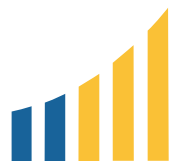


Mountain State Women Aren't Always Free

THE STATE OF WOMEN'S
INCARCERATION IN
WEST VIRGINIA

by Rayna E. Momen, MA



WEST VIRGINIA CENTER ON
BUDGET & POLICY

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PART I

Introduction

Over the past 40 years, the mass incarceration of women has exploded in West Virginia (WV), growing by a staggering 2,731 percent from 1978 to 2019. Female incarceration¹ has grown so quickly, in fact, that women are being incarcerated at a higher rate than men in Mountain State prisons.

But the reasons more women are going to prison in WV have less to do with rising crime and more to do with social drivers (like poverty and substance abuse), and policy drivers (like changes in the way police respond to crime, and in sentencing decisions that determine who goes to prison and for how long). Many residents struggle to meet their basic needs in this largely rural state that ranks poorly on a number of social and economic indicators and falls entirely within the Appalachian region. Factors such as poverty, rural isolation, under-education, and addiction increase the chances that women will come into contact with the criminal legal system² and end up behind bars. Once incarcerated, a range of far-reaching consequences impact not just these women, but their families, communities, and the state as a whole.

The good news is, there are practical ways to reduce the number of women going to prison, and the number of women who go back to prison after release. Better supporting women in their everyday lives — before and after a period of incarceration — along with changes in outdated and harmful policies means more women can remain with their families and in their communities, better positioned to meet their needs and access critical resources. Identifying the most impactful interventions requires a better understanding of the scope and prevalence of female incarceration in WV, which rests heavily on the data that is collected and what we do with it.

By the Numbers: West Virginia's Women Behind Bars

1. WV went from incarcerating 76 women in 1990, to 821 in 2019,³ amounting to an 11-fold increase.
2. The largest single-year increase in female incarceration from 1978 to the present (at 38 percent), occurred from 1994 to 1995.
3. Although the male prison population grew by 302 percent from 1990 to 2019, the female population grew by 980 percent during this period, which is more than three times the growth for males.
4. WV had the third highest percent change in female incarceration from 1990 to 2019 in the U.S.
5. WV's rate of female juvenile confinement was the fourth highest in the nation in 2017, at 95 per 100,000.⁴

PART II

The Rapid Growth of Female Mass Incarceration in West Virginia

There are more than a thousand female residents behind bars in WV, and those numbers are growing. These women are spread throughout the state's 10 regional jails and in the state's only female-designated prison, Lakin Correctional Center (Lakin), a maximum security prison with multiple custody levels that opened in 2003.

Women are also confined in federal prisons in WV, under control of the Bureau of Prisons. A large share of women in these prisons are nonresidents serving time on federal charges. This distinction is important, as combining resident and non-resident females distorts incarceration rates. For example, in 2015, it was reported that WV was first in the nation and the world for its rate of female incarceration, at 273 women per 100,000 residents.⁶

Women of color disproportionately bear the brunt of the rise in incarceration. While adult Black females make up just 1.3 percent of the total WV population,⁷ they make up a disproportionate share of the incarcerated population (>5 percent) in prison and jails.⁸ In 2013, the likelihood of confinement for Black youth in WV was almost three times that of their white peers and exceeded the national average.⁹ Among 2018 intakes in juvenile residential facilities in WV, just under 74 percent were white non-Hispanic, whereas nearly 15 percent were Black non-Hispanic.¹⁰

Figure 1

Spotlight on Lakin Correctional Center⁵

Race	Count	Percent
White	494	93.38%
Black	29	5.48%
All other Races and Ethnicities	6	1.13%
Total	529	100.00%

Age Range	Count	Percent
< 40	382	72.21%
40-59	136	25.71%
60+	11	2.08%
Total	529	100.00%

Highest Completed Education	Count	Percent
Less than High School	252	47.64%
Completed High School Only	259	48.96%
Some College or Completed Degree	18	3.40%
Total	529	100.00%

Top 3 Offense Types	Count	Percent
#1 Drug/Narcotic	79	14.93%
#1 Homicide	79	14.93%
#2 Burglary/B&E	45	8.51%
#2 Child Abuse/Neglect	45	8.51%
#3 Robbery	43	8.13%
All Other Offenses	238	44.99%
Total	529	100.00%

Source: Data come from a roster of the 529 people in prison at Lakin on September 13, 2019 from the West Virginia Department of Military Affairs and Public Safety.

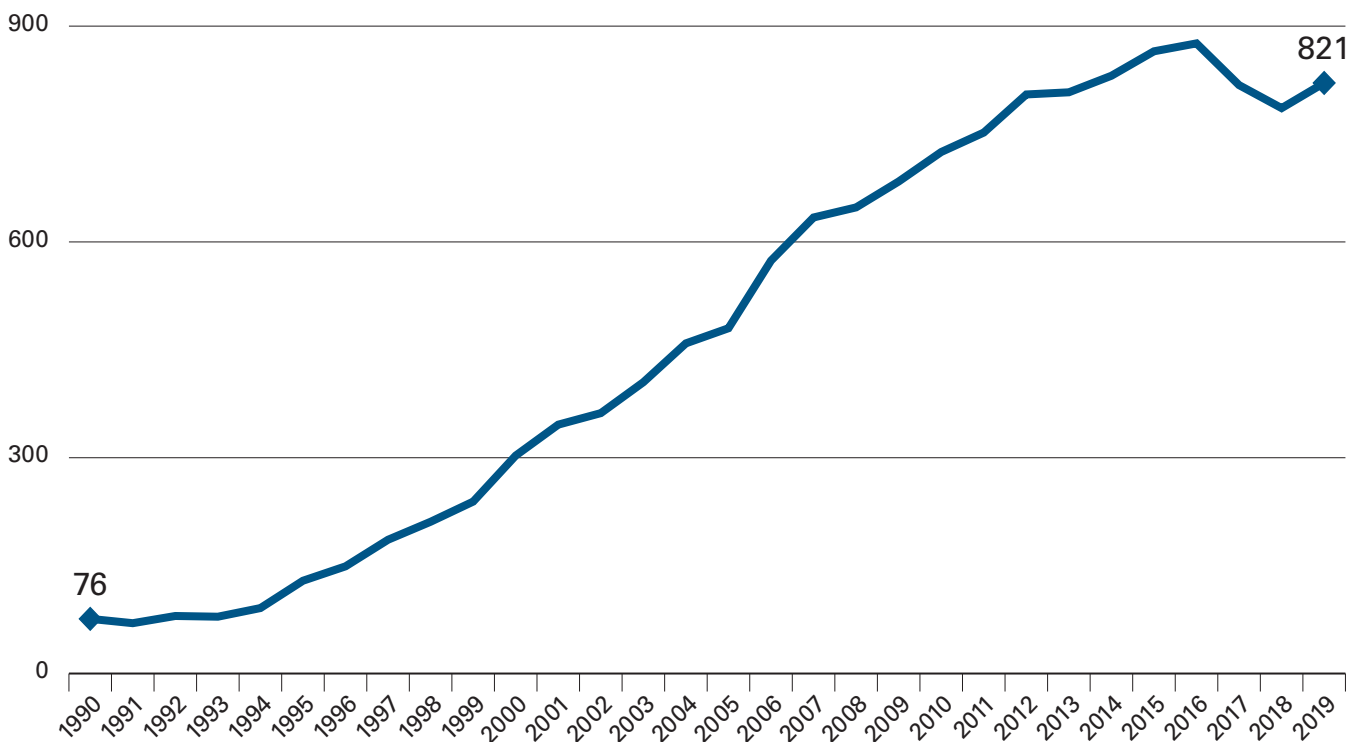
Female Incarceration Continues to Grow Across State and Nation

