

OREGON COMMISSION FOR WOMEN

**Report on Incarcerated Parents in Oregon: Prison Nurseries and Community-Based  
Alternatives, Problematic Foster Care Laws, and Parenting Programs for Incarcerated  
Fathers**

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# Report on Incarcerated Parents in Oregon: Prison Nurseries and Community-Based Alternatives, Problematic Foster Care Laws, and Parenting Programs for Incarcerated Fathers

## Abstract:

This paper discusses three key policy areas regarding incarcerated mothers and fathers in Oregon: prison nurseries and community-based residential parenting programs; foster care laws; and parenting programs for incarcerated fathers. After reviewing background and best practices associated with policy implementation in each area, this paper explores ways in which policymakers, stakeholders and advocates might address each policy area in Oregon, and suggests the formation of a legislative task force to address these issues.

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# I. Introduction

Incarcerated men and incarcerated women are two very different populations, with different experiences on average and different sets of unique needs. In comparison to incarcerated men, “incarcerated women report higher rates of addiction, substance abuse, incidences of child abuse and domestic violence, and higher rates of mental health issues.”<sup>1</sup> In Oregon, incarcerated women are much less likely to be imprisoned for a person-to-person crime, but much more likely to be in need of mental health services, than incarcerated men.<sup>2</sup> Incarcerated women make up only 8.6%<sup>3</sup> of Oregon’s incarcerated population, and are more likely to be released from prison than incarcerated men.<sup>4</sup>

Despite these differences, most incarcerated parents share something in common: parenthood. Although incarcerated women are more likely to be parents than incarcerated fathers, over half of both incarcerated men and women are parents.<sup>5</sup> And yet, parenthood affects incarcerated women and men differently, and each group has access different programs,<sup>6</sup> is affected by laws differently, and may expect different responsibilities upon release. This report strives to elaborate on several key policy areas surrounding incarcerated parenthood that need attention from policymakers, stakeholders, and advocates alike. It will address the different needs of incarcerated mothers and fathers in Oregon, and will further explore how race and ethnicity shapes the experiences of incarcerated parents.

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<sup>1</sup> Katherine L. Eitenmiller, “Bending the Bars for Mothers: How Prison Alternatives Can Build a Stronger Oregon,” *Oregon Law Review*, 92:3 (2014): 761-762.

<sup>2</sup> See Appendix A, p. 15.

<sup>3</sup> [http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

<sup>4</sup> See Appendix A, p. 21.

<sup>5</sup> 75% of Oregon’s incarcerated women are mothers, (Hannah Hoffman, “Jail Birds,” *Willamette Week*, January 18, 2012, accessed July 24, 2015, [http://www.wweek.com/portland/article-18696-jail\\_birds.html](http://www.wweek.com/portland/article-18696-jail_birds.html)) and more than 55% of male inmates are fathers ([http://www.oregon.gov/doc/geco/docs/pdf/legreport\\_bill133.pdf](http://www.oregon.gov/doc/geco/docs/pdf/legreport_bill133.pdf), p. 3).

<sup>6</sup> See Appendix A, pp. 30-31.

# **I. Prison Nurseries and Community-Based Residential Parenting Programs**

This section reviews the literature on and implementation of prison nurseries and community-based alternatives to prison for incarcerated pregnant women, both of which are touted by advocates as beneficial for incarcerated mothers and their newborn children. While Oregon has a few programs for new mothers in prison, it has yet to establish a prison nursery or community-based alternatives like the ones discussed below.

## **Background**

Prison nurseries are separate units in correctional facilities, usually renovated specifically for the needs of new mothers and newborn children, that allow incarcerated mothers who give birth to their children while serving out their sentence to reside with their children. Prison nurseries across the United States vary in how long they let mothers reside with their children, ranging from 30 days to 3 years.<sup>7</sup> All prison nurseries focus on promoting healthy child development and secure attachment formation between infant and mother, and provide a range of services to new mothers, mostly educational training in child development and parenting skills.<sup>8</sup>

To date, nine states (New York, Nebraska, California, Washington, Ohio, Indiana, South Dakota, Illinois, and West Virginia) have established prison nurseries.<sup>9</sup> The states with the highest

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<sup>7</sup> Chandra King Villanueva, Sarah B. From, and Georgia Lerner, "Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives," Institute on Women & Criminal Justice, May 2009, accessed July 17, 2015, [http://www.wpaonline.org/wpaassets/Mothers\\_Infants\\_and\\_Imprisonment\\_2009.pdf](http://www.wpaonline.org/wpaassets/Mothers_Infants_and_Imprisonment_2009.pdf).

<sup>8</sup> Sarah Diamond, "Prison Nursery Programs: Lit Review & Fact Sheet for CT-2012," Connecticut General Assembly, accessed July 6, 2015, <http://www.cga.ct.gov/2013/JUDdata/Tmy/2013HB-06642-R000401-Sarah%20Diamond%20-%20Director,%20Diamond%20Research%20Consulting-TMY.PDF>.

<sup>9</sup> Diamond, "Prison Nursery Programs," 1.

population of female prisoners, Texas, Alabama, and Louisiana<sup>10</sup> do not have prison nurseries. It is estimated that 4 percent of incarcerated women are pregnant at the time of their admittance to prison.<sup>11</sup> Despite this, there are no federal laws which address what should happen to incarcerated mothers' infants who are born in prison.

There are usually strict eligibility criteria for applying and being admitted to prison nursery programs: most programs limit admittance to “women who enter prison pregnant, were convicted of a non-violent crime, and were sentenced to a term of less than 18 to 24 months after the birth of their infant.”<sup>12</sup> Regarding such strict entrance criteria, Goshin and Byrne cite Johnston (1995), who argues that these criteria could disproportionately exclude minority mothers who might be disproportionately policed in terms of child abuse history, and that “crime type should not be used as it often does not reflect a person’s actual crime.”<sup>13</sup> Some of the more inclusive prison nurseries allow mothers sentenced for a violent crime to apply to the program, and these mothers are evaluated individually or receive additional screening.<sup>14</sup> None of the existing prison nursery programs allow mothers who have a history of sexual abuse against a child to apply.<sup>15</sup> Finally, Johnson advocates for programs that do not discriminate against inmates based on the length of their sentences, but rather pay attention to whether or not inmates state that they plan on being primary caregivers upon release.<sup>16</sup>

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<sup>10</sup> Lorie Smith Goshin and Mary Woods Byrne, “Converging Streams of Opportunity for Prison Nursery Programs in the United States,” *J Offender Rehabil*, 48:4 (2009): 271-295, 8.

<sup>11</sup> Diamond, “Prison Nursery Programs,” 1.

<sup>12</sup> Johnston, D., “What works: Children of incarcerated offenders,” in Gabel, K., Johnston, D. ed., *Children of Incarcerated Parents*, New York, Lexington Books, 1995, 206-209 (cited in Goshin and Byrne, “Converging Streams of Opportunity,” 3).

<sup>13</sup> Ibid.

<sup>14</sup> See Table 1 in Goshin and Byrne, “Converging Streams of Opportunity,” 17.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

There have not been many studies done on how prison nurseries in the United States affect developmental outcomes for infants who spend time in them, but the studies that have been conducted reveal positive results, both for the mothers and children who are able to reside in them. One significant study printed in *The Prison Journal* released the finding that, “in spite of high levels of contextual risk in the post-release environment, prison nursery co-residence may confer resilience to anxious/depressed behavior problems in the preschool period.”<sup>17</sup> Other studies document the positive attachment-development that longer-term prison nursery programs help infants to develop, which is essential to healthy developmental outcomes.<sup>18</sup> The alternative, which is early separation because of maternal incarceration, can damage an infant’s ability to securely attach to caregivers, and is “associated with much higher rates of insecure attachment to both the mother and alternate caregiver.”<sup>19</sup>

Another positive outcome of prison nursery programs is the decreased recidivism of their graduates.<sup>20</sup> Most states that have prison nursery programs report significantly lower rates of recidivism among program graduates in comparison to statewide average rates of recidivism.<sup>21</sup> However, some studies reveal findings that emphasize that long-term stable reentry goals are essential to the success and well being of incarcerated mothers and their children. The same study that analyzed resilience conferred by prison nursery programs to preschool children who had spent time in them also emphasized that despite the benefits of prison nurseries, “at certain levels of cumulative risk...security may no longer [be] able to exert a protective influence.”<sup>22</sup>

Programs that emphasize planning for stable, healthy community reentry, such as the prison

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<sup>17</sup> Lorie S. Goshin, Mary W. Byrne, and Barbara Blanchard-Lewis, “Preschool Outcomes of Children Who Lived as Infants in a Prison Nursery,” *The Prison Journal*, 94:2 (2014): 139-158, 150.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Goshin and Byrne, “Converging Streams of Opportunity,” 9.

