

**Backgrounder Memo for the Alternatives to Incarceration Workgroup on
People who Identify as Cisgender Women¹**
Submitted January 31, 2020

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Introduction

Los Angeles County incarcerates over 2,000 cisgender women daily.² These women—like those in jails around the country—are disproportionately Black and Latinx; survivors of violence and trauma; and charged with lower-level offenses related to unmet mental health needs, substance use, poverty, and survival.³ Nearly half are part of the “pretrial” population and have not been convicted of any charged offense but likely remain incarcerated because they or their loved ones cannot afford to pay bail.⁴ Many are released within a week, which is long enough to disrupt jobs, housing, treatment, and responsibilities like childcare.⁵ (See Figures 1 & 2.)

Research suggests that the experiences women have in jail often deepen the disadvantages that contribute to system involvement in the first place. And their very incarceration can harm entire

¹ The Gender and Sexual Orientation Ad Hoc Committee developed recommendations pertaining to people who identify as cisgender women; lesbian, gay, bisexual, and/or queer (LGBQ+); and transgender, gender-non-conforming, and/or intersex (TGI). The Ad Hoc Committee included people directly impacted by the LA County criminal justice system, County employees, service providers, non-profit advocates, and interested community members, among others. We convened ten times to prepare the recommendations, including several meetings focused only on people who identify as cisgender women. The associated recommendations are the result of consensus built among Committee members about the issues driving incarceration for the aforementioned populations and possible solutions.

The term “cisgender” applies to people whose gender identity matches the sex that they were assigned at birth. This memo pertains to cisgender women—that is, people who identify as women and were assigned female at birth. Throughout this memo, the use of the word “women” will refer to cisgender women. There are separate memos pertaining to people who identify as transgender, gender-non-conforming, and/or intersex, including transgender women, who experience unique needs and challenges in the criminal legal system.

² Alex Villanueva, *Los Angeles County Sheriff's Department Custody Division Population Year End Review* (Los Angeles: Los Angeles County Sheriff's Department, 2018), 20.

³ Ibid.; Barbara Bloom, Barbara Owen, and Stephanie Covington, *A Theoretical Basis for Gender-Responsive Strategies in Criminal Justice* (Chicago: American Society of Criminology, 2002), 1-2; Lawrence A. Greenfeld and Tracy L. Snell, *Women Offenders* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2000), 7-9; Shannon M. Lynch et al., *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012), 8; and Danielle Dupuy, Sofia Espinoza, Joanna Itzel Navarro, and Kelly Lytle-Hernandez, *Women in the Los Angeles County Jail System: An Analysis of LASD Data* (Los Angeles: The Million Dollar Hoods Project, 2018).

⁴ See Correctional Services Daily Briefing from February 22, 2019, as included in Attachment C to letter from Alex Villanueva, LA County Sheriff, to Sachi Hamai, CEO of LA County, dated July 9, 2019. *LA County Report Back on Developing a Care-First Treatment Model* (Los Angeles: Los Angeles County Sheriff's Department, 2019), 46.

⁵ Daniel Kopf and Bernadette Rabuy, “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned,” *Prison Policy Initiative*, July 9, 2015, <https://perma.cc/D7S4-5GP9>.

households, especially children.⁶ Thus, LA County's efforts to develop and scale alternatives to incarceration for women are pressing. The recommendations developed by the ATI Work Group for cisgender women can reduce LA County's reliance on incarceration and shift the current landscape towards one of greater community health and safety and wellness. Below, we discuss what we know about women incarcerated in LA County Jail and promising approaches from around the country to change the trajectory; this background informs the ATI Workgroup recommendations relating to cisgender women.

What Do We Know about Cisgender Women Incarcerated in Los Angeles County?

To develop ATI recommendations tailored to the needs and strengths of women, the Gender and Sexual Orientation Ad Hoc Committee convened to discuss what we know about the women incarcerated in LA County and what has driven their incarceration. We developed this information through the expertise of people in LA County with lived experience of the jails and the criminal legal system who joined the Ad Hoc Committee, analysis by Million Dollar Hoods of LA Sheriff's Department (LASD) 2010-2016 booking data, and available research on national trends.

Figure 1

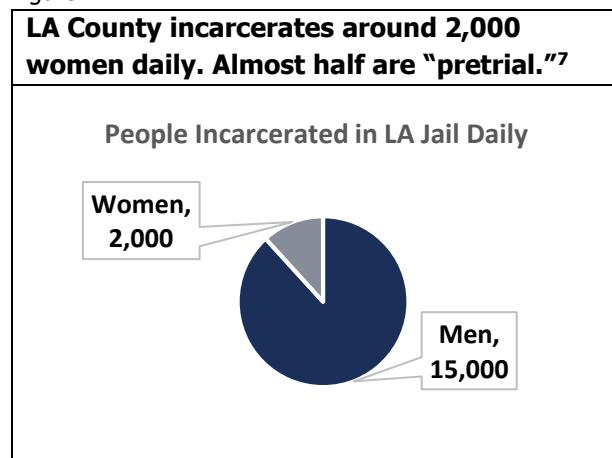
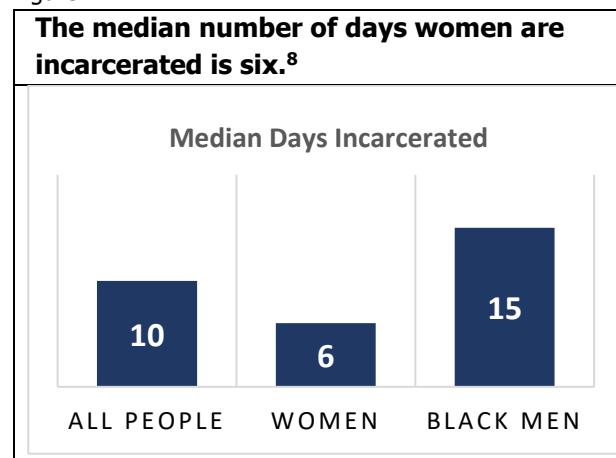


Figure 2



There are significant racial disparities in incarceration, especially with respect to women of color.

