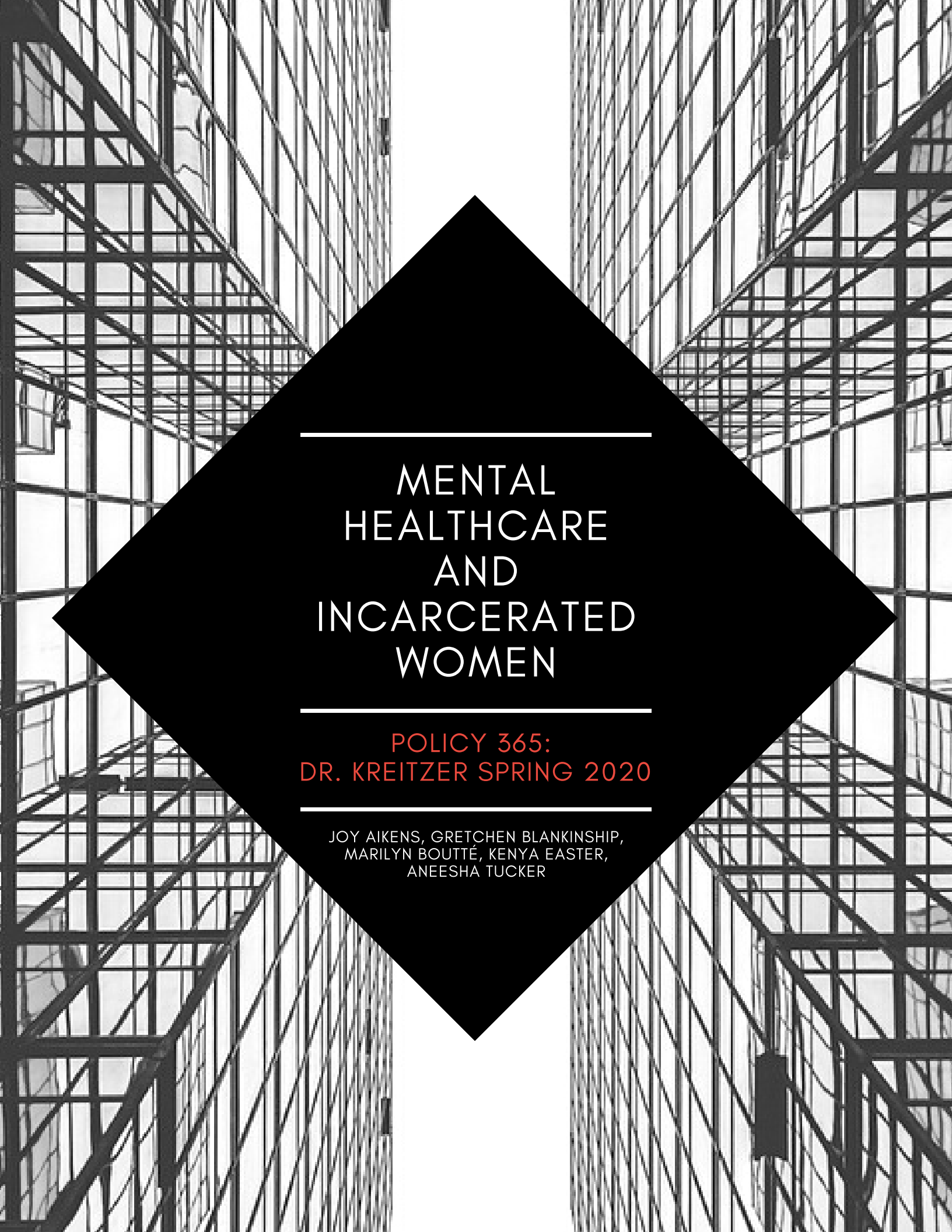

# MENTAL HEALTHCARE AND INCARCERATED WOMEN

## POLICY 365: DR. KREITZER SPRING 2020

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## In 2019, Jena Faith was arrested in New York City.