<sup>21</sup> Ibid.

<sup>22</sup> Goshin et al., “Preschool Outcomes,” 150.

nursery and partnering residential parenting program in Washington that is discussed later, can be looked on as an example.

Community-based residential parenting (CBRP) programs<sup>23</sup> are increasingly promoted alongside prison nursery programs because of the similar outcomes of mother-child bonding, healthy child development, and reduced recidivism they promote, as well as being a fraction of the cost of incarceration and taking place in a “real-world setting.”<sup>24</sup> Some CBRPs are unique in that they allow children who were not born in custody to participate in the program.<sup>25</sup>

CBRPs are utilized throughout various stages of the criminal justice system, “from pre-trial through the duration of a sentence, as a condition of parole or as a requirement for probation.”<sup>26</sup> They are not on prison grounds, and are often operated by non-profits that team up with local corrections departments. They can provide “supervision, housing and social services in a community setting,” and focus on planning for stable community reentry while successfully balancing the responsibilities of parenthood.<sup>27</sup> Advocates for decarceration promote CBRPs as positive therapeutic alternatives to incarceration.

## **Oregon Department of Corrections’ Programs for Incarcerated Pregnant Women**

While the Oregon Department of Corrections (ODOC) provides a range of accommodating programs to inmate mothers of young children,<sup>28</sup> there are no programs such as prison nurseries

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<sup>23</sup> See Appendix II in Villanueva et al., “Mothers, Infants and Imprisonment,” 30.

<sup>24</sup> Villanueva et al., “Mothers, Infants and Imprisonment,” 24.

<sup>25</sup> Ibid, 12.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Eitenmiller, “Bending the Bars for Mothers,” 774.

that allow pregnant inmates to reside in a facility with their infant on a 24-hour basis after childbirth.

A report written by Gary Sims, Administrator of the Office of Diversity and Inclusion at ODOC, details the programs that new mothers have access to at the Coffee Creek Correctional Facility (CCCF).<sup>29</sup> According to his report, in the medium security prison, new mothers get two extra, two-hour long visits a week in addition to normal visiting, during which they can breast feed their babies.<sup>30</sup> In the minimum-security prison, new mothers are eligible to participate in the Early Head Start (EHS) program with their children 0-3 years old.<sup>31</sup> EHS is a federally funded program that helps low-income parents, in this case incarcerated mothers, bond with their children and learn parenting skills. EHS seeks to “enhance the development of very young children, and promote healthy family functioning.”<sup>32</sup> At CCCF, children attend class twice a week with their mothers,<sup>33</sup> and mothers are allowed to meet with their children 2-3 times beyond regular visits.<sup>34</sup>

One of the most well known parenting programs for incarcerated mothers at CCCF is the Family Preservation Project (FPP). The FPP’s goal is to “interrupt the intergenerational cycle of criminal justice involvement, poverty, and addiction.”<sup>35</sup> Informed by best practice literature, the program funds educational opportunities both for mothers and children, and helps mothers plan for a

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<sup>29</sup> Report written by Gary Sims, Administrator of the Office of Diversity and Inclusion, for the Oregon Commission for Women and Oregon Commission on Asian and Pacific Islander Affairs. Excerpts of the report comprise Appendix A of this report.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Melissa Rowland and Alice Watts, “Washington state’s effort to reduce the generational impact on crime,” *Corrections Today*, 69:4 (2007): 34-40, accessed July 21, 2015, <http://www.thefreelibrary.com/Washington+state%27s+effort+to+reduce+the+generational+impact+on+crime.-a0167889362>.

<sup>33</sup> [http://caowash.org/what\\_we\\_do/head-start/head-start.html](http://caowash.org/what_we_do/head-start/head-start.html)

<sup>34</sup> Sims report.

<sup>35</sup> Keva M. Miller, “Family Preservation Project: Coffee Creek Correctional Facility 2010-2013 Evaluation Report,” KM Research and Consulting, June 2014, 2.

stable and successful reentry into their community with treatment for addiction and mental health issues, housing support, and vocational training. One of the most important aspects of the FPP is the focus it places on the parent-child relationship by facilitating bi-monthly, three-hour long therapeutic visits with their children, and promoting letter-writing and phone calls.<sup>36</sup> The program boasts a 0 percent recidivism rate<sup>37</sup> over 5 years of program operation. After being cut in February of 2015, the program was refunded at the end of the Spring 2015 state legislative session.

### **Prison Nursery Program Spotlight: Washington’s Residential Parenting Program & the Eleanor Chase Work Release Facility**

An excellent example of a progressive, regionally familiar prison nursery program is the Residential Parenting Program (RPP) at the Washington Corrections Center for Women (WCCW) in western Washington.<sup>38</sup> Established in 1999, the RPP allows babies who are born during their mothers’ incarceration to remain at the facility for up to three years, longer than any other prison nursery in the United States.<sup>39</sup> The program also has some of the most lenient eligibility criteria in the country, which helps limit barriers to access.<sup>40</sup> Only incarcerated women with a minimum security classification can apply (as with most other prison nurseries), women with any history of sex crimes against children are automatically prohibited, and women must be eligible for release within three years of giving birth.<sup>41</sup> Unique to the program’s criteria, however, is that women with histories of abuse or neglect are allowed to apply and are subject to

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<sup>36</sup> Ibid.

<sup>37</sup> Israel Bayer, “Inmates Need Coffee Creek’s Family Preservation Program,” *Street Roots News*, February 27, 2015, accessed August 1, 2015, <http://news.streetroots.org/2015/02/27/inmates-need-coffee-creeks-family-preservation-program>.

<sup>38</sup> Rowland and Watts, “Washington state’s effort,” 37.

<sup>39</sup> Villanueva et al., “Mothers, Infants and Imprisonment,” 22.

<sup>40</sup> Goshin and Byrne, “Converging Streams of Opportunity,” 12.

<sup>41</sup> Villanueva et al., “Mothers, Infants and Imprisonment,” 11.

further screening.<sup>42</sup> The RPP aims to foster the mother-child relationship while it encourages healthy development and secure attachment among children born to incarcerated mothers.<sup>43</sup> Since the program's induction, 139 babies have been served, and mothers who complete the program have recidivated at a rate of 15 percent, compared to a statewide rate of 38 percent.<sup>44</sup> The RPP was funded in part by a grant from the Puget Sound Education Service District, a regional education agency that serves King and Pierce counties and Bainbridge Island. The grant provides \$1.2 million a year to serve underprivileged women, toddlers and their families, and the WCCW is one of seven sites that receive money from the grant. The federal program Temporary Aid to Needy Families program as well as medical coupons cover baby expenses.<sup>45</sup> As Rowland and Watts assert:

“Nearly all babies born to incarcerated mothers currently receive dependent aid from the Department of Social and Health Services. Therefore, babies who participate in the program will neither create an increased demand on public funds nor increase costs to the institution. The costs incurred to house an infant with his or her mother are less than placing the child in foster care while paying for the parent's incarceration.”<sup>46</sup>

The RPP also partners with a number of community providers and institutions, medical, social and financial, to help run its program.<sup>47</sup>

The RPP came about as collaboration between the WCCW and Early Head Start. Mothers and their babies live in a separate housing area called the “J Unit,” which was renovated specifically

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<sup>42</sup> Ibid.