Black and Latinx women are around 54% of the women in LA County but 75% of those in the jail.⁹ Black women are the hardest hit: they are only 9% of women in LA County and 33% of jail bookings of women, while Latinx women make up almost half of the jail bookings of women.¹⁰ (See Figure 3.) People in the Ad Hoc Committee identified systemic factors like racism, over-

⁶ Ibid.

⁷ Alex Villanueva, 2018, 20, 24.

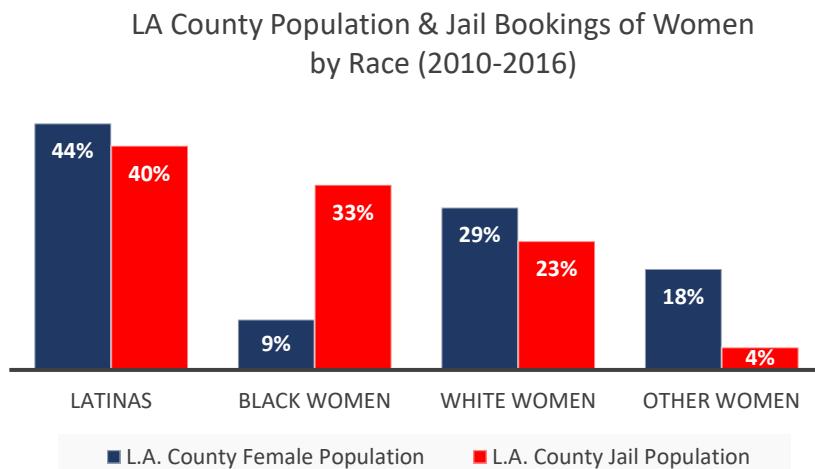
⁸ The Million Dollar Hoods Project analysis of the Los Angeles County Jail data, 2019, on file with Vera Institute of Justice.

⁹ Alex Villanueva, 2018, 20.

¹⁰ Danielle Dupuy et al., 2018.

policing of certain communities, and lack of investment in resources for certain neighborhoods as some root causes of why so many women—especially women of color—are in jail in LA.

Figure 3



Most women who become involved in the criminal justice system are managing trauma and mental healthcare needs.

Around half of women in LA County Jail are considered part of the “mental health population”—with a daily average in February 2019 of 978 women.¹¹ As of 2015, the rate of mental illness in the LA County Jail is significantly higher in the female population (27%) than in the male population (19%), and this disparity continues to grow.¹²

This matches the national landscape, as mental illness is one of the most significant underlying issues women in jail face across the country. Serious mental illness (SMI)—including major depression, bipolar disorder, and schizophrenia—affects women in jails nationally at a rate more than double that of men in jail and more than six times that of women in the general public.¹³ Women in jails have also reported high rates of trauma and victimization—including childhood sexual abuse, sexual assault, and intimate partner violence.¹⁴ (See Figures 4 & 5.)

In the Ad Hoc Committee, it became clear that many system-involved women in LA County have similarly experienced abuse, violence, and trauma, including many from a young age.

Committee members described how periods of incarceration exacerbated trauma and identified the urgent need for culturally humble, community-based mental health care for women—especially in geographical areas of the County with high levels of system involvement.

¹¹ Correctional Services Daily Briefing from February 22, 2019, 42.

¹² Ibid.

¹³ Shannon M. Lynch et al., 2012, 14; Henry J. Steadman et al., “Prevalence of Serious Mental Illness Among Jail Inmates,” *Psychiatric Services* 60, no. 6 (2009), 761-65.

¹⁴ Doris J. James and Lauren E. Glaze, *Mental Health Problems of Prison and Jail Inmates* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006), 4; and Shannon M. Lynch et al., 2012, 15, 32.

Figure 4

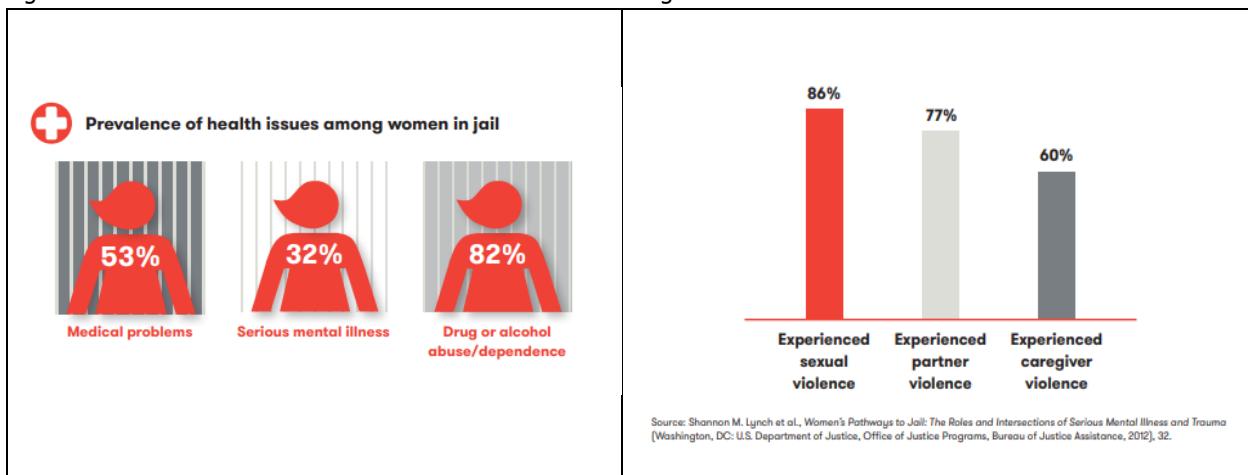
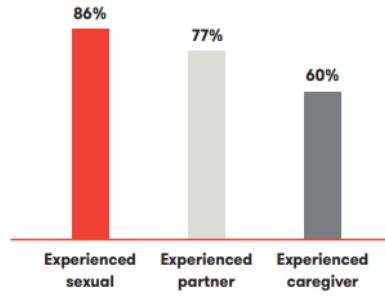