The number of women behind bars is large and growing. Women make up the fastest growing slice of the incarcerated pie in WV and in the nation. This sharp rise is due in large part to the War on Drugs, waged by the Nixon administration in the early 1970s and greatly expanded under the Reagan administration in the 1980s, when the crack epidemic hit the nation and wreaked havoc in WV. In addition, the rise is also largely attributable to the 1994 Crime Bill,¹¹ which emboldened states to impose harsher prison sentences for certain offenses, funded the building of more prisons, called for more rigorous policing practices, and intensified the War on Drugs, leading to even more pronounced racial and economic disparities and more women being caught in the widening net of the criminal legal system. Further, the opioid crisis, which grew to epidemic proportions in WV, has its roots in 1990s changes to how pain medications were prescribed. Thus, female incarceration in WV can be linked to patterned changes in the criminal legal system and the medical industry.

Figure 2

The Enormous Rise in West Virginia Female Incarceration, 1990-2019

West Virginia females sentenced under jurisdiction of state or federal correctional authorities on December 31 of each year



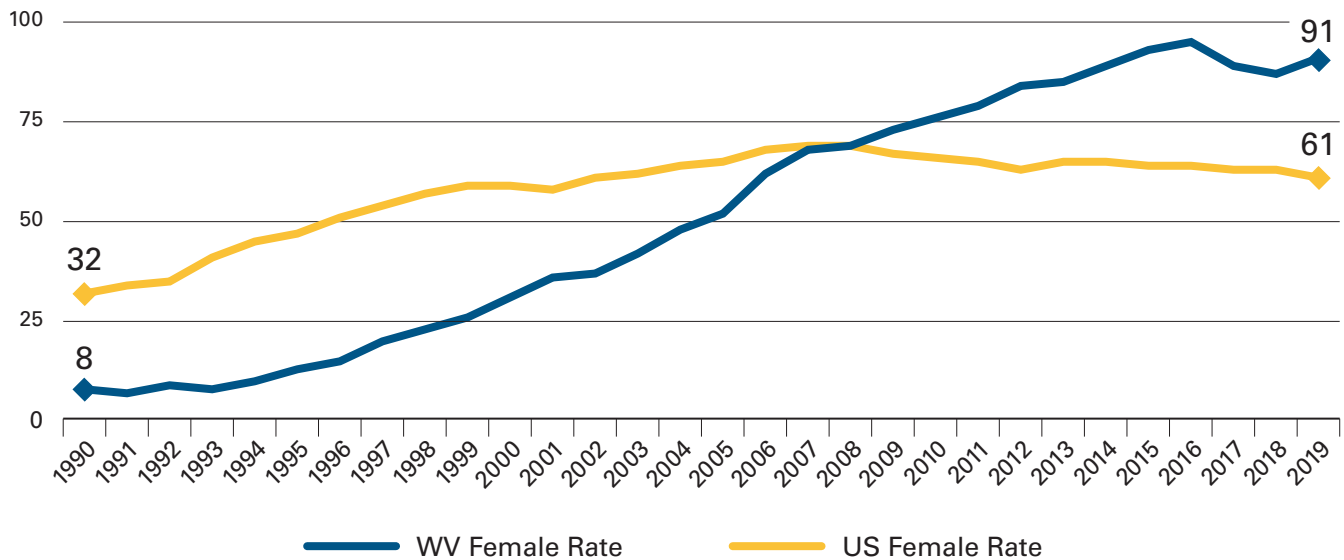
Source: Bureau of Justice Statistics, National Statistics Prison Program, 1990-2018; 2018 and 2019.

The above figure illustrates the drastic rise in the number of females sentenced to incarceration in WV over thirty years, which grew from 76 in 1990 to 821 in 2019. The takeoff is especially striking in 1995, when the number of incarcerated women rose nearly 38 percent from the prior year, representing the largest single-year increase since 1978.

Figure 3

The Sharp Rise in West Virginia Female Incarceration Rate (per 100,000 Female Residents) Compared to the U.S.

Imprisonment rate of sentenced West Virginia females and sentenced U.S. total females under jurisdiction of state or federal correctional authorities on December 31 of each year (1990-2018); and for 2019, based on January 1 population estimates.



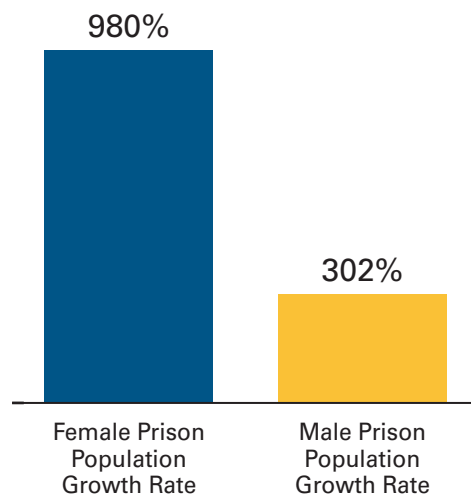
Source: Bureau of Justice Statistics, National Prisoner Statistics Program, 1990-2018; 2018 and 2019; U.S. Census Bureau, post-censal resident population estimates for January 1 of the following calendar year.