<sup>43</sup> Rowland and Watts, “Washington State's efforts,” 34.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Mary Bridge Children's Hospital (well-baby care and pediatric services), Washington State Department of Social and Health Services (financial support and daycare subsidies for children), Chapel Hill Church (numerous donations and continued financial support) and Rebuilding Families Advisory Board (fundraising) (Rowland and Watts, “Washington State's efforts,” 34).

for mothers and their young children.<sup>48</sup> The J Unit is staffed by Early Head Start Educators, who provide services such as “developmental screenings and assessments, infant/toddler care and activities, nutritious meals and family support,” as well as “prenatal education, information about infant health and development, screening for maternal depression.”<sup>49</sup> Children at the RPP are visited once a month by a pediatrician who assesses their growth and provides check ups and vaccines.<sup>50</sup> Pregnant women are also uniquely privilege to the services of doulas,<sup>51</sup> whose services are issued through the Birth Attendants’ Prison Doula Project.<sup>52</sup>

Mothers who participate in the program have a host of responsibilities, primarily participation in programing aimed at fostering parenting skills and building a strong mother-child relationship, as well as working with counselors in order to plan reentry to their communities while balancing the responsibilities of parenthood.<sup>53</sup> A significant and laudable aspect of the RPP is its commitment to planning reentry into communities that promote long-term stability, all the while allowing children to transition with their mothers.

The WCCW partners with residential work release programs, such as the Eleanor Chase Work Release Facility,<sup>54</sup> which allow mothers transitioning out of the RPP to reenter their community with their new babies.<sup>55</sup>

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<sup>48</sup> In the “J Unit,” each mother has a room with a bed for herself and a crib for her child; there is also a mother-child wing, a kitchenette, a playroom, and a bathing room and a diaper changing room as well as an outdoor play area (Villanueva et al., “Mothers, Infants and Imprisonment.” 11).

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> A doula is a woman who is knowledgeable about childbirth and helps mothers during and directly after labor and childbirth.

<sup>52</sup> Ibid.

<sup>53</sup> See Rowland and Watts, “Washington state’s effort,” p. 38 for a more detailed listing of programs and responsibilities.

<sup>54</sup> <http://doc.wa.gov/facilities/workrelease/eleanorchasewr/default.asp>

<sup>55</sup> Rowland and Watts, “Washington state’s effort,” 37.

## **Conclusions**

Because so few prison nurseries exist in the United States, there is a dearth of best-practice literature and policy recommendations to guide their creation. However, studies and program reviews reveal several important factors that are key to prison nurseries that are inclusive, effective, and promote healthy child development and parent-child bonds.

As has been discussed, it is crucial that regardless of whether it is a prison nursery or a CBRP that addresses the needs of incarcerated women who give birth during incarceration, planning for reentry and long-term parenting strategies are essential to the connection, health, and wellbeing of both mother and child. Mother-child programs such as prison nurseries and CBRPs should be as inclusive as possible so as not to exclude minority mothers, or certain mothers with histories of violent crime. Finally, mothers and children should be able to spend as much time together as possible in order to promote healthy infant attachment and child development.

While CCCF does make an effort to help new incarcerated mothers bond with their infants, there is still room for state agencies to promote mother-child attachment and healthy infant development. Both prison nurseries and CBRPs are excellent, cost-effective, and promising options to do so.

## **II. The 15/22 Mandate: Punitive Foster Care Laws**

This section discusses the ways in which federal law regarding foster care inadvertently endangers the parental rights of incarcerated parents, disproportionately incarcerated mothers, with a child or children in foster care. It primarily focuses on a provision of the 1997 Adoption and Safe Families Act (ASFA) that sets a limited timeframe during which children in the foster

care system must be moved to permanent homes. Because most incarcerated parents' sentences exceed this time frame, they are particularly in danger of losing their parental rights.

## **Background**

In 1997, seeking to expedite the process of finding foster children permanent homes, the federal government enacted The Adoption and Safe Families Act (ASFA). One provision of the ASFA, often called the 15/22 mandate,<sup>56</sup> stipulates that if a child has been in foster care for 15 out of the past 22 months, child welfare caseworkers are required to file a petition to determine whether or not parental rights should be terminated.<sup>57</sup> The law gives three exceptions to this provision: 1) at the option of the state, the child is being cared for by a relative, 2) a state agency has documented a compelling reason for determining that filing such a petition would not be in the best interests of the child, or 3) the state has not provided the child's family such services as the state deems necessary for the safe return of the child to the child's home.<sup>58</sup>

Because the average incarcerated parent's sentence is between 80 to 100 months,<sup>59</sup> the 15/22 mandate often threatens the parental rights of incarcerated parents, disproportionately mothers and parents of color, with foster children. Even if an incarcerated parent is participating in programs and services to "facilitate reunification,"<sup>60</sup> the 15/22 mandate technically applies when reunification is delayed for 15 months. Despite the ASFA's good intentions, it has disproportionately endangered the parental rights of incarcerated parents. The problem is

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<sup>56</sup>Martha L. Raimon, Arlene F. Lee, and Philip Genty, "Sometimes Good Intentions Yield Bad Results: ASFA's Effect on Incarcerated Parents and Their Children," in Olivia Golden and Jenifer Ehrle Macomber, "Intentions and Results: A Look Back at the Adoptions and Safe Families Act," The Urban Institute, December 11, 2009, Washington, DC, 123.

<sup>57</sup> Raimon et al., "Good Intentions," 124.

<sup>58</sup> Eitenmiller, "Bending the Bars for Mothers," 770.

<sup>59</sup> Steve Christian, "Children of Incarcerated Parents," National Conference of State Legislatures, March 2009, 5.

<sup>60</sup> Ibid.

compounded by the fact that, in more than 25 states, courts can take into account a parent's incarceration or criminal conviction when considering terminating parental rights.<sup>61</sup>

Children in foster care who have an incarcerated parent make up a significant portion of children in Oregon's child welfare system. While only 3 percent of incarcerated parents report having a child in foster care, according to Pathfinders of Oregon, 41 percent of children in foster care in Oregon have an incarcerated parent.<sup>62</sup> Additionally, children of color, particularly Native American and African American children are overrepresented in Oregon's foster care system,<sup>63</sup> perhaps because people of color, particularly African American people, are disproportionately represented in Oregon's prisons.<sup>64</sup>

As previously stated, certain incarcerated parents are even more disproportionately affected by the 15/22 mandate than others. A study conducted in 2000 by the Oregon Department of Corrections revealed that when a mother is arrested, "36 percent of children live with their father, 54 percent live with a relative and 15 percent live in foster care," and when a father is arrested, "81 percent of children live with their mother, 14 percent live with a relative, and 5 percent live in foster care."<sup>65</sup> More than incarcerated fathers, incarcerated mothers must, on top of the societal stigma surrounding incarceration, deal with the stigmas surrounding incarcerated motherhood. As Eitenmiller writes, "incarcerated mothers challenge societal views about "good mothers," as women are often judged by their commitment and time devoted to motherhood."<sup>66</sup>

Women of color face additional negative racial stereotypes, which, "paired with the stigmas of

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<sup>61</sup> Eitenmiller, "Bending the Bars for Mothers," 771.

<sup>62</sup> [http://www.pathfindersoforegon.com/wp-content/uploads/2012/10/CIP.Fact\\_Sheet\\_1.pdf](http://www.pathfindersoforegon.com/wp-content/uploads/2012/10/CIP.Fact_Sheet_1.pdf)

<sup>63</sup> <http://www.oregon.gov/coo/ten/docs/safetytemplate.pdf>.

<sup>64</sup> [http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf).

<sup>65</sup> [http://www.oregon.gov/doc/GECO/docs/pdf/legreport\\_bill133.pdf](http://www.oregon.gov/doc/GECO/docs/pdf/legreport_bill133.pdf), 3. The report does not make clear as to whether these percentages represent the living situations of children pre or post-incarceration.

<sup>66</sup> Eitenmiller, "Bending the Bars for Mothers," 762.

drug use...and poverty” of the average incarcerated woman,<sup>67</sup> could put them at a higher risk of losing their parental rights.<sup>68</sup> The 15/22 mandate is yet another hurdle that adds stigma to mothers who are not able to be with their children, even if they want to, due to the length of their sentences.