Figure 5



Many women in jail are mothers and the separation caused by incarceration often has intergenerational impacts.

While we do not have LASD data on how many women in jail identify as parents, we know that nationally nearly 80% of women in jails identify as mothers and most as single mothers.¹⁵ The Department of Health Services reported to the Board of Supervisors that, in 2017, there were 864 adults found to be pregnant while in custody with 35 individuals delivering their babies while incarcerated.¹⁶ Of 35 children born in custody, 16 went into the direct care of their maternal grandmother, 13 went with other family members, and 6 were placed with the Department of Children and Family Services (DCFS). Among the 864 adults that were pregnant while in custody, 552 faced charges with the Los Angeles County District Attorney's Office, of which 53% were for felony offenses and 47% for misdemeanor offenses. According to the LA County Office of the Inspector General, in January 2018, there were 35 pregnant people incarcerated at CRDF.¹⁷ Based on information shared in the Ad Hoc Committee meetings in 2019, while many pregnant/lactating people are unofficially diverted instead of incarcerated, there are 50-65 pregnant people incarcerated at CRDF at any given time.

Despite laws to the contrary, people in the Ad Hoc Committee shared that some pregnant people in jail are subjected to shackling and use of force that undermines health, and are separated

¹⁵ Elizabeth Swavola, Kristine Riley, and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016); Susan W. McCampbell, The Gender-Responsive Strategies Project: Jail Applications (Washington, DC: U.S. Department of Justice, National Institute of Corrections, 2005), 4; and Laura M. Maruschak, *Medical Problems of Jail Inmates* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006), 7.

¹⁶ Letter from Christina R. Ghaly, Acting Director of LA County Health Services, to LA County Board of Supervisors, July 24, 2018, <http://file.lacounty.gov/SDSInter/bos/supdocs/121161.pdf>.

¹⁷ Letter from Max Huntsman, LA County Inspector General, to LA County Board of Supervisors, February 2, 2018, <https://oig.lacounty.gov/Portals/OIG/Reports/2-2-18%20OIG%20Report%20Back%20on%20Pregnant%20Prisoners.pdf?ver=2018-02-07-141008-730>.

from community support that is critical to family unity and wellness.¹⁸ Moreover, some of those diverted have to use and pay for ankle monitoring that limits reintegration into the community and creates significant financial burdens that undermine economic stability.

Many in the Ad Hoc Committee also shared how the disruption of parenting because of incarceration is intertwined with ongoing system involvement. Some talked about how mothers in jail often plead guilty simply to reunite with their children as quickly as possible—despite the unfortunate legal and economic consequences that flow from those decisions. Others linked their own arrests as teenagers to the trauma and instability they themselves had experienced due to family separation and placement in foster care. These experiences are consistent with the wealth of available information about the harmful impact of maternal incarceration on children and their families; thus, the ATI efforts to divert mothers are important interventions.¹⁹

Many women with involvement in the criminal legal system are in financially precarious situations, only made worse by periods of incarceration and the fines and fees associated with criminal cases.

Many women who enter jail nationally are already economically disadvantaged and criminal legal system involvement only creates a downward financial spiral.²⁰ (See Figure 6.) Black and Latinx women—the majority of women in LA County Jail—face the greatest wealth disadvantages in terms of net wealth, likelihood of living in poverty, and likelihood of being unemployed.²¹ One way in which this is reflected in the limited LASD data is that over 25 percent of women in LA County Jail identify as homeless, and the number of incarcerated homeless women grew each quarter in 2018.²² Moreover, between 2010 and 2016, LA County incarcerated on average 3,000 women over the age of 50 each year; these women were mainly Black women and had much higher rates of homelessness than other incarcerated women.²³

On top of already disadvantaged financial prospects upon entering jail, incarceration takes an economic toll on women. Paying bail in order to get out of jail often pushes women into deeper financial crisis.²⁴ A few days in jail can put women at risk of losing employment as can court-

¹⁸ Melissa Goodman, Ruth Dawson, and Phyllida Burlingame, *Reproductive Health Behind Bars in California* (California: ACLU of California, 2016), www.aclunc.org/ReproductiveHealthBehindBars_Report.

¹⁹ Annie E. Casey Foundation, KIDS COUNT, *A Shared Sentence: The Devastating Toll of Parental Incarceration on Kids, Families and Communities* (Baltimore: Annie E. Casey Foundation, 2016).

²⁰ Elizabeth Swavola et al., 2016, 19.

²¹ Mariko Lin Chang, *Lifting as We Climb: Women of Color, Wealth, and America's Future* (Oakland, CA: Insight Center for Community Economic Development, 2010), 8; and Lapidus et al., *Caught in the Net: The Impact of Drug Policies on Women and Families* (Washington, DC: American Civil Liberties Union, Break the Chains: Communities of Color and the War on Drugs, and The Brennan Center at NYU School of Law, 2005), 30.