Women are being incarcerated at a higher rate than men across the country and this rate has increased far more quickly in West Virginia than in the nation as a whole, as seen in Figure 3 above. This suggests that factors contributing to this rising trend in the nation are having an even more dramatic impact in WV. This growth has also outstripped male incarceration over the last four decades, with the share of females among WV’s total prison population rising from 5 percent in 1990 to 12 percent in 2019, which is also higher than the national average. Figure 4 to the right shows just how much female incarceration has grown when compared to that of WV males.

Female incarceration grew by a staggering 980 percent from 1990-2019, whereas male incarceration grew by 302 percent during that time. WV ranked third highest in the nation for this percent change over that period, following North Dakota, which ranked first at 1,206 percent growth, and Idaho, which ranked second at 1,000 percent growth. In addition, from 1990 to 1999, WV female incarceration grew 214 percent, compared with just 121 percent for males, more than any other 10-year period from 1980 to 2019. This focused growth suggests that state-level patterns have differentially impacted women, leading them into the state’s prison and regional jails at heightened rates.

Figure 4

West Virginia Female Incarceration Growth Compared to Male, 1990-2019

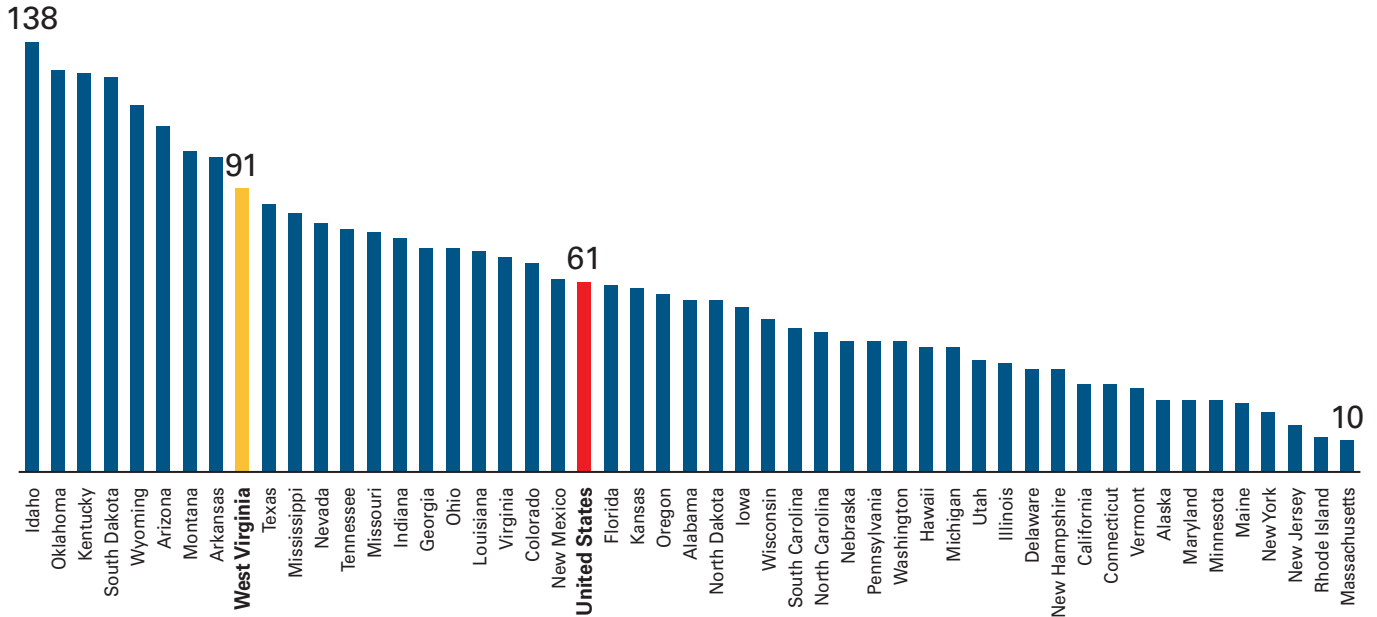


Source: Bureau of Justice Statistics, National Statistics Prison Program, 1990-2019.

Looking decade by decade makes this trend even more apparent. In 1990, WV incarcerated females at a rate of just eight per 100,000 female residents, and in 2019 that rate was 91 per 100,000, making it the ninth highest rate in the U.S. that year. Idaho had the highest rate at 138 per 100,000 females, whereas Massachusetts had the lowest at a rate of just 10 per 100,000. The U.S. rate was 61 per 100,000 for 2019. When looking at female incarceration rates, WV continues to stand out across the nation, indicating that state-level factors shape what leads so many WV women to end up behind bars.

Figure 5

West Virginia Ranks High for its Rate of Female Incarceration (per 100,000 Female Residents) Compared to all States and the U.S., 2019



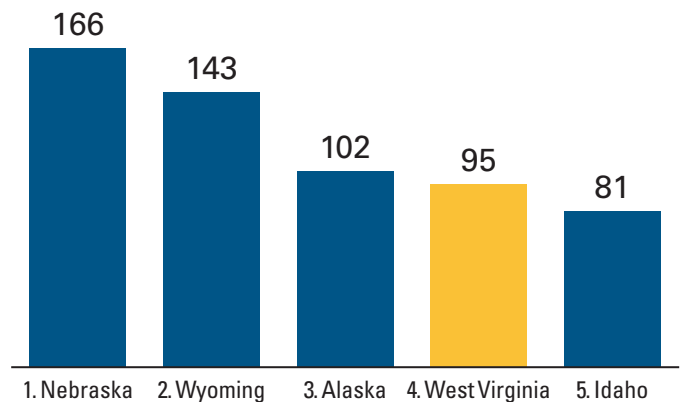
Source: Bureau of Justice Statistics, National Prisoner Statistics, 2019; U.S. Census Bureau, post-censal resident population estimates for January 1 of the following calendar year.