*She was originally housed in a women's facility and was transferred to a men's facility despite being a woman. During the four weeks the veteran spent in jail, she was targeted with physical and verbal harassment from other incarcerated people and guards. Jail officials also denied Jena her doctor-prescribed hormone therapy, even as they made sure to give her all of her other prescribed medications, which led to hot flashes, cold flashes, nausea, and stomach pain. Since she was released from jail, Jena continues to suffer through sleepless nights and night terrors because of what she went through. Unfortunately, Jena's story is not unique. The lack of mental health care available in prisons plagues not only the trans community, but incarcerated populations at large.*

# INTRODUCTION

*Problem Statement*

Women are more likely than men to have a mental health illnesses and report that their experience in prison overall negatively affects their mental health more so than men. Despite being disproportionately susceptible and affected by mental illness, incarcerated women do not receive adequate mental health care in prison which leads to negative life outcomes. This problem Is exasperated for trans men and women, uninsured prisoners and those who have spent time in solitary confinement.

I*ntersectional Implications*

In general, women of color are more likely to be incarcerated than their white peers. Similarly, members of the LGBTQ community are disproportionately likely to come into contact with the criminal justice system. It is important to understand the history of bias and abuse in the criminal justice system when it comes to both of these groups and the prevalence of other systemic factors like poverty and substance abuse that places these populations into contact with the criminal justice system more often than cis-gender, heterosexual white women. Because of this the experiences of incarceration are even more traumatic for these groups, and thus are deserving of specific attention when policy solutions are created and implemented.

# BACKGROUND

**The US has the highest incarceration rate in the world, and that rate has increased faster for women than men.**

25%

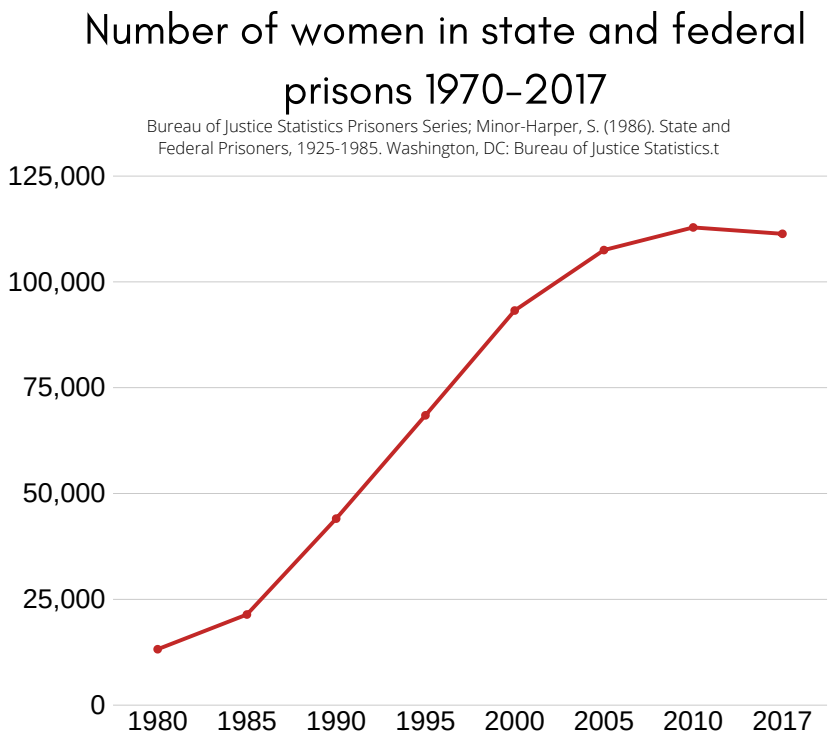
**of the world's prison population**

comes from the United States despite having only 5% of the world's population

30%

**of the world's female incarceration population**

comes from the United States, which is home to only 4% of the world's female population.