Importantly, the 15/22 mandate mostly affects incarcerated parents who have not committed a crime of violence against a child.<sup>69</sup> Another provision of ASFA dictates the filing of a petition to terminate parental rights of parents who are involved with, attempt, or commit voluntary manslaughter against a child or an assault that results in serious injury to a child. The 15/22 mandate therefore mostly affects parents whose crime was nonviolent.<sup>70</sup>

The ASFA also creates a host of disincentives for child welfare workers to file exceptions to the 15/22 mandate.<sup>71</sup> In order to do so, these workers “must make a detailed record of why they invoke the exceptions, and therefore the burden for determining why the exceptions may be appropriate lies with the already overworked caseworker.”<sup>72</sup> Because federal audits of state welfare agencies focus on the speedy expedition of foster care children out of foster care as a metric of success, child welfare workers are further demotivated to file for an exception that could postpone the expedition process.

The barriers that incarcerated parents face in working to maintain their relationship with their child or children in foster care are also barriers to caseworkers and caregivers, who are tasked with figuring out how to overcome some of these barriers. Facilitating visitation can be

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid, 772.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid, 124.

<sup>72</sup> Ibid.

especially challenging; for example, although Appendix 4.16 of Oregon’s Department of Human Services (DHS) Child Welfare Procedure Manual stresses that visitation is “perhaps the most important mechanism for maintaining a positive parent/child relationship,” it equally emphasizes how challenging facilitation of such visits can be. More importantly, it places the onus of responsibility on caseworkers, who must put in “extra work, patience, and creativity in cases involving parents who are incarcerated.”<sup>73</sup> Although there is recourse to making exceptions to the 15/22 mandate, it requires no small amount of time, resources, effort, and knowledge, both on the part of the incarcerated parent and the child welfare caseworker or secondary caregiver, to understand what must be done to fulfill expectations of exceptional circumstances, and to demonstrate that efforts for parent-child connection have been made.

### **Foster Care Laws, Resources, and Incarcerated Parents in Oregon**

Oregon’s judicial rather than legislative branch has historically dealt with and shaped the relationship between parental incarceration, children in foster care, and termination of parental rights.<sup>74</sup> Most recently, in *State ex rel. Department of Human Services v. Williams*, the Oregon State of Appeals set the most definitive precedent that “incarceration of a parent, without more, is not an aggravated circumstance that may serve as a basis for excusing DHS from making reasonable efforts toward reunifying the family.”<sup>75</sup> Thanks to this ruling, and rulings preceding it, parental incarceration is not an adequate factor to determine termination of parental rights in Oregon. However, according to Eitenmiller, “today, DHS continues to present parental incarceration as evidence against parents in termination proceedings,”<sup>76</sup> and that the length of a

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<sup>73</sup>[http://www.dhs.state.or.us/caf/safety\\_model/procedure\\_manual/appendices/ch4-app/4-16.pdf](http://www.dhs.state.or.us/caf/safety_model/procedure_manual/appendices/ch4-app/4-16.pdf), 1.

<sup>74</sup> For an excellent review and analysis of how Oregon case law has evolved to grant certain protections for incarcerated parents, see Eitenmiller, “Bending the Bars for Mothers,” 763-766.

<sup>75</sup> <http://law.justia.com/cases/oregon/court-of-appeals/2006/a128226.html>.

<sup>76</sup> Eitenmiller, “Bending the Bars for Mothers,” 766.

parent's imprisonment stay can be used as evidence against an incarcerated parent at termination hearings.<sup>77</sup> Despite this, courts usually take into account "all conditions affecting the offender's ability to parent safely rather than finding a parent's incarceration alone to be dispositive."<sup>78</sup>

In the face of these positive legal precedents that afford incarcerated parents certain protections, the 15/22 mandate still looms as a statute that puts a strain on incarcerated parents who are seeking to maintain a relationship with their child or children in foster care and plan on parenting them upon release, yet whose sentences exceed the short timeframe.

Most worryingly, it is not at all clear that there is sufficient information for incarcerated parents and children in foster care with incarcerated parents to empower themselves with the knowledge both of what DHS is required to do for them, and what they need to do in order to maintain relationships with each other. In terms of information and resources for these individuals, there seems to be a lack of acknowledgment of the unique needs and challenges that incarcerated parents and their children in foster care face.

For example, on the Oregon.gov website's "Children of Incarcerated Parents" page, there is no mention of how foster care might affect children's relationships with their parents.<sup>79</sup> There are no apparent resources on Oregon's DHS page on Foster Care for children with incarcerated parents;<sup>80</sup> neither are there specific links or resource pages for incarcerated parents to learn about what duties DHS has to facilitate connection between parent and child, or what is required of them during their time in prison to stay legally tied to their children. The 2012 10-Year Plan for

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> [http://www.oregon.gov/doc/GECO/Pages/oam\\_links.aspx](http://www.oregon.gov/doc/GECO/Pages/oam_links.aspx).

<sup>80</sup> <http://www.oregon.gov/dhs/children/fostercare/Pages/index.aspx>.

Oregon Project *Safety Policy Vision* brief<sup>81</sup> extensively discusses both prison and foster care, yet fails to connect the two in a way that acknowledges the parent-child connection that often exists between the two systems. While the brief takes time to discuss the racial demographics of Oregon's foster care children, it does not acknowledge that nearly half of these children have or have had incarcerated parents. Instead, the focus is on decreasing the amount of time that children are in the foster care system; no acknowledgment of the strain such short timeframes put on incarcerated parents is made.

The link between the particular barriers that the incarceration system and the ASFA create for incarcerated parents and 41 percent of children in foster care who have incarcerated parents has yet to be meaningfully addressed, both in terms of legislative policy and in terms of providing resources for the parents, children, child welfare caseworkers and secondary caregivers who are in dire need of them.

## **Conclusions**

Above all, it is imperative that Oregon state agencies and advocates understand the unique issues and needs of incarcerated parents with a foster child or children, and those of foster children with incarcerated parents. With the passage of the House Bill 3503, which established Oregon's first Family Sentencing Alternative Pilot Program, it is evident that the Oregon legislature has started down a path of commitment to decarceration and prioritizing the parent-child relationship over incarceration. Hopefully this will reduce the instances in which a parent's incarceration forces them to put their child in foster care. However, the bill does not apply to parents who do not have physical custody of their child when they commit their crime; because many incarcerated parents

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<sup>81</sup> <http://www.oregon.gov/coo/ten/docs/safetytemplate.pdf>.

had a child in the foster care system before they were incarcerated,<sup>82</sup> there is still a significant need for resources and policy reform directed at addressing the specific needs of incarcerated parents with children in the foster care system, and those of foster children with incarcerated parents.

Although ASFA has specific criteria that determine the termination of parental rights in some cases, “it is state—not federal—law that defines legal grounds for such termination.”<sup>83</sup> Thus, there is still room for policymakers to shape foster care law to address the needs of incarcerated parents, and formally eliminate length of incarceration as grounds for terminating parental rights of incarcerated parents, particularly for nonviolent offenders. Raimon et al. refer to exceptions to the 15/22 mandate that states such as New Mexico, New York, Colorado and Nebraska have proposed or enacted, which would apply “where the incarcerated parent continues to occupy a place of importance in the child’s life, and it would be in the child’s best interests to continue reasonable reunification efforts beyond the 15/22 month threshold.”<sup>84</sup> Washington state implemented such a law in 2013, Substitute House Bill 1284, which “guide’s the courts’ discretion to delay the termination of parental rights if the parent’s incarceration or prior incarceration is a significant factor for the child’s continued stay in the foster care system.”<sup>85</sup> They additionally recommend grandparents and relative guardians who are taking care of a foster child with incarcerated parents should receive “[expedited] subsidized guardianship and corresponding payments.”<sup>86</sup>

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<sup>82</sup> Christian, “Children of Incarcerated Parents,” 5

<sup>83</sup> Ibid.

<sup>84</sup> Raimon et al., “Good Intentions,” 126.

<sup>85</sup> Victoria Law, “New Law Gives Parents Behind Bars in Washington State a Way to Hold Onto Their Children,” *Truthout*, May 11, 2013, accessed August 13, 2015, <http://www.truth-out.org/news/item/16312-new-law-gives-parents-behind-bars-in-washington-state-a-way-to-hold-onto-their-children#>.

<sup>86</sup> Ibid.