The picture of female incarceration in WV would be incomplete without looking at juvenile female confinement. In 2017, the state ranked fourth highest in the nation with a rate of confinement of 95 girls per 100,000. Nebraska ranked first at a rate of 166 per 100,000, Wyoming ranked second at 143, Alaska ranked third at 102, and Idaho ranked fifth at 81. Nationally, juvenile females make up 15 percent of those in youth confinement,¹² while in WV girls made up roughly 19 percent in fiscal year 2019.¹³

Research shows that early contact with the criminal legal system increases the chances of coming into contact as adults, and such early contact is often tied to the school-to-prison pipeline, where girls are more harshly punished for delinquent behaviors than their male counterparts and other disciplinary actions show gendered patterns. This suggests that WV

Figure 6

West Virginia Ranks in Top Five Among States for its Rate of Juvenile Female Confinement (per 100,000 Girls) in 2017



Source: Sickmund, M., Sladky, T.J., Kang, W., and Puzanchera, C. (2017) "Easy Access to the Census of Juveniles in Residential Placement." Online. Available: <http://www.ojjdp.gov/ojstatbb/ezacjrp/>.

girls could benefit from more restorative justice responses to delinquency, as opposed to more punitive measures, to disrupt patterns of justice involvement as youth.

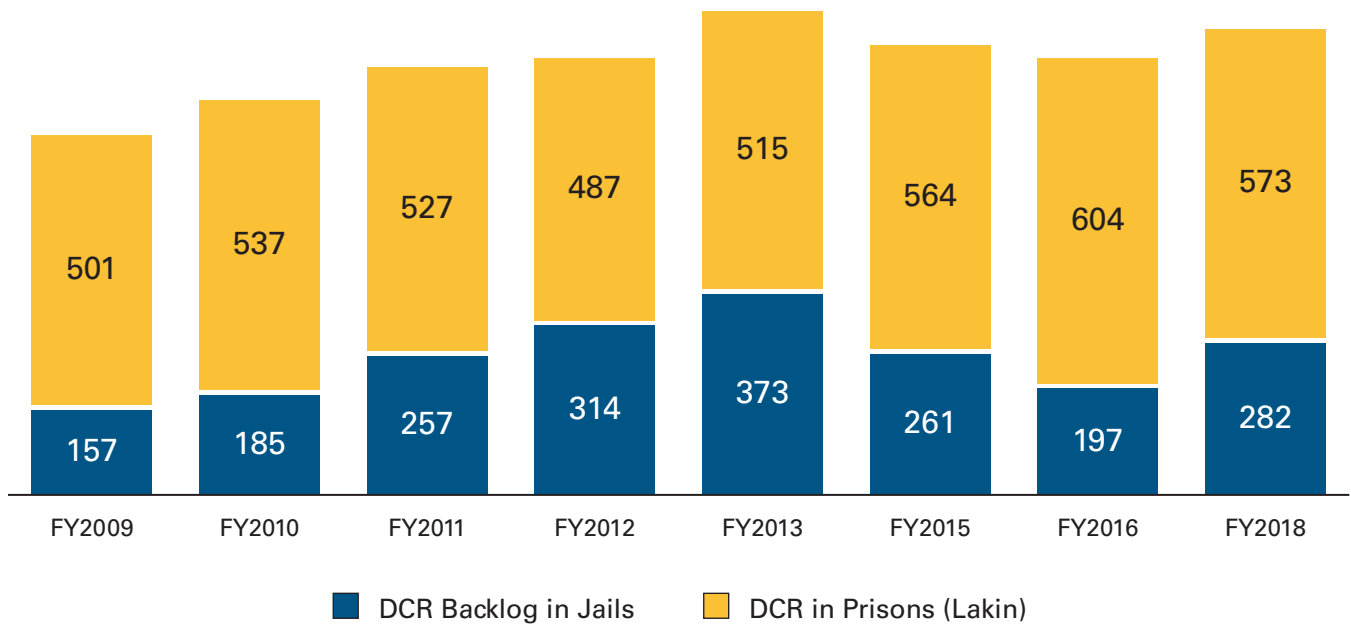
Regional Jail Backlog Contributes to Rising Female Incarceration

With the growing number of WV females being arrested and charged, a growing number of women are entering the state’s regional jails, and for those sentenced to a year or more under custody of the WV Division of Corrections and Rehabilitation (DCR), a growing number remain in jails awaiting transfer to Lakin. 2019 data shows 821 females in this category,¹⁴ with the number of women being sentenced to prison outpacing available beds at Lakin,¹⁵ which reached capacity the first month after opening,¹⁶ and continued to be at capacity even after prison expansions to keep pace with this growth. As a result, the regional jail backlog rose from 157 in 2009 to 313 in 2019,¹⁷ though there is limited data on this population beyond what is included in DCR annual reports, little of which is broken down by gender.

Figure 7

Regional Jail Backlog for Females has Grown

West Virginia females under WV DCR jurisdiction in regional jails and in Lakin, select Fiscal Years, 2009-2018



Source: West Virginia Division of Corrections, Annual Reports Fiscal Years 2009-2018; West Virginia Department of Military Affairs and Public Safety.¹⁸

Figure 7 illustrates the number of females committed to the DCR serving time at Lakin and in regional jails. On average, nearly one-third of sentenced females were serving their time in regional jails, while thousands of additional women cycle in and out of WV jails each year. In fiscal year 2019, 12,214 females were admitted to WV jails,¹⁹ comprising more than a quarter of all jail admissions. According to the Prison Policy Initiative, 25 percent of women behind bars have yet to go to trial.²⁰ Yet in mid-November of 2020, 56 percent of women in WV regional jails were being held pre-trial. Nationally, pre-trial individuals are disproportionately poor and people of color unable to afford bail. Eliminating cash bail would go far in reducing overcrowding in WV jails, which operate over capacity even in the pandemic.

PART III

Consequences of Mass Female Incarceration in West Virginia

The explosive growth in female incarceration has a range of serious consequences for West Virginia's families, governmental budgets, the economy, the hundreds of mothers and those pregnant behind bars, and the overcrowding that results. Because women uniquely experience incarceration in several important ways, this trend is especially harmful for a population that enters prisons and jails with heightened rates of prior trauma, mental health issues, violent victimization, and substance use disorders. In addition, the trends show racial disparities, which means consequences are further compounded for women of color, and particularly Black women. How females experience incarceration impacts how they experience reentry, and where they serve their time also matters, as programming is limited in jails designed for short-term stays and overcrowding impacts program delivery.

Most prisons and jails are designed for men and operate around gender biases. This is at odds with the reality that incarcerated females have unique needs, some of which relate to health care and reproduction, as well as pregnancy and parenting. In addition, incarcerated women are uniquely vulnerable to sexual victimization,²¹ and are more harshly disciplined than incarcerated males,²² which can hinder chances at early release. Strip searches, solitary confinement, and other such practices constitute forms of violence and may serve as a trigger, re-traumatizing women while imprisoned. Nationally, four in 10 correctional officers employed in female-designated prisons are men.²³

There are several main consequences of the rise in female incarceration, and we will explore four here.