**The incarceration rate for women has increased over 700% from 1970 to 2016 (Equal Justice Iniative, 2018).**

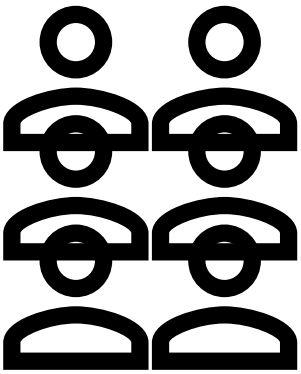
The rates of incarceration also are higher for women of color, with **Black women and Hispanic women incarcerated at rates 2.3 and 1.5 times higher than that of white women,** respectively (Sufrin et. al, 2015). A majority of these women are incarcerated for nonviolent crimes which are mostly drug offenses and property crimes (Sufrin et. al, 2015).

Incarcerated women experience barrier to healthcare and **report health issues at a rate 3 times higher than the Average American and higher than that of incarcerated men** (Staton-Tindall et al., 2007). The total institution of prison does nothing but exacerbate these conditions, with insufficient diagnoses and treatment options. When prisoners are denied access to proper health care, including proper mental health care, the already traumatic experience of incarceration is magnified. This was the case for Jena Faith, a transwoman in New York who was denied her prescribed hormonal treatment and spent four weeks in a men's facility, despite being a woman. The harassment she faced by inmates and guards have created lasting repercussions and were detrimental to her own mental health. Unfortunately, Ms. Hill is not the only trans individual to have faced such harrowing experiences. Even beyond the trans population, the mental health care that women in general receive while they are incarcerated is not consistent from state to state, and often does not exist, only serving to exacerbate mental health issues that existed before intake.

# PATHWAYS TO PRISON

**How some groups of people are more likely to become incarcerated**

Pathways to prison concern the ways in which certain groups of people are streamlined into incarceration. Typically, the effects are seen disproportionality and exist because of systemic issues rooted in racism, amongst other structural failures. The School-to-Prison pipeline outlines the way that children, specifically Black children, are disciplined in school at higher rates than white children and how being disciplined in school can be a predictor for incarceration (US Department of Education Office for Civil Rights, 2012). This issue is compounded for Black girls, who are 6 times more likely to be suspended from school than their white counterparts. Its reflection in the incarceration rates is not shocking: students that are expelled are 10 times more likely to be incarcerated than those that are not (US Department of Education, US Department of Health and Human Services, 2014).



**VS**

Black girls are suspended at six times the rate of their white counterparts

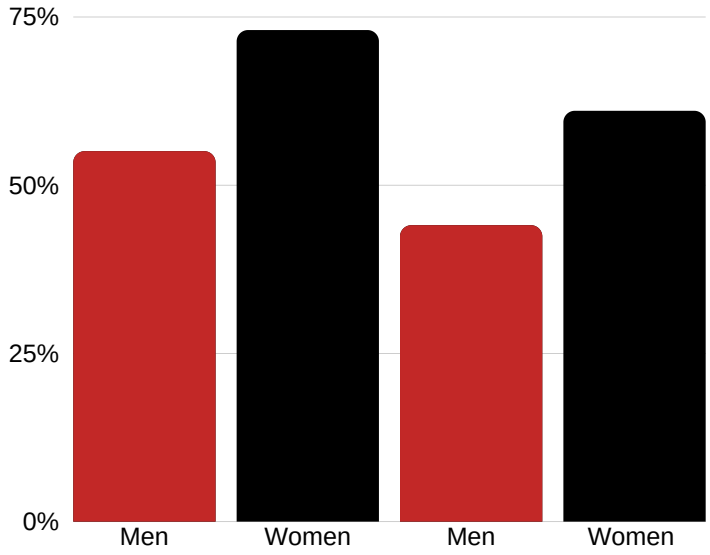
Particularly important when talking about the mental health of incarcerated women is the Abuse-to-Prison pipeline. This pipeline pinpoints experiencing abuse, primarily sexual, as a predictor for offending and recidivism in women. In the juvenile justice system, 31% of girls have experienced sexual abuse, but in some states, such as Oregon, that number can be as high as 93% of girls (The Georgetown Law Center on Poverty and Inequality, The Human Rights Project for Girls, 2016). The impact that this has on the mental health of these girls is clear: over 65% of girls in the juvenile justice system have experienced some PTSD symptoms, a rate far higher than their male counterparts. This trend does not disappear when we look at incarcerated adult women: 80% of incarcerated women report having experienced sexual abuse (The Georgetown Law Center on Poverty and Inequality, The Human Rights Project for Girls, 2016). The impact on the mental health of incarcerated women is striking, making a dive into the mental health of incarcerated women ever important.