²² Alex Villanueva, 2018, 11.

²³ The Million Dollar Hoods Project analysis of the Los Angeles County Jail data, 2019, on file with Vera Institute of Justice.

²⁴ Saneta deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* (Oakland, CA: Ella Baker Center, Forward Together, Research Action Design, 2015), 14; Gina Clayton, Endria Richardson, Lily Mandlin, and Brittany Farr, *Because She's Powerful: The Political Isolation and*

mandated programming requirements that interfere with work hours.²⁵ Also, criminal cases—even when charges are ultimately dismissed—often carry court costs and the inability to pay fees and fines typically lands women back in jail.²⁶

Many in the Ad Hoc Committee described how lack of access to quality education and jobs in certain areas of LA County has led women to survival economies, like sex work, that increase the chances of arrest, and how subsequent criminal records only further decrease the ability of women to find jobs and financial independence. Moreover, many also talked about the crippling fines and fees associated with even minor traffic cases that can overwhelm women and act as counterproductive barriers to economic opportunities (e.g. by limiting ability to travel to work because of license suspensions).

Figure 6



Women in LA County (and nationally) are often booked for lower-level charges related to trauma, substance use, poverty, and survival.

Based on local data analysis completed by Million Dollar Hoods, the most common charges leading to the booking of women into LA County Jail relate to behavioral health needs and survival. The median times women spend incarcerated on these charges reflect the fact that the offenses are lower-level and long enough to disrupt important pillars of stability like caretaking and employment. (See Figures 7 & 8.)

Figure 7

Most Common Charges for Women in LA County Jail (2010-2016) ²⁷		
	Charge Category	% of Charges
#1	Possession of a controlled substance	14%
#2	Driving on a suspended license / no insurance	8%

Resistance of Women with Incarcerated Loved Ones (Los Angeles and Oakland, CA: Essie Justice Group, 2018), 17, 55-62.

²⁵ Elizabeth Swavola et al., 2016, 19.

²⁶ Ibid.

²⁷ Danielle Dupuy et al., 2018.

#3	Theft / shoplifting / larceny	7%
#4	Failure to appear	6%
#5	DUI	6%

Figure 8

Median Time Incarcerated for Women on Common Charges (2010-2016) ²⁸	
Driving on a suspended license	2 days
Prostitution	4 days
Drug possession	6 days
Supervision violation	13 days

Spotlight on Prostitution & Racial Disparities Impacting Black Women

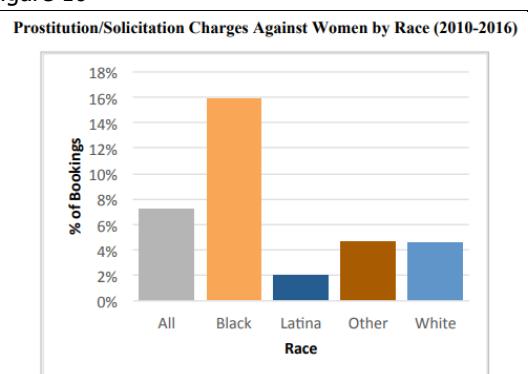
Although not among the five most common charges for all women in the LA County Jail (see Figures 7 & 8), prostitution remains a **common charge** that leads to the booking of women into LA County Jail. There is, however, a **large racial disparity**. Black women are disproportionately impacted, as it is the most common booking charge they face and not one of the top 5 most common charges for other races.²⁹ (See Figures 9 & 10.)

Figure 9

Top Charges Against Women Booked into the L.A. County Jail by Race (2010-2016)						
Black	%	Latinas	%	Other	%	White
Charge	Charge	Charge	Charge	Charge	Charge	Charge
Prostitution /Solicitation	16%	DUI	13%	DUI	16%	Possession of a controlled substance
Possession of a controlled substance	10%	Possession of a controlled substance	12%	Possession of a controlled substance	10%	DUI
Driving on a suspended/revoked license	7%	Driving on a suspended/revoked license	9%	Theft/ Shoplifting	7%	Burglary
Supervision violation	7%	Theft/ Shoplifting	7%	Driving on a suspended/revoked license	5%	Theft/ Shoplifting
Burglary	6%	Burglary	6%	Burglary	5%	Supervision violation

*% represents the percent of Black females, Latinas, Other race females and White females booked for a single charge.

Figure 10



* This graph represents single-charge bookings

Spotlight on Substance Use & Racial Disparities³⁰

Women in LA County Jail—across all races—are regularly booked and incarcerated for nearly a week simply for possession of a controlled substance. (See Figures 8 & 11.)

²⁸ The Million Dollar Hoods Project analysis of the Los Angeles County Jail, 2019, on file with Vera Institute of Justice.

²⁹ Danielle Dupuy, Eric Lee, Mariah Tso, Isaac Bryan, and Kelly Lytle Hernandez, *Bookings into the LA County Jail, 2010-2016* (Los Angeles: The Million Dollar Hoods Project, 2019), 9.

³⁰ The Million Dollar Hoods Project analysis of the Los Angeles County Jail, 2019, on file with Vera Institute of Justice.

Figure 11

Bookings between 2010 and 2016 (all genders)	
Opioid possession only charge	21,054
Methamphetamine possession only charge	30,547

Black people in LA County, including women, were most impacted by OPIOID possession arrests.

- Black people accounted for nearly 1 out of every 2 opioid jail bookings.
- Among women, over 54 percent of opioid related jail bookings was a Black woman.
- The five most common home zip codes, from available data, for all people arrested on opioid possession charges were: 90044, 90037, 90047, 90003, 90013.
- Cost of opioid possession bookings, 2010-2016: at least \$81 million

Latinx people in LA County, including women, were most impacted by METHAMPHETAMINE possession arrests.