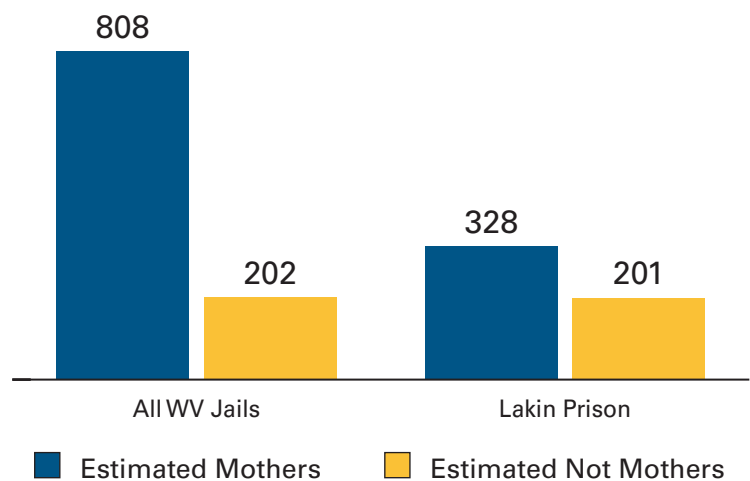
1. Families Disrupted

The majority of imprisoned women are mothers and often the primary caregivers and sole financial supports for their families. The arrest of these women leave many families disrupted as more children enter foster care, a system which is already overburdened in WV.

Across the U.S., 80 percent of women in jails are mothers,²⁴ while 62 percent of women in prisons are mothers of minor children.²⁵ With such high percentages of mothers represented among the incarcerated, the impacts on families cannot be overstated. More than 10 percent of incarcerated mothers have a child in foster care or under care of the state, which is much higher than for their incarcerated male counterparts.²⁶ Research shows that incarcerated mothers face harsher consequences than incarcerated and nonincarcerated fathers when it comes to the likelihood of losing their children.

Figure 8

Estimated Number of Mothers in West Virginia Jails and Lakin Prison, 2019



Source: West Virginia Division of Corrections and Rehabilitation FY 2019 Annual Report; Division of Corrections and Rehabilitation Data on Lakin's end of 3rd Quarter 2019 Population.

Children with incarcerated mothers are also more likely to end up incarcerated themselves.²⁷ West Virginia ranks first in the nation for its per capita rate of children in state custody, which senior officials at the Department of Health and Human Resources (DHHR) have characterized as “a child welfare crisis driven by the addiction epidemic.”²⁸ Among open child abuse and neglect cases, more than 80 percent involve drugs, while over 50 percent of cases in which children are removed are tied to drug addiction, and “since 2013, there has been a 67 percent increase in the number of children in state custody in West Virginia, compared to an 11 percent increase nationally.”²⁹

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2. Pregnant Behind Bars

In addition to being mothers prior to incarceration, many pregnant women also end up behind bars. Three percent of women in federal prisons and 4 percent in state prisons are pregnant upon admission.³⁰ In WV, 119 women entered Lakin pregnant from 2006 to 2019, with 104 of those women giving birth while incarcerated.³¹ This means that an average of 8.5 pregnant women enter Lakin each year.

Lakin allows eligible women who are pregnant upon incarceration to keep their newborn infants with them in a designated unit³² for up to 18 months after giving birth. Such a program was state-mandated, leading Warden Lori Nohe to develop Keeping Infant Development Successful (KIDS),³³ a program which allows mothers to establish a critical bond with their children and makes the mothers less likely to lose them to foster care. In addition to reducing the burden on the foster care system, an estimated \$1,000 monthly savings per child is attributed to the KIDS program. Women in the KIDS program are shown to return to prison in less than 1 percent of cases.

3. Fiscal Costs

WV spends a tremendous amount of money keeping women behind bars, and these costs are particularly burdensome on county budgets.³⁴ Kanawha County’s jail bill for fiscal year 2019 alone, which includes detained females and males, was more than \$5.5 million dollars, the largest of the 55 counties.³⁵ The county also had the most women represented in Lakin’s population in 2019,³⁶ comprising over 9 percent of the population. The annual per person cost of incarceration in WV in fiscal year 2019 (\$30,866)³⁷ was nearly \$3,500 more than the state’s average per capita income (\$27,446).³⁸ At this rate, WV spends more than \$15 million dollars incarcerating 500+ women in Lakin for a single year.

WV’s spending on corrections has far outpaced spending on primary and secondary education. Over the period 1980 to 2013, corrections spending grew over five times faster than spending on PK-12 public education.³⁹ The more we invest in corrections, the less we have to invest in education, and since schools are a known prison pipeline, it would serve us well to better prioritize education for WV’s youth.

4. Economic Consequences

Families of the incarcerated incur significant costs to stay connected to their loved ones through phone calls, visitation, and other forms of communication. Meanwhile, imprisoned people are responsible for affording basic necessities at inflated prices. While some jobs for incarcerated women exist at Lakin, jobs in prisons generally pay cents on the dollar, a wage severely disproportionate to the work involved.⁴⁰ As a result, it takes significantly more labor to afford the cost of items most people take for granted in their everyday lives. For many women, this includes feminine hygiene products that are typically poor quality and are, by law, limited in quantity to imprisoned WV women,⁴¹ forcing them to bargain for such necessities and in some instances, leading them to use dangerous substitutes. Women who are unable to afford necessities must rely on outside

supports for financial help, and many simply do not have people in their lives that are able to provide in this way. Further, when women go to prison, many households lose part or all of their income, causing immediate and lasting impacts.

Economic barriers continue after release from prison, as the stigma of a criminal record makes it even harder to gain meaningful employment. Research points to employment barriers to reentry that have racialized and gendered components, with Black women experiencing the highest rates of unemployment.⁴² If more employers were willing to give women a chance upon reentry and were incentivized to do so, and if discriminatory laws limiting the right to be employed in certain fields (even with certifications) were reversed, more women would fare better after incarceration.

PART IV

Causes of Female Incarceration Growth in West Virginia

A range of factors have contributed to the rise in female incarceration, which we will explore here.

1. Higher Incarceration Rates for Violent Crime

Nationally, the biggest driver of female incarceration in state prisons over the last 40 years has been women ending up behind bars for violent offenses.⁴³ Among women imprisoned at Lakin near the end of 2019, homicide tied for the largest share of offense categories.