# MENTAL HEALTH

## Upon Uptake: Prevalence of Mental Health Disorders in Women

While mental health disorders are prevalent throughout the entire prison system, research has concluded that incarcerated women suffer from a "higher rate of psychiatric disorders, particularly depression and drug dependence" (Fazel et al., 2016). It has been found that 64 percent of women in prison have prior diagnoses for mental health disorders such as "major depression, bipolar disorder, antisocial personality disorder, and PTSD (Staton-Tindall et al., 2007). In 2005, a report by the Bureau of Justice found that, within both the state and federal prison systems, there were higher rates of mental health issues in women as compared to men (James & Glaze, 2006). Upon entry women have displayed increased "risk factors," including: "being primary caregivers of minor-age children, childhood histories of single-parent households, histories of at least one incarcerated parent, low educational achievement" and "experiences of multiple forms of abuse and victimization (especially sexual victimization) in childhood and adulthood" (Fedock & Covington, 2017, p. 3). These factors exacerbate the prevalence of mental health issues in the population, because inmates with prior histories of physical and sexual abuse report problems with their mental health at a rate 2 to 3 times higher than the general public (James & Glaze, 2006). While it is evident that there is a high prevalence of mental health disorders among incarcerated women, current "gender-neutral" assessments for mental health upon intake have been under debate for false diagnoses leading to insufficient treatment strategies (Fedock & Covington, 2017, p. 6). Women, not having the proper assessment upon entering prison, are unlikely to receive the type of strategic treatment that their individual mental illness requires (Fedock & Covington, 2017, p. 6).

**Percentage of inmates with reported mental health issues (James & Glaze, 2006)**



# MENTAL HEALTH

**Within Prison: The Lack of Proper Diagnoses**

Studies have shown that there is a correlation between the prevalence of many mental health issues within incarcerated women and their lack of access to services for both physical and mental health prior to their conviction (Staton-Tindall et al., 2007). In 2005, only 22% of inmates within the state prison system diagnosed with mental illness had access to proper mental health care prior to their arrest (James & Glaze, 2006). With the lack of prior care to address mental and physical illness, studies found that female inmates had a mean of 12.5 "sick call" visits within their first 6 months in prison (Staton-Tindall et al., 2007). Though women display an increased need in attention for their mental health, many staff within prison facilities do not track some inmates' mental health records (Office of the Inspector General, 2017). Without the proper monitoring of inmates' mental health concerns, a large gap emerges between individual needs for treatment and the types and frequency care received (Office of the Inspector General, 2017).

**The Treatment Gap and its Effects:**

Even when women are properly diagnosed and placed within treatment programs, most "evidence based" and "cognitive-behavioral based" programs used within the prison system have been tested solely on male prisoners (Fedock & Covington, 2017, p. 7). This becomes problematic as women have shown to interact and respond to treatment programs differently from their male counterparts, which leads to different levels of effectiveness between men and women (Fedock & Covington, 2017, p. 8). Thus, a treatment program that is beneficial for men will not have a comparable effect on women. Therefore, broad programs are not applicable to every individual. In the past 10 years, research involving programs specifically for incarcerated women has grown, which has led to researchers emphasizing "the need for a transformed vision for the criminal justice system- one that recognizes the behavioral and social differences between women and men offenders" (Fedock & Covington, 2017, p. 9). More effective treatment strategies are necessary to reduce the heightened "recidivism" rates that occur when mental health is untreated, as up to two-thirds of incarcerated women in 1999 reported to have previously been convicted of another crime (Liebman et al., 2014, p. 2). Without the proper mental health care for women as individuals during incarceration, the proliferation of mental health issues upon release from prison commonly becomes a concern for the prison system once again (Rich et al., 2013).