- Nearly 60 percent of all methamphetamine bookings involved a Latinx person.
- Latina bookings accounted for 53 percent of all women booked on a methamphetamine charge.
- The five most common home zip codes, from available data, for all people arrested on methamphetamine possession charges were: 90044, 90201, 90650, 90022, 93550.
- Cost of methamphetamine possession bookings, 2010-2016: at least \$110 million

Spotlight on Supervision Violations & Racial Disparities Impacting Black Women³¹

Black women are disproportionately incarcerated in LA County and, of those booked, 7% are incarcerated for supervision violations, one of the most common charges Black women face.³² (See Figure 9.) Bookings for supervision violations may impact the overall racial disparities in incarceration of Black women locally, as the median time women are held in LA County Jail generally is 6 days but 13 days for supervision violations.³³ (See Figure 8.) More information could help assess the role of supervision violations in perpetuating racial disparities, and the ATI Work Group recommendations reflect the need for additional safe and ethical data collection and analysis.

Developing a More Complete Picture

Ad Hoc Committee members identified many issues they believe drive the incarceration of women in LA County that cannot be fully captured by available data, like arrests for the activities of intimate partners and family; DCFS involvement as a pathway to the criminal legal system; prosecutorial up-charging in the face of legislative reform; and selective law enforcement practices, including stings for certain types of offenses and in certain geographical

³¹ Ibid.

³² Danielle Dupuy et al., 2019, 9.

³³ The Million Dollar Hoods Project analysis of the Los Angeles County Jail, 2019, on file with Vera Institute of Justice.

areas. Moreover, more data needs to be collected locally—in safe and ethical ways—to help understand drivers of incarceration more fully. For example, data from the National Inmate Survey, analyzed by the Williams Institute at UCLA School of Law, reflected that one in three (33%) incarcerated women identify as lesbian or bisexual, "a proportion that is about 8 to 10 times greater than the 3.4 percent of lesbian or bisexual women in the U.S. population."³⁴ A recent study revealed that incarcerated women who identify as lesbian or bisexual are likely to receive longer sentences than their heterosexual peers.³⁵ Information like this, which is not currently available through LASD, could help decipher important patterns in the incarceration of women locally and opportunities to address inequities.

While LA County can do more to understand the incarceration of women locally, what we do know is not unusual; in fact, it mirrors what is happening around the country. This means that LA County's efforts to develop and scale alternatives to incarceration for women, especially Black and Latinx women, are timely and the County can implement recommendations in line with some of the best and most promising practices in diversion.

Changing the Trajectory

Many jurisdictions across the country are now considering how to turn the tide on the incarceration rates of women. Efforts to increase diversion opportunities across the board can benefit women. However, there is growing recognition of the need to reevaluate criminal legal system policies and practices through a lens specific to women—centering women's stability, trauma-informed care, harm reduction, and cultural humility. The following are some promising approaches to diverting women from jail before and after arrest.

Addressing the needs of women through inclusive community-based systems of care to minimize contact with law enforcement or incarceration.

Many women end up in jail because of crises sparked by unmet behavioral health needs, like mental health care or treatment for drug dependence/abuse. The criminal legal system often becomes a first point of access to services via mandated diversion programming after an arrest. However, best practices caution that social services should be readily accessible in the community—not primarily through the criminal legal system, which is ill-equipped to be a manager of services given the adversarial and punishment-oriented setting.³⁶

These community-based service systems must embrace women with involvement in the criminal legal system, recognizing them as a core constituency to ensure meaningful access—yet this is

³⁴ Ilan H. Meyer, Andrew R. Flores, Lara Stemple, Adam P. Romero, Bianca D.M. Wilson, and Jody L. Herman, "Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011–2012," *American Journal of Public Health* 107, no.2 (2017), 238.

³⁵ Aleks Kajstura, "Women's Mass Incarceration: The Whole Pie 2019," *Prison Policy Initiative*, October 29, 2019, <https://www.prisonpolicy.org/reports/pie2019women.html>.

³⁶ Courts are not well-equipped to manage social services since criminal cases take place as part of adversarial proceedings. Also, mandated services often inadvertently lengthen or deepen involvement in the criminal legal system, including when women are legally innocent. See Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and New York Women's Foundation (NYWF), *Women InJustice: Gender and the Pathway to Jail in New York City* (New York: PRI, 2017), 30.

not always the case currently.³⁷ Moreover, LA County should ensure that services are provided in a way that promotes racial equity.³⁸ Robust and inclusive community-based systems of care like the ones the ATI Work Group has envisioned can help prevent and intervene in crises and thus minimize contact with law enforcement.³⁹ These services also are an important foundation for women's successful reentry from jail, as continuity of services through community-based care prevents fragmented behavioral health or addiction services post-release.⁴⁰

In order to meet the behavioral health needs of women, community-based systems of care ideally should offer a range of trauma-informed services tailored for women, account for important priorities like maintaining family unity, address the economic disadvantages women face, and use peers to promote engagement with services. Given that most women in jail are mothers and many are afraid to seek help before crisis in anticipation of separation from their children, several jurisdictions offer behavioral health services, including residential ones, that incorporate women's children, foster economic opportunities, and prioritize permanent housing to boost safety and stability.⁴¹ To maximize positive engagement with available services, LA County and jurisdictions like New York City have recognized the importance of using peers and community networks, which can attract marginalized women to harm reduction services and sustain women through ongoing treatment.⁴² The ATI Work Group's recommendations at Intercepts zero and one to create services specifically for women, bolster parenting resources, engage peers in outreach/support, and promote financial independence are tailored to the central needs of women at risk of criminal legal system involvement.