Moreover, the obligations that state agencies have to make sure family connection and reunification between incarcerated parents and their children in foster care are being made should be abundantly clear to both parents and children. Visitation between incarcerated parents and their children, whether in foster care or not, is crucial to both parent and child wellbeing and is essential to maintaining the parent-child bond that is direly jeopardized when a parent is incarcerated. Such connection should be prioritized by state agencies, and funded accordingly. Incarcerated parents with children in foster care must be recognized to have need of particular knowledge and resources in order to stay meaningfully involved in the lives of their children, and the children in the lives of their parents. As the San Francisco Children of Incarcerated Parents Partnership's Bill of Rights states, children of incarcerated parents have a right to see, touch, and speak with their parents,<sup>87</sup> when it is safe and healthy for them to do so. They have a right to a relationship with their parent; Oregon's policies must reflect a commitment to this right, and to the needs, of incarcerated parents and their children.

### **III. Parenting Programs for Incarcerated Fathers**

This short section seeks to highlight that although incarcerated women are more likely than incarcerated men to be parents, and that incarcerated mothers are more likely to be single parents than incarcerated fathers, the sheer number of incarcerated men versus incarcerated women means that a significant number of single-caregiving incarcerated fathers exists in Oregon, and is deserving of as much policy focus as incarcerated mothers.

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<sup>87</sup> <http://www.sfcipp.org/images/brochure.pdf>.

## Statistics and Program Overview

On average nationwide, women in prison are more likely to be parents than men in prison, and incarcerated mothers are more likely to be single parents or provide the majority of the care to their children than incarcerated fathers.<sup>88</sup> According to the 2008 Bureau of Justice Statistics Report, 42 percent of mothers in state prisons reported to be living in single-parent households a month before their arrest, compared to 17 percent of fathers.<sup>89</sup> Despite these statistical disparities, it is important to keep in mind that “because many more men than women are imprisoned, the number of single-parent male households is almost *five times higher* than that of single-parent female households.”<sup>90</sup> Based on Oregon’s August 2015 inmate population profile,<sup>91</sup> rough calculations indicate that there could be up to 1,256 incarcerated fathers in Oregon who were living in single-parent households at the time of their arrest.<sup>92</sup>

There is a multitude of parenting programs for incarcerated fathers in Oregon state prisons, such as the Dads4Life program at the Snake River Correctional Institution.<sup>93</sup> This program provides fathers the opportunity to participate in fun events with their children, allowing them to spend quality time together and bond in settings outside of prison visitation rooms. The DOC also strives to connect families with incarcerated family members to get in touch with each other over video chat and text message.<sup>94</sup> As part of the Oregon Justice Reinvestment Project, ODOC will

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<sup>88</sup> Christian, “Children of Incarcerated Parents,” 2-3.

<sup>89</sup> *Ibid.*, 2.

<sup>90</sup> Christian, “Children of Incarcerated Parents,” 4.

<sup>91</sup> [http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

<sup>92</sup> This number was roughly calculated based on the statistics that 75% of Oregon’s incarcerated women are mothers, ([http://www.wweek.com/portland/article-18696-jail\\_birds.html](http://www.wweek.com/portland/article-18696-jail_birds.html)) and more than 55% of male inmates are fathers ([http://www.oregon.gov/doc/geco/docs/pdf/legreport\\_bill133.pdf](http://www.oregon.gov/doc/geco/docs/pdf/legreport_bill133.pdf), 3).

<sup>93</sup> “Prison hosts event to strengthen family relationships,” *The Argus Observer*. August 2, 2015, accessed August 2, 2015, [www.argusobserver.com/valley\\_life/prison-hosts-event-to-strengthen-family-relationships/article\\_e221da6c-38cc-11e5-9280-87730720d5c2.html](http://www.argusobserver.com/valley_life/prison-hosts-event-to-strengthen-family-relationships/article_e221da6c-38cc-11e5-9280-87730720d5c2.html).

<sup>94</sup> Jeremiah Stromberg, Assistant Director of Community Corrections, relayed this information to the author in an email sent on August 6<sup>th</sup>, 2015.

help publish reports in the near future that contain more detailed accounts of parenting programs for incarcerated fathers in Oregon.

Oregon's prisons for men have yet to implement evidence-based parenting programs for incarcerated fathers. Though there is a dearth of academic research done on the effects of parenting programs for incarcerated fathers, a report published by Rutgers University in 2012 suggests that one such program, InsideOut Dad®, garners positive outcomes for incarcerated fathers in terms of “self-efficacy, knowledge, attitudes, and contact with children.”<sup>95</sup> The National Fatherhood Initiative endorses implementation of InsideOut Dad® as “the nation’s only evidence-based fatherhood program designed specifically for incarcerated fathers.”<sup>96</sup>

## **Conclusions**

Stereotypical gender roles surrounding parenthood often associate much of the responsibility of parenthood with mothers. This stereotype, particularly in the context of Oregon’s incarcerated population, which is overwhelmingly male, does not promote equitable policymaking. Oregon has already invested an intensive, successful parenting program that focuses on the mother-child relationship. If Oregon and its policymakers are committed to gender equity and promoting equal parenting responsibility for both incarcerated mothers and fathers, perhaps men’s prison in Oregon could one day be service to a program like the FPP or InsideOut Dad®, tailored to the particular needs of incarcerated fathers, and similarly committed to halting intergenerational cycles of incarceration and promoting healthy father-child bonds and parenting.

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<sup>95</sup> S. Block, C.A. Brown, L. Barretti, E. Walker, M. Yudt, and R. Fretz, “Assessing the Impact of the InsideOut Dad® Program on Newark Community Education Center Residents,” Rutgers University, Economic Development Research Group, Newark, NJ, December, 2012, accessed August 17, 2015, [http://cdn2.hubspot.net/hub/135704/file-561437088-pdf/Research\\_Eval\\_Files/368\\_IoDEvalRpt\\_NREPP\\_120712.pdf?utm\\_referrer=http%3A%2F%2Fwww.fatherhood.org%2Ffree-resources%2Ftopic%2Fevaluations](http://cdn2.hubspot.net/hub/135704/file-561437088-pdf/Research_Eval_Files/368_IoDEvalRpt_NREPP_120712.pdf?utm_referrer=http%3A%2F%2Fwww.fatherhood.org%2Ffree-resources%2Ftopic%2Fevaluations).

<sup>96</sup> <http://www.fatherhood.org/evidence-based-programs>.

## **IV. Conclusion**

### **Report Summary**

This report overviews three key areas of policy surrounding incarcerated parenthood: prison nursery programs and community-based alternatives, problematic foster care laws, and parenting programs for incarcerated fathers in Oregon. It emphasizes the need for increased policy attention to be focused on the wellbeing and attachment of incarcerated pregnant women by investing in the construction of a prison nursery or community-based residential parenting programs, or perhaps the construction of both to work in tandem with each other. It calls for a serious reevaluation of the lack of resources available to incarcerated parents with foster children, caretakers of foster care children, and child welfare workers. In particular, it advocates for legislation to create an exception to the 15/22 mandate for some incarcerated parents, as well as increased funding for transportation services for children who wish to visit their incarcerated parent. Finally, this report conducts a brief appraisal of parenting programs for incarcerated fathers in Oregon, and suggests the implementation of evidence-based parenting programs in men's prisons, tailored to the needs of incarcerated fathers.

### **Looking Forward**

Though only mentioned in passing in this report, the radically different histories of trauma and abuse of incarcerated women compared to men is one of the starkest contrasts between the two groups. A review of the services that CCCF as well as county jails are providing to incarcerated women who have experienced domestic violence, child abuse, or sexual assault/trauma is of extreme importance.

With this legislative session's passage of Oregon's first alternative sentencing pilot program along with the refunding of the Family Preservation Project, Oregon's legislators seem to have signaled a move in a new direction, away from mass incarceration and toward community-based alternatives. However, the conversation surrounding equitable and just treatment of incarcerated populations is only just beginning, and policymakers, stakeholders, advocates, and agencies must be committed to a conversation that is informed by a diverse group of voices, including people who have experienced incarceration or are currently incarcerated.