In examining violent crime as a main driver of crime trends, it is important to also consider the drivers of violence. For instance, “On the individual level, violence is driven by shame, isolation, exposure to violence, and an inability to meet one’s economic needs—factors that are also the core features of imprisonment. This means that the core national violence prevention strategy relies on a tool that has as its basis the central drivers of violence.”⁴⁴

Many incarcerated women are survivors of violence by intimate partners. One report found this to be the case for 77 percent of women in jails, with 86 percent having survived sexual violence.⁴⁵ Research shows much of the violence committed by females that lands them a sentence of incarceration is committed in self-defense, as opposed to violence perpetrated at random or occurring during the commission of some other crime.⁴⁶ In recent years, there has been a more punitive police response to gender-based abuse. Dual arrests are becoming more frequent, but due to insufficient data, it is difficult to discern how many women serving time in WV fall into this category.

2. Drug-Related Crime and the Opioid Epidemic

Both in WV and nationally, women are increasingly becoming incarcerated for drug-related crimes, due in part to more women becoming addicted to opioids and other drugs. And these women are receiving longer sentences, contributing to more women entering prisons, and staying in prisons for longer periods of time. In 2007, Jim Rubenstein, then WV DCR Commissioner, suggested the growth in female incarceration was largely due to property crimes that could be tied to efforts to support one’s drug habit or the habit of a partner.⁴⁷

For women in prison at Lakin near the end of 2019, drug/narcotics offenses tied for the largest share of offense categories among that population, followed by burglary/B&E and child abuse/neglect, with robbery a close third, all of which may be tied to substance abuse. The increase in drug-related crimes is supported by WV data for all females and males incarcerated in the DCR, which saw a 300 percent increase in admissions to WV state prisons for drug offenses from 2000 to 2015.⁴⁸ More than a quarter of jail admissions in 2018 were said to necessitate detoxification, compared with less than 2 percent in 2013.⁴⁹ While opioids are a major contributor, WV was largely impacted by the crack epidemic beginning in the 1980s, and has also seen an increase in people addicted to methamphetamine along with a rise in crime related to the use, manufacture, and distribution of this dangerous synthetic drug.

Opioid Epidemic Fuels Drug Policing

It is no secret that WV has been disproportionately harmed by the opioid epidemic. Huntington, WV has long been deemed the overdose capital of America.⁵⁰ WV leads the nation for its rate of age-adjusted overdose deaths that involve opioids.⁵¹ The reality is that addiction has become a growing problem in WV, for which we have gained national attention. As more females become addicted, more are going to prison. They are also becoming peripherally involved in the drug trade for a number of reasons.

With so many residents living with chronic pain, it was only a matter of time before an increasing number of people would become dependent upon such highly addictive substances. Once dependent, a tolerance builds and it can be extremely difficult, and often painful, to stop using. In an economically depressed state, more people are out of work, with fewer opportunities for other employment, job training, or education. Under these circumstances, some turn to substances to cope with the challenge of making ends meet or distribute opioids as a form of income. Whether doctors were overprescribing opioids to turn a faster profit and maintain clientele or prescribing opioids in large amounts and abruptly cutting off the supply, more residents were succumbing to this life-altering addiction. The high cost of prescriptions and the need for greater amounts in order to feel similar effects meant more people turning to cheaper substances to meet the need. In this case, heroin became a fast alternative for those who had not started out using this particular drug, and another market grew. It is telling that we see a rise in female incarceration, timed with a rise in opioid prescriptions and heroin dependence. Some 30 years later, we are still dealing with the collateral consequences.

The rise in female incarceration in WV appears consistent with the shift in how doctors prescribed pain medication, particularly opioids. Before the 1990s, this class of drugs was typically reserved for people with certain cancers or the management of short-term pain, as opioids were shown to be less effective for treating chronic pain.⁵² However, the pharmaceutical industry started encouraging physicians to expand the patient pool for whom opioids would be prescribed to include other pain sources, as pain became recognized as a significant condition for which treatment was to be taken seriously while misinformation about the impact of opioids spread. Doctors went from prescribing pain medication for a small segment of the population, to dispensing opioids on a much wider scale, and with the development of time-release formulated opioids, like Oxycontin, in the mid-1990s, coupled with limited oversight for prescribing physicians and a failure to communicate how addictive and dangerous this class of drugs is, the opioid epidemic was quickly underway.

3. Policing Strategies, Sentencing Laws, and the War on Drugs

Policing strategies, sentencing laws, and the War on Drugs are significant drivers of female incarceration, especially since enforcement of drug laws differentially impact women, leaving those with more peripheral involvement in the drug trade at heightened risk for incarceration.⁵³

Although in large part, women are targeted with the goal of capturing men higher up in the drug trade, more women have ended up in the criminal legal system than ever before. They tend to have little substantial information to offer that would lead to the arrest of people who play much bigger roles, and thus end up being more severely punished due to harsh sentencing laws surrounding conspiracy. A formerly incarcerated WV woman had this to say: "Police who knew my license were suspended, they saw me, out driving, stopped me, because they knew they were also likely to get either paraphernalia or, some, uh, small amount of drugs, and they could charge me with possession too... And, of course the goal was, in picking up addicts, is always to try and get more information about dealers... which I was never cooperative, but, they did keep trying..."⁵⁴

Harsh sentencing laws mean longer periods of incarceration for those with prior offenses. A woman convicted of a third offense that is punishable by a prison sentence may have her sentence enhanced by as much as five years.⁵⁵ Research also shows that mothers who encounter the criminal legal system, particularly for drug-related crimes, tend to be more harshly punished than their male counterparts due to societal norms about how mothers should behave.⁵⁶

4. Barriers to Reentry and Recidivism

Whether females serve months or years in prison or jail, the majority of imprisoned women will eventually return to society, and multiple factors influence what happens to them when they transition back. When individuals lack adequate substance abuse and mental health treatment, access to education, and positive supports prior to reentry, they face additional obstacles to coping with life after release. Several barriers make it hard for women to stay out of the system after incarceration, or to avoid incarceration in the first place: the stigma of a criminal background, difficulty complying with restrictive conditions of probation and parole,⁵⁸ housing and employment discrimination for people with felony convictions, child care and transportation

issues, inaccessible substance abuse treatment, and lack of support systems. A formerly incarcerated WV female stated, “When I left prison I was given nothing... as far as identification of who I am, or what’s going on. Like, they’re set you up with nothing to reentry. I know I wouldn’t be where I’m at, if I didn’t have people that believed in me, and, you know, really cared and wanted me to do right, and to be right.”⁵⁹

Many women leave prison after being granted parole and must remain compliant under restrictive guidelines that make it harder to avoid reincarceration. Many women are also sentenced to probation in place of a prison sentence and must also follow similar conditions that too often lead to technical violations, which then lead them to prison. Paying monthly fees, obtaining employment, and attending scheduled check-ins can be complicated by such things as transportation limitations and child care responsibilities. Some individuals are also subject to “special” conditions that pose additional burdens.

