 Enact A.4342, legislation that would repeal New York’s Rockefeller Drug Laws, and increase funding for community-based drug treatment and other alternative to incarceration programs for women.

A.4342 is sponsored by Assemblymember Jeffrion Aubry, Chair, Committee on Corrections

The Rockefeller Drug Laws are a primary reason for the explosion in the number of incarcerated women in New York State over the last 30 years. Since the drug laws were enacted in 1973, the number of women in prison for drug crimes has increased by 787%.

About one-third of women in New York’s prisons are serving time for drug offenses. Most female drug offenders are sent to prison for minor drug crimes: in 2007, almost 38% were sent to prison for B-level drug crimes and nearly 60% were sent to prison for one of the three lowest categories of drug offenses (C, D or E offenses).

More than 88% of women in New York State prisons report having a substance abuse or alcohol problem before their arrest.

Just under 78% of women incarcerated for drug offenses are African American or Latina, even though studies show that the majority of people who use and sell drugs are white. Many women drug offenders are from a handful of low-income neighborhoods in New York City – communities where the state focuses a disproportionate amount of its drug law enforcement efforts.

Modifications to the drug laws in 2004 and 2005 reduced the length of some mandatory sentences; made all sentences for drug offenses determinate (flat, e.g. 10 years); increased the amount of narcotics that an individual must possess in order to trigger a particular charge; and, increased the amount of merit time certain incarcerated drug offenders can earn. These changes are a small step in the right direction.

Even with these changes, however, a judge still does not have authority to divert offenders convicted under the drug laws to alternative to incarceration programs (ATIs), including drug treatment.

Additionally, the 2004–2005 reforms allow only the two most serious categories of drug offenders (AI and AII) to apply for re-sentencing. Because there are a very small number of women in prison for AI and AII drug crimes, the recent amendments have provided particularly limited relief for female drug offenders.

Of the 231 AI drug offenders re-sentenced and released as of December 2007, only six were women; of the 161 AII drug offenders re-sentenced and released, only 11 were women.

New York State should enact **A.4342**, legislation that would: (1) restore judicial discretion and enable judges to divert individuals convicted of drug crimes to community-based treatment programs; (2) allow all categories of incarcerated drug offenders to petition the courts to review their sentences; and, (3) shorten sentence lengths for drug offenses.

New York State should also allocate additional funds for community-based drug treatment and other ATIs suited to the specific needs of women and their children. Studies and experience have proven that drug treatment is far more effective than imprisonment in reducing drug-related crime, fighting addiction, and preparing participants for a smooth transition back to the community.

Drug treatment also saves money: it costs almost \$37,000 to incarcerate one person in a New York State prison

for one year, but only about \$20,000 for inpatient and \$4,300–7,500 for outpatient drug treatment. Neither the 2004 nor the 2005 reforms to the Rockefeller Drug Laws increased funding for community-based drug treatment programs.

Women with substance abuse problems have specific needs: almost 62% of women admitted to treatment programs certified by the State Office of Alcoholism and Substance Abuse Services (OASAS) in 2006 either had children or were pregnant at the time of their admission.

The 2004–2005 changes to the Rockefeller Drug Laws have done nothing to stem the flow of women and men being incarcerated for drug crimes. More people were sent to state prison for drug offenses in 2007 (6,149) than in 2006 (6,039), 2005 (5,835) or 2004 (5,657).

In addition, many women drug offenders have histories of domestic abuse and trauma. Because women's addiction is often tied to their histories of abuse, treatment methods that are not women-centered (such as confrontational group sessions), can reignite past trauma and have harmful consequences.

New York has a small number of women-only treatment programs and programs that allow children. In 2006, less than 6% of the total number of OASAS-certified drug treatment programs had a women-only component and 2.5% provided residential care for both parents and children.

Any increased resources for drug treatment and ATIs must include funds for women-only programs and programs where mothers can live with their children. Studies show higher success rates for women who participate in gender-specific programming that allows them to explore personal issues openly and safely, and for mothers in residential programs who can live with their children while receiving treatment.

Without these further reforms, New York's harsh mandatory sentencing laws will continue to have a devastating effect on women – particularly poor women of color – and their communities, and women will continue to be denied the chance to effectively recover from addiction and abuse, reconnect with their children, and become productive members of society.

For more information or sources on statistics used throughout this publication, please contact Women in Prison Project Director Tamar Kraft-Stolar:

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Why focus on incarcerated women?

In 1973, about 380 women were incarcerated in New York State correctional facilities. Today, there are more than 2,800 women in New York's prisons – an increase of almost 635%.

The need to focus on women in prison does not deny the need to address the difficulties that men in prison face. Because women have unique life experiences, occupy different familial and social roles, and commonly enter prison in more dire economic circumstances than men, criminal justice policies and programs must be created to suit women's particular needs and issues.

A gender-specific approach to criminal justice policies and programs would provide critical support for women in prison and create a ripple effect of benefits for children, families, and communities directly affected by incarceration.

Incarcerated Women in New York State: 2008 Statistics

- As of January 2008, 2,821 women were incarcerated in New York's prisons.
- An additional 26,800 women were on parole and probation in New York State.
- Women represent 4.5% of the state's total prison population (62,577).
- About 84% of women sent to New York's prisons in 2007 were convicted of non-violent offenses.
- Almost 82% of women in prison for violent offenses in 2007 were first-time felony offenders.
- One-third of women in prison are serving time for drug offenses; the majority were convicted of one of the three lowest categories of drug crimes.
- Almost 67% of women in prison are African American or Latina.
- 78% of women serving time for a drug offense are women of color.
- Nearly 55% of women in prison are from New York City or its suburbs; most are from a handful of low-income communities.
- About 88% of women in prison report having an alcohol or substance abuse problem before their arrest.
- More than 80% of women in prison were physically or sexually abused as children.
- Nine out of ten women in prison have experienced severe physical and/or sexual abuse in their lifetimes.
- 42% of women in prison have been diagnosed with a serious mental illness.
- More than 72% of women in prison are mothers; most were the primary caretakers of their children before incarceration.
- Over 10,000 children have a mother in prison or jail in New York State.
- Many women in prison were unemployed and living in poverty before arrest.
- Roughly 55% of women in prison do not have a high school diploma.
- About 12% of women in prison are living with HIV.
- More than 22% of women in prison have Hepatitis C.

Notwithstanding the extraordinary challenges facing incarcerated women, if women offenders are given the chance to access resources, confront personal issues, and build skills, they can become healthy individuals and strong role models and advocates for themselves, their families, and their communities.

Instead of spending millions of dollars on incarcerating women – an ineffective and inhumane response to the social ills that drive crime – government officials should increase funding for and the use of community-based, gender-specific alternative to incarceration programs. These programs increase community safety, save taxpayers money, and give women the opportunities and support they need to rebuild their lives and families and to contribute to society in a meaningful way.