This author advocates for the creation of a legislative task force that will address the needs of incarcerated parents and their children. This task force might be comprised of individuals from agencies such as ODOC, DHS, the Oregon Department of Education, the Oregon Department of Justice, and county correctional offices, and should encourage the participation of informed legislators, formerly or currently incarcerated individuals, advocates and nonprofit leaders who will address the issues outlined in this report and work toward implementing or exploring the cost-effectiveness of previously discussed policy recommendations. The inclusion of nonprofit agencies will be key in discussions surrounding the affordability and provision of programs that serve incarcerated parents and their children. There are already pilot programs in effect that such a task force might focus on when examining the success of laws and programs targeted at incarcerated parents and their children, such as the FPP and the recently ratified Family Sentencing Alternative Pilot Program. In addition, this report contains ample policy recommendations that may serve to inspire a preliminary agenda for such a task force.

Washington's Children and Families of Incarcerated Parents Advisory Committee (CFIPAC) might be useful to reference in considering which key stakeholders should be included in such a

taskforce. The CFIPAC was formed after the passage of Substitute House Bill 1426 in 2005, which required “comprehensive interagency planning to provide services and supports for children of incarcerated parents.”<sup>97</sup> Much of Washington’s success in creating progressive incarceration policies might be owed to both SHB1426 and to the CFIPAC.

The creation of a task force as described above, a commitment to exploring the different needs of different incarcerated populations, and a conversation informed by a wide range of voices will help Oregon continue down a road of commitment to the creation of equitable, empowering, and just policies surrounding incarcerated parents and their children.

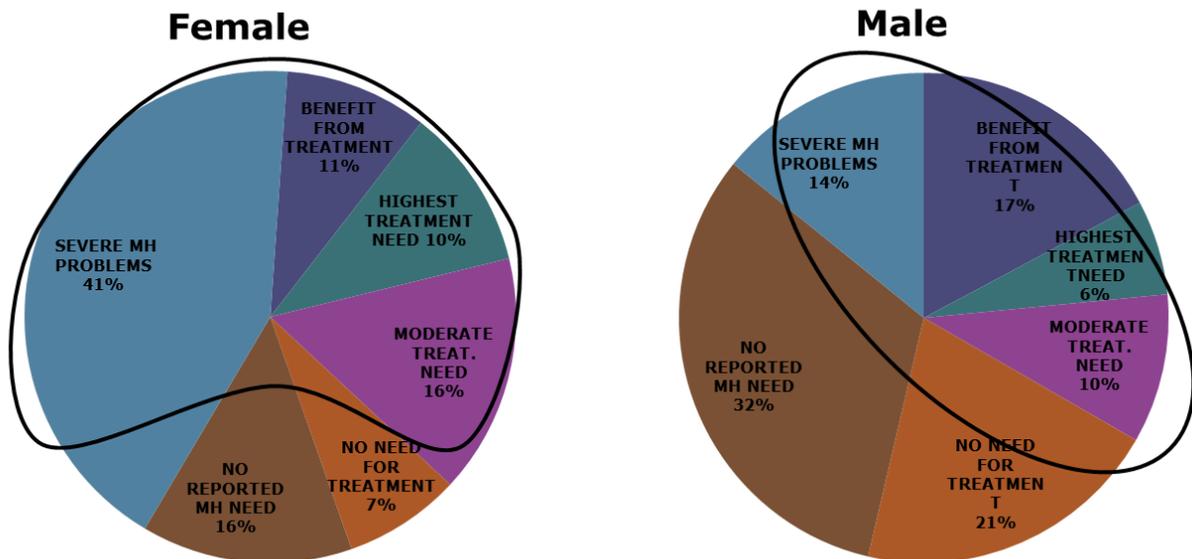
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<sup>97</sup> <http://www.k12.wa.us/IncarceratedParents/pubdocs/CFIP2008CommitteeReport.pdf>, 1.

## VII. Appendix A: Excerpts from Gary Sims' Report to the Oregon Advocacy Commissions on Gender Diversity as it Relates to Adults in Custody in Oregon\*

The Oregon Department of Corrections has 1270 female Adults in Custody (AIC) out of a total population of 14,632. Women represent 8.7% of the AIC population. There isn't a profile of a typical AIC. But there are some issues that women have that are unique. Here is some data:

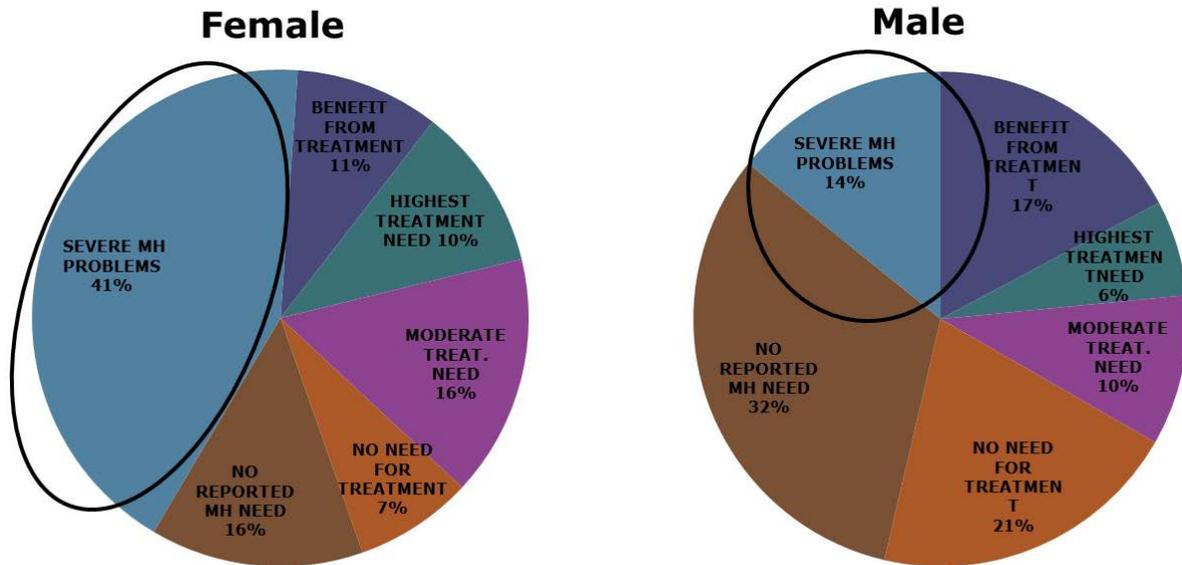
### Gender Diversity as It Relates to AIC: Mental Health



[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

Of female AIC, 77% need mental health treatment. By comparison, 47% of male AIC need mental health treatment.

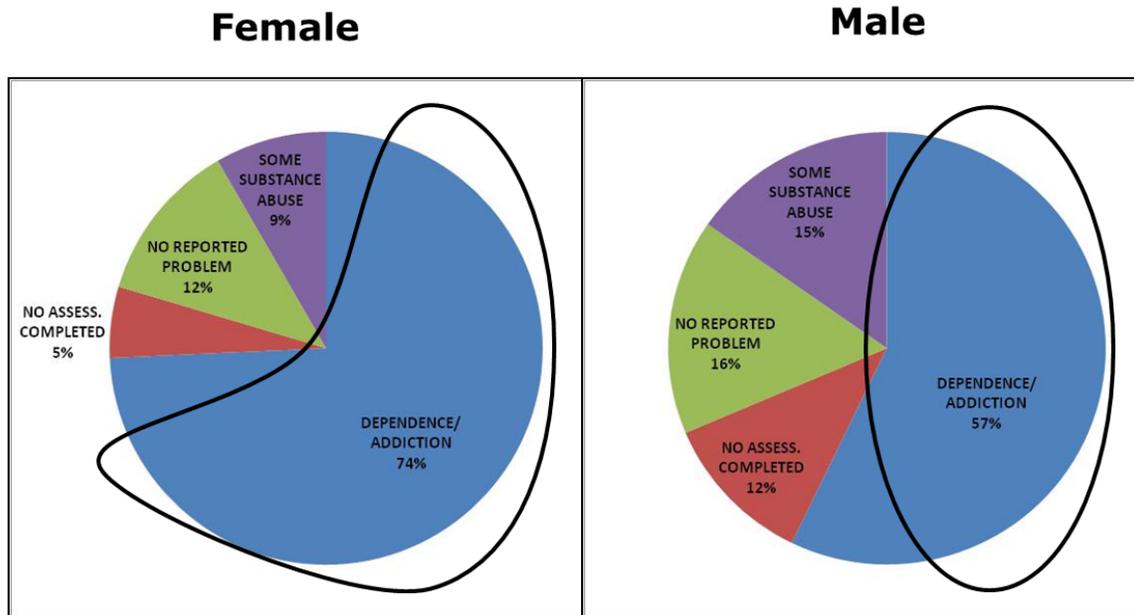
# Gender Diversity as It Relates to AIC: Mental Health



[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

Of female AIC, 41% have severe mental health problems. This is almost three times the level that male AIC have (14%).