# Pregnancy and Childbirth

An issue that impacts women specifically is that of childbirth and pregnancy. Much like access to mental health care, access to care for pregnant people is limited when they are incarcerated. Prison as a total institution strips away the choice and dignity of pregnant people, and can lead to mental health issues. The traumatic experience of prison has an impact on mental health and also on pregnancy. For example, **28 states permit the shackling of pregnant people when they are being transported to the hospital for care or to deliver their children** (NWLC). Not only do restraints interfere with doctors' ability to treat patients, but this practice is also degrading and embarrassing. Many women report depression, post-traumatic stress disorder, anguish, and trauma after being restrained while giving birth (APA 2015). After birth mental health is still a concern as incarcerated women are at higher risk for postpartum depression and psychosis due to prevealence of underlying mental health disorders (NCCHC 2014). Postpartum depression is magnified by the fact that babies are separated from their mothers soon after birth (NCCHC 2014). Some criminal justice systems have attempted to mitigate the problem by introducing nurseries to prisons to allow newborns to remain with their mothers, but this is only available in 8 states (Sufrin et al 2019). Ultimately, combating mental health for incarcerated pregnant women includes limiting the use of shackles and restraints during childbirth, limiting separation of mothers and their new born babies, and increasing the screenings for postpartum depression.

# TRANS RIGHTS

**Upon Uptake: The Harm of Classification Standards for Transgender People**

While the treatment gap is prevalent between cis-male and cis-female inmates, the gap is exacerbated for trans-people who are disproportionately represented within the criminal justice system..

Nearly one in ten (9%) Black transgender women were incarcerated in 2014 which is approximately ten times the rate in the general population (National Center for Transgender Equality, 2018). As a socially marginalized identity, transwomen face specific barriers and challenges in regards to mental health. Prisons are highly gendered facilities, that use a binary sex-based classification system based on genitalia. The intake gender classification process is where the hardship for transgender people begins as they must be subjected to strip searches and a gender unaffirming sex and housing classification. Inmates are strip-searched in front of both correctional staff and other inmates for security reasons and to determine their gender versus their genitalia. This process forcibly reveals or "outs" an inmate's transgender status to correctional staff and other inmates which can lead to substantial violence (Routh & Abess, et. al., 2015). Correctional facilities house transgender people strictly according to their genital anatomy or the gender they were thought to be at birth - often increasing their vulnerability to abuse (National Center for Transgender Equality, 2018). This practice continues to be widespread across facilities even though PREA regulations that forbid correctional facilities from only housing transgender inmates based on only anatomy rather than a comprehensive review of multiple factors (National Center for Transgender Equality, 2018). This experience continues within prison, where trans women face denial to hormone therapy, denial to gender affirming clothing and actions, sexual abuse and assault, and misuse of solitary confinement

# *Solitary Confinement*

Solitary confinement, restrictive housing units (RHU), and Special housing units (SHU) are places in which prisons and correctional facilities incorrectly place inmates with mental illnesses. **The Federal Bureau of Prisons (BOP) does have clearly define "restrictive housing" in its guidance and policy nor does it state that it practices solitary confinement, or even recognize the term.** In addition, they do not track the number of inmates who are in single-cell RHU or account for how much time they are in all RHUs throughout the BOP's institutions.