More than 16 percent of incarcerated women at Lakin in 2019 were serving time for technical violations of probation, which means they were serving time for violating a condition of probation, not for committing a new felony, whereas just 1 percent were serving time for a violation due to a new felonious charge. Community supervision is a known contributor to mass incarceration, does little to curb the incidence of crime, and disproportionately impacts racial and ethnic minorities. Thus, limiting the reach of community supervision should be prioritized.

Based on July 2018 data from the WV DCR, just over 17 percent of females released from custody in 2014 returned to incarceration (recidivated) by 2017. For those whose original crime was a drug/narcotic offense (which accounted for the highest crime release category for men and women in that year), nearly one-fifth recidivated within three years. Recidivism rates are an important consideration, but fail to tell a complete story.

The Felony Murder Rule

Importantly, many women end up in prison because of the Felony Murder Rule,⁵⁷ which holds parties criminally liable for murder for planned participation in a felony crime in which a loss of life occurred, regardless of their role in the act that led to a person’s death. In other words, some WV women are in prison on felony murder convictions even though they were not present when a person lost their life and must spend a minimum 15 years behind bars before being eligible for parole. While it is unclear how many WV women are impacted by the Felony Murder Rule, with 25 women in Lakin in late September 2019 serving Life With Mercy, roughly 5 percent or more may be serving time for peripheral involvement in a murder they may not have committed.

5. Prior Trauma, Abuse, and Mental Health Issues

Other pathways to prison for women include prior trauma, abuse, and mental health issues.⁶⁰ Most women experience various traumas long before they end up incarcerated. Prior to and during incarceration, women are found to experience high rates of physical and sexual assault.⁶¹ According to the Vera Institute, 31 percent of women being admitted to jails are estimated to have a serious mental illness, a rate at least four times greater than that of the general population.⁶² Further, at least two thirds of women who are incarcerated self-report having a history of mental health disorders, which is much greater than that of their male counterparts.⁶³ In addition, more than 41 percent of juveniles in WV's residential facilities in 2018 reported mental health or a mental disability diagnosis upon intake; over 19 percent reported physical, emotional, or sexual abuse, and 29 percent reported a history of substance abuse/treatment.⁶⁴ Experiencing trauma in one's formative years can set off a chain of negative events throughout the life course, depending on whether the trauma is identified and addressed. As a result, many of the crimes committed by women and many girls are survival-based.⁶⁵

In a recent study, nearly 56 percent of adults in WV were found to have at least one Adverse Childhood Experience (ACE), and more than 13 percent experienced four or more ACEs, with household substance abuse being the most commonly experienced.⁶⁶ ACEs also correlated with income — the lower the annual household income, the greater the number of reported ACEs. A correlation between the number of traumatic experiences and increased risk of prescription opioid misuse was also found. With so many WV adults having experienced one or more ACEs, it is not surprising that substance abuse is a growing problem, which may start out as a coping mechanism. Once people become dependent, build up a tolerance, and are no longer able to afford enough to produce the desired effect or stave off withdrawal, it is only a matter of time before they turn to other avenues for obtaining more of the drug, which is where encounters with the criminal legal system become more likely.

6. Discrimination, Poverty, and Under-Education

Women in the U.S. experience sex-based discrimination (e.g., in hiring, employment, and other arenas), and tend to fare worse economically than their male counterparts, who make more money on the dollar on average and are more likely to receive raises and promotions. Women who face significant barriers to achieving economic stability are at increased risk of becoming involved in the survival economy and in turn, are more likely to become justice-involved for committing survival-based crimes.⁶⁷ Similarly, the overcriminalization of school-aged girls, including punishment for survival efforts, impacts the rate of females in juvenile confinement. As one formerly incarcerated WV female notes, “the first time that I dealt with criminal justice system or was incarcerated was... due to submitting false documents to the IRS. It kind of started as a means to try to get up out of poverty a little or I guess more or less just survive. Eventually I got involved with drugs and... struggled with addiction quite a bit and that's what led to most of my experience with incarceration.”⁶⁸

Once in the system, money plays a role in whether women can post bail and pay other fines and fees, and in the legal representation they can afford. Further, each encounter with the system makes it more likely that a woman will receive punishment in the form of incarceration, and that such punishment will involve harsher sentences for repeated law violations. Lower-income people and people of color are more likely to end up behind bars,⁶⁹ but there is also a geographical component. Literature shows that poor women in rural places are handed harsher sentences than those with more resources.⁷⁰ With WV being a largely rural state fully engulfed in the Appalachian region, closer examination of the link between rurality and sentencing decisions is warranted.

Females with lower educational attainment are also overrepresented among incarcerated WV women, with nearly half (48 percent) of women in Lakin in 2019 not having completed high school prior to incarceration, and less than 1 percent having completed a college degree. Most striking is that two women had not gone beyond the third grade. Although data alone does not explain this trend, under-educated WV women appear to be at heightened risk for incarceration. Lower education translates to fewer job opportunities and lower paying jobs, and that people with lower incomes are more likely to end up in the survival economy and come into contact with the criminal legal system.

PART V

What Other States are Doing to Reduce Female Incarceration and Release More Women from Prisons and Jails

Although female incarceration rates vary by state, it is important to look at other state models when it comes to decarceration efforts.⁷¹ For example, JusticeHome is a New-York based program for women that serves as a gender-responsive and trauma-informed alternative to incarceration.⁷² With regard to sentencing, Massachusetts and Tennessee passed legislation that “require judges... to consider family impact when sentencing a person who is the primary caregiver of minor children, and to impose accountability measures appropriate for the offense that will not harm those children.”⁷³

Promising examples of reentry initiatives can be seen in California (A New Way of Life Reentry Project), Florida (Ladies Empowerment and Action Program, LEAP), Maryland (Mission: Launch), Missouri (Center for Women in Transition), New York (Ladies of Hope Ministry’s Hope House), and Texas (Angela House). In particular, Florida’s LEAP program “empowers incarcerated women to transcend their past and successfully re-enter society by providing transformational education, entrepreneurial training, and mentorship.”⁷⁴ In terms of success, the rate of recidivism among program graduates has stayed between 4 and 7 percent since launching in 2009, markedly better than the national range of 33-67 percent.