# Gender Diversity as It Relates to AIC: Drug Addiction



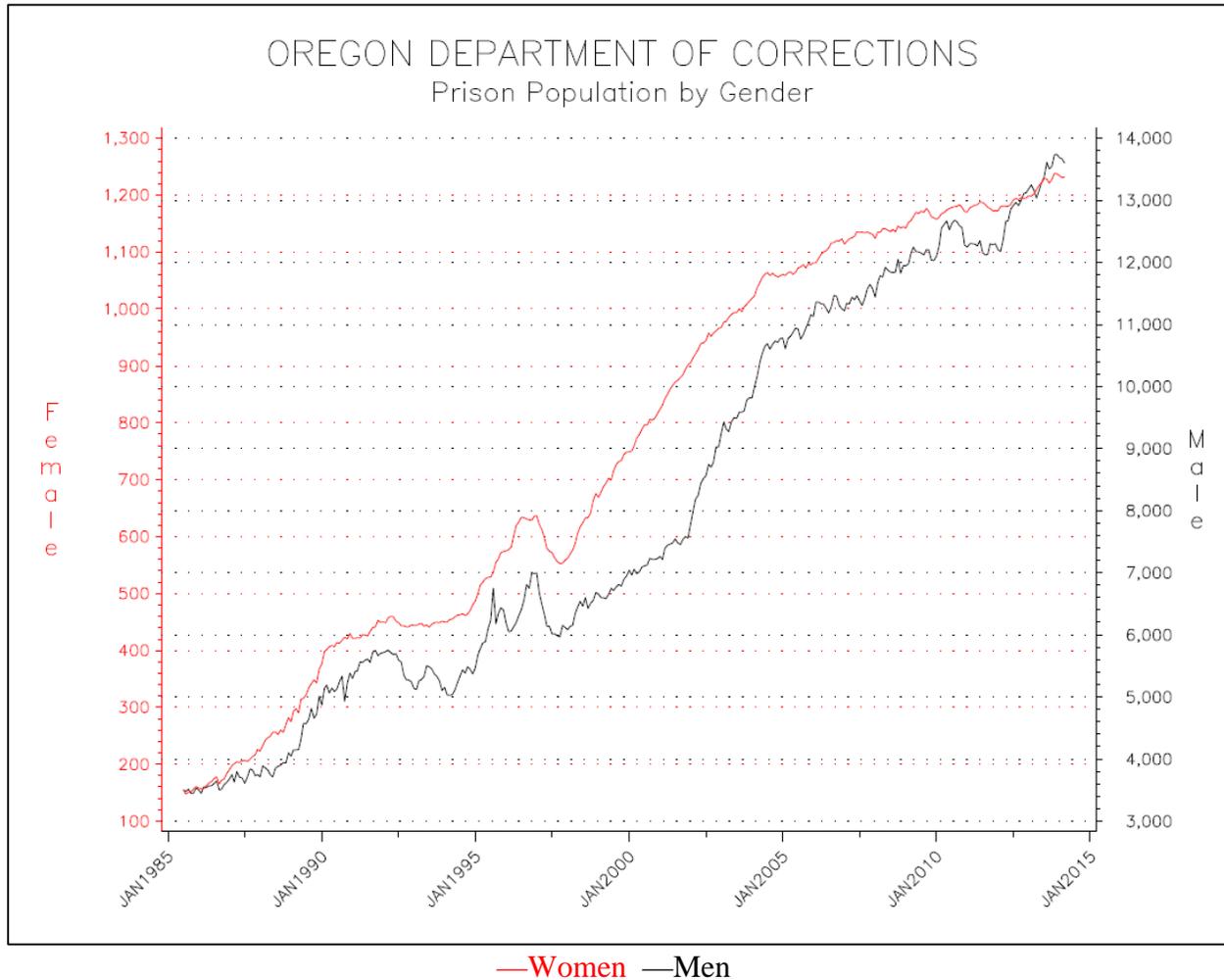
[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

Female AIC are more likely to have substance abuse issues (74%) compared to male AIC (57%).

Women are disproportionately less likely to be in prison for what the state calls Measure 11 crimes, or person-to-person crimes. Of all AIC convicted of a Measure 11 crime, 95.4% are men. Only 4.6% are women.

<http://www.oregon.gov/doc/RESRCH/docs/m11snp.pdf>

*Interested to know if we have more incarcerated now and what do they see for the future.*



DOC Research Report retrieved from <http://www.oregon.gov/doc/RESRCH/docs/pops4.pdf> on July 30, 2014.

The prison population continues to grow for a number of reasons and this is true for both male and female AIC. Even though women make up less than 10% of the prison population, their increasing rate of incarceration is the same or higher than that for the men.

*Do women inmates have access to all the same kinds of programs men do?*

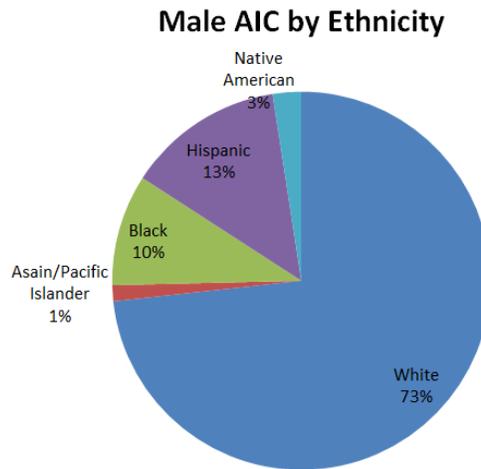
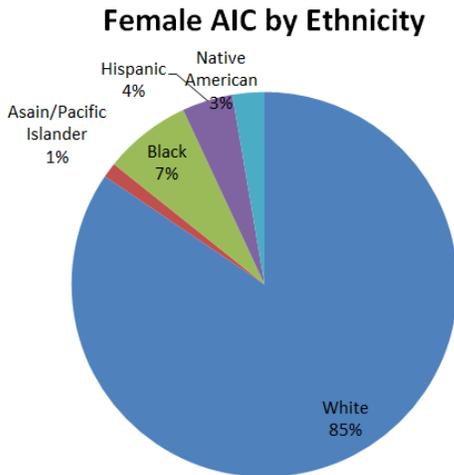
Yes and no. As far as government-paid programs, the ODOC works hard to be equitable between women and men. But programs that are a part of community organizations, which have people who volunteer their skills and time, vary by facility and consequently vary between women and men. Of all volunteers in the ODOC's 14 prison facilities, 20% volunteer at Coffee Creek. Many of these volunteers are religious. Volunteers also are involved in:

- Alcohol and Drug/12-Step Programs (Primarily AA and NA)
- Education
- Home for Good in Oregon Reentry Program
- Health Services

- College/University-based Internships
- Life Skills

(2013 Volunteer Report/Lavon StarrMeyers)

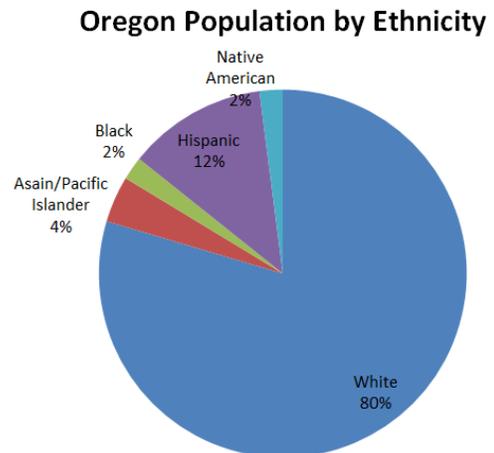
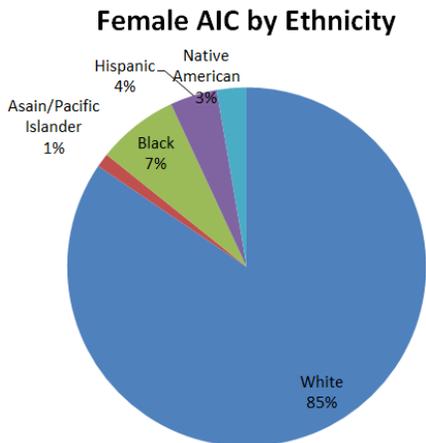
*What is the demographic/cultural/racial breakdown of incarcerated women?*