Even so inmates, including those experience mental illness, are trapped in single-cell confinement for long periods of time with limited (meaningful) human contact. According to the U.S Department of Justice, between 2008 and 2015, **inmates with mental illness averaged around 896 days or 29 months in solitary confinement** - with inmates with mental illness spending a disproportionate amount of time in RHUs than their peers. Upon spending nearly 29 months in RHU, 13 percent of this sample was released directly into the community by BOP.

Extended exposure to solitary confinement can result in psychological and psychiatric conditions such as irritability, depression, anger, aggression, and rage as well as chronic insomnia, loss of control, panic attacks, obsessive thoughts, paranoia, and hypersensitivity to noise, light, and smells. Recently, studies have suggested that the frequency, duration, and conditions of confinement for even short periods of time **can adversely affect the mental health of inmates and that effects can be long lasting.** These long lasting effects can make it difficult for inmates to transition and reintegrate back into society.

# TRANS RIGHTS

**Within Prison**

An annual report is a comprehensive report on a company's activities throughout the preceding year.

## Within Prison: Sexual Assault and Violence

According to federal data, transgender people are nearly ten times more likely to be sexually assaulted than the general prison population, with an estimated 40% of transgender people in state and federal prisons reporting a sexual assault in the previous year (National Center for Transgender Equality, 2018). This is intensified when accounting for transgender women who are housed in men's facilities, as they are of substantial risk. One statewide study in California found that when transgender women were automatically housed with men, they were 13 times more likely to be sexually assaulted than male prisoners in the same facilities (National Center for Transgender Equality, 2018). Adverse effect of Prison Policy on Transgender and Gender Non-Conforming PeopleAlso under the guise of protection, facilities may deny transgender people access to gender-affirming clothing, grooming items, or actions (Sumner & Jenness, 2014). Clothing and cosmetics beyond what is outlined in state corrections policies are considered contraband. Bras for transgender inmates who have developed breasts as a result of hormonal treatment or implants are included within the list of contraband even if the treatment is provided by the department of corrections. Similarly, correctional facilities often have rules that outline the use of cosmetics, grooming standards, and other issues related to adornment and gender displays that adversely affect transgender women (Sumner & Jenness, 2014).

### The Inability to Receive Health Care as a Trans Inmate

Once incarcerate most states do not allow for transgender inmates to continue or obtain treatments after intake. 20 states do not allow for the continuation of hormone therapy while only 13 states allow for the initiation of hormone treatment and 7 provide for sex reassignment surgery. Some court cases have obtained medical rights for transgender people, however, sex-reassignment surgery is not granted as a method to ease discomfort or resolved mental health issues that inmates might experience while incarcerated (Routh & Abess, et. al., 2015).

### The Consequences of Ignoring the Mental Health of Trans-People

This treatment has serious implications for the mental health of transgender inmates such as depression and autocastration. When Wisconsin passed the Sex-Change Prevention Act, preventing funding for hormonal and surgical transition therapy for transgender inmates, the federal district court founded, in the *Fields v. Smith* court case, that this statute violated the Eighth Amendment Equal Protection clause and constituted as cruel and unusual punishment (Stroumsa, 2014). They found that some inmates might require hormone therapy on the basis of medical need and that it is important for trans people to be individually evaluated on a case by case basis (Maruri, 2011). *Fields* focused on that fact that gender dysphoria or GID, in some cases might be "intense and severe" as inmates might suffer from symptoms like "anxiety, irritability, suicidal ideation, suicide attempts, and self-mutilation or autocastration" (Maruri, 2011). Autocastration, which has potentially lethal consequences, is often the consequence of failure to receive hormone therapy as transgender inmates turn to self-treatment. In at least six facilities in four states, transgender inmates have castrated themselves while incarcerated (Maruri, 2011)

**37%**

**of trans-people recieving hormone therapy prior to incareration report being denied their hormones once inside (Oberholtzer, 2017)**

# CURRENT POLICIES

The following is a brief overview of current healthcare-related policies and how they may affect incarcerated women or fall short.