³⁷ Ibid., 30.

³⁸ A study found that continuing stereotypes about women of color, particularly Black women, limited access to programs that relate to crucial issues like economic independence and family reunification. They concluded that white women, at 54 percent, were more likely than Black women, at 35%, to have received such services as substance abuse treatment and mental health counseling as conditions of probation. Barbara Bloom, et al., 2002, 4.

³⁹ For women with histories of trauma, an arrest can trigger a traumatic reaction. See Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and New York Women's Foundation (NYWF), 2017, 29.

⁴⁰ Ibid., 30; Audrey L. Begun, Theresa J. Early, and Ashleigh Hodge, "Mental Health and Substance Abuse Service Engagement by Men and Women During Community Reentry Following Incarceration," *Administration and Policy in Mental Health and Mental Health Services Research* 43, no. 2 (2016): 207-18.

⁴¹ There are myriad examples of jurisdictions, including in California, investing in programming tailored to the needs of women. Cameo House in San Francisco, CA is one example of residential treatment for mothers that maintains the family unit. It serves pregnant and parenting women with one child age six or younger. The program provides substance abuse prevention, parenting skills, child development and reentry services for a period of 12 months, followed by aftercare services. Solano County's Women's Reentry Achievement Program (WRAP) has also received praise for providing services to incarcerated mothers that spans from before to after release with intensive case management, employment services, and counseling. Barbara E. Bloom, *Meeting the Needs of Women in California's County Justice Systems: A Toolkit for Policymakers and Practitioners* (Oakland, CA: Californians for Safety and Justice, 2015), 18-20.

⁴² Vera Institute of Justice and The New York Women's Foundation, *A New Path to Justice: Getting Women Off Rikers Island* (New York: Vera Institute of Justice, 2018). See also LA County ATI Work Group, *Interim Report* (Los Angeles: June 2019), 56-7, for recommendations to expand existing Community Health Worker (CHW) programs.

Minimizing the number of women enduring even short periods in jail through robust pre-arrest and pre-booking diversion and by reconsidering arrest/charging practices.

Jurisdictions across the country have sought to reduce the incarceration of women by focusing on the first point of contact with law enforcement at the outset of criminal charges.

Given the higher rates of mental illness for women in jails, cities have recognized the need for a trauma-informed approach to mental health crises that minimizes the role of law enforcement and maximizes the use of healthcare resources.⁴³ Several jurisdictions, including LA County, have successfully invested in diverting mental health crisis calls to care instead of arrest, particularly using the Crisis Intervention Team (CIT) model where specially trained officers work with mental health providers to address women in crisis.⁴⁴ A number of cities are also looking to the CAHOOTS program in which medical and mental health professionals work together as a model for non-police response to behavioral health crisis.⁴⁵ These interventions at Intercept one have the potential to decrease instances of arrest and address crisis through a “care first” lens. They are also particularly important to women who have histories of trauma and may

Police and local jurisdictions like LA County have also invested in the Law Enforcement Assisted Diversion (LEAD) program to offer pre-booking diversion for low-level offenses related to substance use, mental illness, and poverty⁴⁶. When King County, Washington, where LEAD was created in 2011, evaluated its program, it found that women were 34 percent of participants.⁴⁷ The evaluation reflected positive outcomes and cost savings, with participants more likely to obtain housing and employment and less likely to be arrested or charged with a felony.⁴⁸

⁴³ Elizabeth Swavola et al., 2016, 25.

⁴⁴ Ibid., at ‘in lieu of custodial arrest’ section. Akron, Ohio has had significant success implementing CIT practices for women in crisis. Only 3 percent of calls resulted in arrest and most led to transport to treatment, ranging from emergency services to community services. Similarly, Tulsa, Oklahoma has implemented the Community Outreach Psychiatric Emergency Services (COPES), a program that allows a team of community-based partners to support women in crisis; the result has also been that only 3 percent of women involved in the calls have gone to jail and most go to care.

⁴⁵ Oakland, California is one of the most recent jurisdictions to pilot the CAHOOTS program, which originated in Stockholm to improve care, deescalate crisis, and minimize the stigma of mental health conditions. Sigal Samuel, “Calling the cops on someone with mental illness can go terribly wrong. Here’s a better idea. What if we sent mental health experts instead of police?” Vox, July 1, 2019, <https://www.vox.com/future-perfect/2019/7/1/20677523/mental-health-police-cahoots-oregon-oakland-sweden#content>. For more information on CAHOOTS, including meeting with Oakland stakeholders on implementation, see White Bird Clinic’s website, <https://whitebirdclinic.org/category/cahoots/>.

⁴⁶ In October 2018, the Board of Supervisors expanded the LEAD program, including operations in North Long Beach and South LA. See LA County Supervisor Sheila Kuehl’s post on the expansion of LEAD, <https://supervisorkuehl.com/supervisors-expand-effective-new-jail-diversion-program/>.

⁴⁷ Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, *LEAD Program Evaluation: Criminal Justice and Legal System Utilization and Associated Costs* (Seattle, WA: University of Washington, 2015), 12.