The Ohio Reformatory for Women’s (ORW) Tapestry Program assists incarcerated women who are substance dependent. Unlike most such programs, ORW’s is an 18-month commitment, longer than the typical 30 to 90 days, and women are eligible regardless of where they are in their sentence, provided they are sober upon program entry.⁷⁵

With respect to more comprehensive efforts, Policy Matters Ohio outlined key principles for meaningful reform referred to as the “Five Rs.”

1. Reclassification of low-level misdemeanor drug possession offenses
2. Retroactive application of such reclassification
3. Reformation of probation to ensure people who commit technical violations, as opposed to new crimes, are not sent to prison
4. Reduction of sentences for people who complete programming while incarcerated
5. Reemploying formerly incarcerated people by removing barriers associated with criminal records⁷⁶

PART VI

Conclusion: Policy Solutions to Reduce Female Incarceration in West Virginia

Based on the findings in this report, several important reforms would reduce the number of women going to prison and how long they stay when they do.⁷⁷ As a result, fewer families would be disrupted, fewer children would be placed in foster care, Lakin prison and the state's regional jails would be less crowded, and WV would save a large amount of money that could be reinvested into education and social and health services, further mitigating incarceration rates.

The first four suggestions are prioritized based on the far-reaching impacts that they are likely to have, while the last suggestion affects the ability to identify areas of need to inform the most impactful targeted policy solutions:

- 1. End the Felony Murder Rule.**

Sentencing women to life with mercy based solely on planned involvement in a felony that resulted in death fails to account for the context of such crimes. We should consider the specific role they played and come up with alternative sentencing for those with peripheral involvement.

- 2. Find alternatives to incarceration in all cases involving a pregnant person.**

The stress of pregnancy alone is great enough for many women. Women who are pregnant need resources that allow them to make the most informed decisions for themselves, as well as prenatal care for those who decide to become parents. Ending the practice of imprisoning pregnant women means fewer children would be born to incarcerated women, fewer children would be taken from their families, generational incarceration would be disrupted, and an overburdened child welfare system would fare better over time.

- 3. Find treatment alternatives for women in active addiction or who are chemically dependent.**

WV sends too many women to prison for addiction-related crimes. Criminalizing addiction does little to aid in recovery and is not a deterrence for crime. Alternatives to incarceration would mean fewer women returning to prison on technical violations or becoming repeat offenders, and more women having a chance of recovering from their addiction. The positive impacts of recovery on the lives of individuals and their loved ones cannot be overstated.

- 4. Stop sending women to prison for technical violations of probation and parole.**

Keeping women out of prison for technical violations reduces overcrowding and overreliance on incarceration. Women who miss appointments, fail a drug screen, or are unable to obtain employment and housing, for example, should not be punished with a period behind bars. Instead, we should work with individuals to help them navigate these challenges. The purpose of probation and parole is to avoid incarceration or transition out of it. It is hard enough for many West Virginians to stay afloat without such restrictions. Eliminating incarceration for technical violations would put a dent in female incarceration trends in WV.

- 5. Collect meaningful data on incarcerated women and women in all stages of the criminal legal process.** There is a conspicuous lack of gender-specific data on incarcerated women in WV, whether it is being collected but not widely shared or has been largely overlooked. Data should be comprehensive and transparent. Efforts to decarcerate require a more complete picture of the scope and prevalence of female incarceration in the state. Without it, such efforts are thwarted.

Other Suggestions for Reversing These Trends

A number of other measures would contribute to fewer WV women going to prison, more opportunities during incarceration, and smoother transitions upon release. However, these suggestions largely rest on reimagining our system of punishment and destigmatizing having a criminal legal history.

1. Less reliance on incarceration

■ **Reduce the number of arrestable offenses.**

Making fewer arrests can be achieved by reducing the number of jailable offenses, such as those for survival-based crimes. Many people just need access to resources, as criminality is often secondary to some primary concern that is not being addressed.

2. Shorter periods of incarceration

■ **Eliminate cash bail.**

Eliminating cash bail reduces racial and economic disparities for people who are pre-trial while reducing jail overcrowding.

■ **Eliminate sentencing enhancements and mandatory minimums.**

Sentencing enhancements and “three-strikes” laws do little to deter crime while perpetuating existing biases in the system.

■ **Take family impact into account in all sentencing decisions.**

Sentencing decisions that take family impact into account allow for consideration of the collateral consequences of incarceration on families who will be directly impacted.

■ **Require a fiscal note as justification for handing down sentencing decisions.**

Demonstrating the costs of incarcerating each individual for a specified length of time holds the criminal legal system more accountable by discouraging sentences that are excessive in relation to the criminalized behavior.

3. Reentry facilitation

■ **Provide more educational opportunities for people in prisons.**

Offering more educational opportunities for people in prisons has lasting benefits during and after incarceration, such as improved writing and communication skills, establishing a sense of community, and opening up employment options.

■ **Automatically expunge criminal records upon release.**

Expunging criminal records eliminates a number of barriers to employment, housing, education, and other arenas, yet expungement processes are often burdensome and restricted to people with certain offense types. Once people complete a sentence of incarceration, the consequences should not follow them for the rest of their lives.

■ **Fill the gap in transitional housing for reentrants.**

With transitional housing options severely lacking, especially for women reentrants, more safe, stable housing is needed in order to keep more people off the streets and help smooth the transition.

WV has seen a slight decrease in the state prison population, including women in Lakin, since the pandemic hit. However, it should not take a public health crisis to decarcerate, and we must have policies in place to prevent reverting right back to the alarming trends we have seen in WV over the past several decades.

Endnotes

- 1 In this report, female incarceration refers to the incarceration of people assigned female at birth; although sex and gender are not interchangeable, and a person's gender identity may not align with their assigned birth sex, for purposes of this paper, the terms women and female are both used to refer to incarcerated people assigned female at birth; in addition, at any given time, there may be trans men, trans women, and nonbinary people incarcerated in prisons and jails, and in most cases, they are housed based on assigned birth sex, and not the gender with which they identify, which means there may be trans men in female-designated prisons, and vice versa.
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