### The National Mental Health Act & the Community Mental Health Act

Mental health was deemed a federal priority in 1946 with the passage of the National Mental Health Act. The law which was a reaction to the stress and toll of World War II, established the National Institute of Mental Health (NIMH) as the epicenter of the nation's efforts to improve American's mental health. While the NIMH may not enact policies that directly affect mental healthcare policy in prisons, the institute's current research is important to understanding and evaluating the mental healthcare needs of prison populations (U.S. Department of Health and Human Services).

Later, in 1963, the Community Mental Health Act was enacted. This law established mental healthcare centers that focused on community-based care as an alternative to institutionalize mental healthcare treatment. This served as a turning point toward a more progressive and humane avenue for mental healthcare in the United States (The National Council for Behavioral Health).

### The Affordable Care Act (ACA)

More recently, the Affordable Care Act (ACA), enacted in 2010, aims to make health insurance affordable to more people, expand Medicaid and lower the cost of health care so that more Americans are receiving quality health care (HealthCare.gov). Because prisoners are more likely than the general U.S. population to be uninsured, the ACA has the potential to disproportionately reach incarcerated women (Rich et al). As of 2014, under the ACA, most insurance plans are required to cover mental health services and substance abuse programs, although these services are often not comprehensive of the full care one may need.

## Prison Rape Elimination Act (PREA)

Just as important as it is for intimates to receive proper mental health care, it's important that prisoners feel safe while living in prison. The Prison Rape Elimination Act of 2003 has a number of provisions that requires the U.S. Department of Justice to develop standards to prevent, detect, and respond to sexual abuse in Federal, State, and local prisons (National Center for Transgender Equality, 2018).

A provision of the law was the establishment of the National PREA Resource Center. The PREA resource center provides federally funded training and technical assistance to states and localities. PREA also mandated that the Department of Justice produce an annual report that tracked their efforts to reduce prison rape and other data on sexual assault in prison (National PREA Resource Center).

PREA regulations protect LGBTQ individuals by requiring facilities to consider a person's LGBTQ identity or status in determining risk for sexual victimization, limit cross-gender searches, and provides guidelines about privacy and special considerations for housing placements of transgender and intersex individuals (National Center for Transgender Equality, 2018). PREA regulations work toward creating a healthy and safe environment for people in prison which can in turn help to reduce cases of mental illness due to trauma experienced in prison, but the standards created by PREA are not perfect.

## Recent Legislation

Other mental health legislation is being introduced in Congress such as the Lower Health Care Costs Act (2019) and the Mental Health Services for Students Act (2019). Current policy proposals touch on topics as broad as general healthcare reform to early intervention and identification of mental illnesses in young people (Mental Health America).

# RECOMMENDATIONS

While the United States' claims to prioritized mental health care, current federal policies are not reaching women in prisons. This results in the decline of mental health once a woman is incarcerated and inadequate mental health care in prison. These recommendations would increase overall well-being of incarcerated women and mental health care in prisons.

1

## Increase enrollment in Medicaid for those that qualify.

Correctional facilities can work with Medicaid offices to ensure navigators are available to assist inmates, individuals on parole, or those with close contact with incarcerated men to enroll in Medicaid. This could result in an increase in coverage after prisoners are released and increased access to mental health services for those affected by the prison system.

2

## Expand research on how treatment programs affect women and non-binary prisoners.

The federal government should channel increased federal funds to the National Institute of Mental Health to conduct program evaluations on how mental health services affect women and non-binary indivudals in correctional facilities. This research could then inform evidence-based policymaking that could result in more holistic, supportive and patient-centered mental health care for women in prison.

3

## Removing classification standards.

The federal government should expand PREA protections to eliminate blanket policies addressing transgender and gender non-conforming inmates. New policies should handle classification on a case by case basis with attention to the personal and individualized needs of inmates in regards to gender classification, housing, mental health care, and health care.

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