⁴⁸ Ibid.; Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, “Seattle’s Law Enforcement Assisted Diversion (LEAD): Program Effects on Recidivism Outcomes,” *Evaluation and Program Planning* 64

Accordingly, LA County has invested in expanding the LEAD program to target areas of need and, in 2018, the local LEAD program opened its first dedicated interim housing site for women in collaboration with community partners.⁴⁹

Finally, some prosecutors across the country are acknowledging their power to respond to issues that impact women greatly, like drug charges or bail requests. There is a small but growing contingent of prosecutors that have pledged to reduce charges or not prosecute drug possession cases (e.g. for small amounts of certain types of drugs).⁵⁰ Using prosecutorial discretion for drug cases has the potential to reduce the incarceration of women significantly, as it remains one of the most common charges women face in LA County Jail. Also, some people have called for law enforcement and prosecutors to similarly expand diversion and pretrial release for women more broadly—for example, with the ATI Work Group recommending a presumption of release for pregnant and lactating people and changing practices of criminalizing women for offenses associated with survival, like sex work.⁵¹ This aligns with recommendations from across the country to offer diversion and voluntary programming for offenses common to women with behavioral health needs.⁵² A shift in arrest/charging policies can transform outcomes in individual cases but also make systemic changes that reduce the incarceration of women in LA County overall.

A Note on Sex Work & Diversion

Most of the largest jurisdictions across the country, including LA County, have programs through the criminal legal system to address sex work (i.e. most commonly prostitution or

(October 1, 2017), 49–56. For a discussion of housing, employment, and income outcomes, see Seema L. Clifasefi, Heather S. Lonzak, and Susan E. Collins, “Seattle’s Law Enforcement Assisted Diversion (LEAD) Program: Within-Subjects Changes on Housing, Employment, and Income/Benefits Outcomes and Associations With Recidivism,” *Crime & Delinquency* 63, no. 4 (April 1, 2017), 429–445.

⁴⁹ In October 2018, the Board of Supervisors expansion of LEAD involved the program partnering with a community provider and operating its first dedicated interim housing site for women. See LA County Supervisor Sheila Kuehl’s post on the expansion of LEAD, <https://supervisorkuehl.com/supervisors-expand-effective-new-jail-diversion-program/>.

⁵⁰ Fair and Just Prosecution, “Harm Reduction Responses to Drug Use,” 2019, https://fairandjustprosecution.org/wp-content/uploads/2019/08/FJP_Brief_HarmReduction.pdf. For examples of efforts in Philadelphia and Seattle, see Julie Shaw, “Report: DA Krasner ‘Very Close’ to rolling out policy decriminalizing drug possession,” *The Philadelphia Inquirer*, May 8, 2019, <https://www.inquirer.com/news/philadelphia-district-attorney-larry-krasner-drug-possession-20190508.html>; Justin Jouvenal, “No charges for personal drug possession: Seattle’s bold gamble to bring ‘peace’ after the war on drugs,” *The Washington Post*, June 11, 2019, https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html; and Nicholas Kristof, “Opinion: Seattle Has Figured Out How to End the War on Drugs,” *The New York Times*, August 23, 2019, <https://www.nytimes.com/2019/08/23/opinion/sunday/opioid-crisis-drug-seattle.html>.

⁵¹ See also Strategy 3, a call for including specific booking questions at arraignments to flag women for pretrial release, in Vera Institute of Justice and The New York Women’s Foundation, 2018; and Elizabeth Swavola et al., 2016, 26–7.

⁵² Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and New York Women’s Foundation (NYWF), 2017, 35.

solicitation charges).⁵³ While prostitution/solicitation are not among the most common booking charges for women in LA County overall, they are the charges most frequently bringing Black women into the jail and thus an issue of racial equity. Many diversion programs for people engaged in sex work aim to offer women services and support. However, some experts have argued that these well-intentioned programs and local law enforcement practices may widen the net by bringing more women of color and transgender women into the criminal legal system through sweeps and profiling as well as perpetuating the cycle of disadvantage through mandated programming.^{54, 55} Some have also questioned whether actual diversion programs—particularly ones that require mandated programming in lieu of incarceration—are effective at meaningfully engaging people in services or are doing more harm than good.⁵⁶ Finally, it should be noted that there is a growing movement across the country, including in California, to decriminalize sex work—though efforts to gain traction on legislation have been mixed.⁵⁷ The ATI Work Group has recognized the racial disparities in LA County that must be addressed and recommendations around decriminalization of certain offenses, peer engagement, and the structure of court-based diversion programs align with the trajectory around the country to move towards harm reduction.

Maximize diversion opportunities by avoiding exclusions based on criminal record, security classification, or assessments used for cisgender men, which are not good predictors of success for women.

While women generally pose minimal risk to community safety, they are often assessed for pretrial release or security classification in jails using tools designed to predict men's dangerousness risk, and studies have shown this can result in inappropriate “over-classification.”⁵⁸ Additionally, jurisdictions have found that gender-neutral pretrial programs

⁵³ Elizabeth Swavola et al., 2016, 26.

⁵⁴ In July 2019, California Governor Gavin Newsom signed Senate Bill 233 prohibiting possession of condoms as evidence of prostitution in a criminal prosecution. Advocates argued that the practice promoted profiling of women of color and transgender women and that it conflicted with harm reduction principles. Senate Bill No. 233, California Legislative Information, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB233.

⁵⁵ Red Umbrella Project, *Criminal, Victim, or Worker?: The Effects of New York’s Human Trafficking Intervention Courts on Adults Charged with Prostitution-related Offenses* (New York: REDUP, 2014); and Andrea J. Ritchie, “As we #SayHerName, 7 Policy Paths to Stop Police Violence against Black Girls and Women,” *Colorlines*, May 19, 2016, <https://perma.cc/R9LG-SCE7>.

⁵⁶ Global Health Justice Partnership of the Yale Law School and School of Public Health and Sex Workers Project of the Urban Justice Center-NYC, *Diversion from Justice: A Rights-Based Analysis of Local “Prostitution Diversion Programs” and their Impacts on People in the Sex Sector in the United States* (2018), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/diversion_from_justice_pdp_repo_rt_ghjp_2018rev.pdf.