[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

Female AIC are less likely than male AIC to be Hispanic and black:

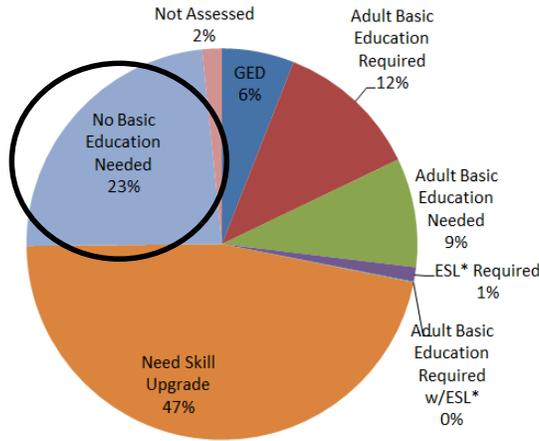
- Hispanic (Female 4% of the AIC population, male is 13%), and
- Black (Female 7% of the AIC population, male is 10%)



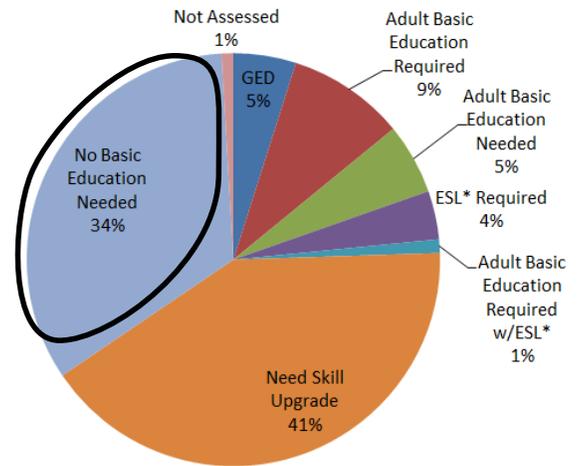
[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf) and U.S. Census quickfacts (2010).

However, female AIC are more likely to be black (7%) compared to the entire population of Oregon (2%), and less likely to be Hispanic (Female AIC 4%, the Oregon population is 12%)

**AIC Educational Needs: Female AIC**



**AIC Educational Needs: Male AIC**

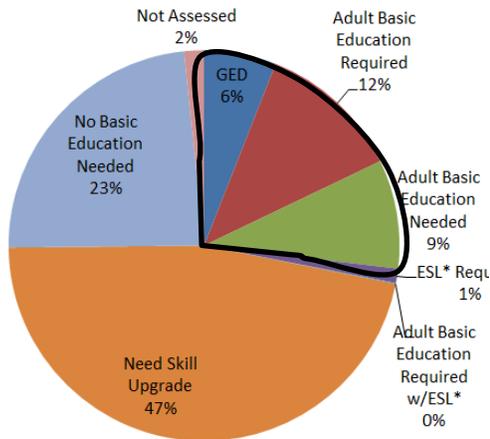


\*ESL: English as a second language

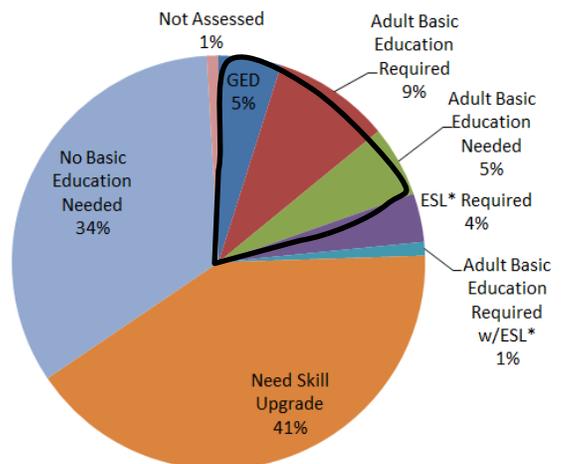
[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

In the ODOC, female AIC are more in need of educational programs: 23% of women do not need some form of educational programming compared to 34% of the men.

**AIC Educational Needs: Female AIC**



**AIC Educational Needs: Male AIC**



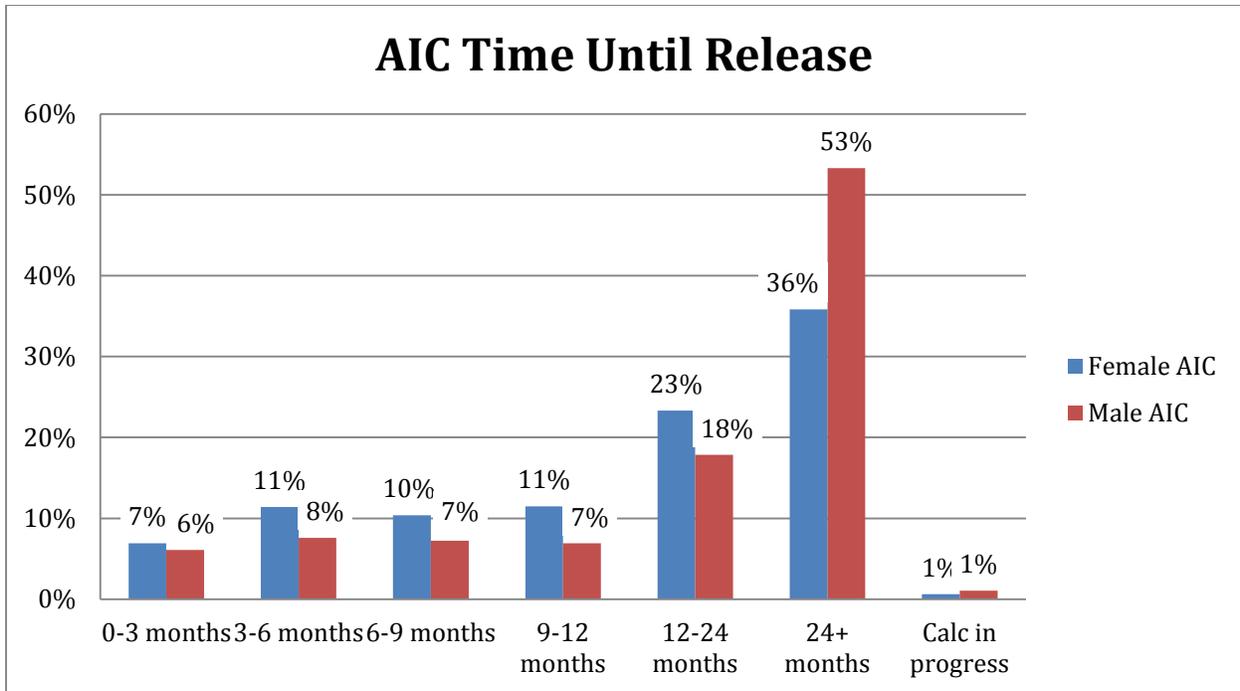
\*ESL: English as a second language

[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

Female AIC are more in need of GEDs and adult basic educational programs: 27% of women need GEDs and adult basic educational programs compared to 19% of the men.

Female AIC are more in need of GEDs and adult basic educational programs: 27% of women need GEDs and adult basic educational programs compared to 19% of the men.

## Release dates



[http://www.oregon.gov/doc/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/doc/RESRCH/docs/inmate_profile.pdf)

People are surprised to discover the rate that the DOC releases AIC; women even more so than men. 39% of female AIC will return to the community within the next 12 months (July 1, 2014, to June 30, 2015); only 32% of men will release during that time frame. In the next two years (July 1, 2014, to June 30, 2016), 62% of women will release; in comparison, 46% of men will release.

**\*Note: this report was compiled during and based on information from 2014. Current statistics might be slightly different.**

### About the Author

Emlyn Foxen is a fourth year undergraduate student at Pomona College in Claremont, California. She is pursuing a major in Political Studies and a minor in Gender and Women's Studies.