⁵⁷ Marie Solis, “Sex Workers Will Finally Be Able to Carry Condoms Without Fear of Arrest in California,” *Vice*, July 29, 2019, https://www.vice.com/en_us/article/j5wymd/sex-workers-condoms-abuse-california-law.

⁵⁸ Elizabeth Swavola et al., 2016, 30; Krista S. Gehring and Patricia Van Voorhis, “Needs and Pretrial Failure: Additional Risk Factors for Female and Male Pretrial Defendants,” *Criminal Justice and Behavior* 41, no. 8 (2014), 944; and Kelly Hannah-Moffat, “Gridlock or Mutability: Reconsidering ‘gender’

often do not account for the unique responsibilities and challenges women face—for example, women who act as caretakers and may have trouble complying with various conditions of programming—nor do they seek to address women’s needs, which can be key to a successful transition out of jail.⁵⁹ The effect is that women who can thrive in the community with the right support may end up excluded from diversion opportunities or returned to jail if they cannot meet stringent release requirements. The ATI Work Group has identified the harms of constantly judging women by a past criminal record or charges and rightly crafted recommendations that call to maximize access to diversion and support for all women. The research supports LA County in being bold and inclusive in terms of diverting women of all backgrounds, charges and histories with the right support for their particular needs.

Structure alternatives to incarceration to foster positive engagement with voluntary services and avoid exacerbating the drivers of system involvement for women.

For women who are released from jail to programming or community supervision, there is often the risk of re-incarceration simply because the diversion opportunity was ill-suited to the needs and strengths of women.⁶⁰ Many women are sent to jail for violating supervision conditions because of the challenges of balancing program requirements with life responsibilities like work or parenting; navigating multiple systems (e.g. child welfare, public assistance, probation) with conflicting expectations; and being unable to afford the payment of fines and fees associated with community supervision and ATI alternative programming. Additionally, for some women—especially those who are struggling with mental health conditions or drug dependence/abuse—diversion models based on the threat of incarceration for “non-compliance” can be counterproductive for meaningful engagement with services and retraumatize women.⁶¹

Research has led to calls for avoidance of compliance-based diversion and over-supervision that undermine women’s outcomes and do not increase community health and public safety or wellness.⁶² Instead, jurisdictions are increasingly implementing harm reduction principles by

and ‘Risk Assessment,’’ *Criminology & Public Policy* 8, no. 1 (2009), 209-19, Doi:10.1111/j.1745-9133.2009.00549.x.

⁵⁹ Amber Baylor, “A Free Start: Community-Based Organizations as an Antidote to the Mass Incarceration of Women Pretrial,” *Hastings Women’s Law Journal* 26, no. 1 (2015), 51-64.

⁶⁰ Becki Ney, Rachelle Ramirez, and Marilyn Van Dieten, *Ten Truths That Matter When Working with Justice Involved Women* (Washington, DC: National Resource Center on Justice Involved Women, 2012), 11.

⁶¹ Where behavioral health programming is not gender-specific or trauma-informed, “compliance” can be hard to achieve for women and a model of negative sanctions like the threat of incarceration have the potential to actually retraumatize women. Prisoner Reentry Institute at John Jay College of Criminal Justice (PRI) and New York Women’s Foundation, 2017, 31. Additionally, for women engaged in sex work, engagement with peers and voluntary offers of programming can produce more positive engagement than sanction-based models. Global Health Justice Partnership of the Yale Law School and School of Public Health and Sex Workers Project of the Urban Justice Center-NYC, 2018.

⁶² Specialty courts and ATI programs often operate “one size fits all” models where people fail not because they have new arrests but rather because they cannot keep up with diversion obligations. This ends up prolonging involvement in the criminal legal system and often additional time in jail. Vera Institute of Justice and The New York Women’s Foundation, 2018. In fact, over-supervision has been found to produce worse outcomes for people found to be at low-risk for re-offending: “Decades of research confirm

changing programming requirements and focusing on offers of voluntary services at as many points in a case as possible. There has also been a growing movement across the country to address the fines and fees that are crippling women, including those in Los Angeles.⁶³ The ATI Work Group recommendations address these issues in line with best practices—asking for gender-specific programming, removing fines and fees associated with services, and reconsidering ATI supervision requirements to reduce supervision violations and accompanying racial disparities.

Conclusion

For too long, LA County has incarcerated women in jail without considering who the women are, systemic racial disparities, and how the County might support women in their communities instead of relying on incarceration. In implementing the ATI Work Group vision, LA County will be on the pathway to combating the harms that have fueled criminal legal system involvement for women and investing in programs that can support women thriving. The broader ATI roadmap and recommendations crafted by the Gender and Sexual Orientation Ad Hoc Committee reflect significant progress in the right direction.

... that overly supervising (by number of contacts, over-programming, or imposing unnecessary restrictions) low-risk probationers or parolees is likely to produce worse outcomes than essentially leaving them alone. . . . Thus, uniform supervision will invariably have a negative impact on recidivism rates for some sector of the supervised population. In addition, if the supervision strategy and case plan are not matched to the individual's assessed risk and needs, the supervision may very well be ineffective." Vera Institute of Justice, *The Potential of Community Corrections: To Improve Communities and Reduce Incarceration* (New York: Vera Institute of Justice, 2013), 13.

⁶³ Gina Clayton et al., 2018, 17; and ACLU of Southern California, *Costs of Injustice: How Criminal System Fees are Hurting Los Angeles County Families* (Los Angeles, 2019), https://www.aclusocal.org/sites/default/files/aclu_socal_costs_of_injustice.pdf.