

Report of the

# Gender Bias Study of The Supreme Judicial Court

Commonwealth of Massachusetts

1989

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Justice Ruth I. Abrams, Supreme Judicial Court, Co-chair  
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# Criminal and Juvenile Justice

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## Overview

Women compose a small portion of the offender population; in 1987, women constituted 5% of offenders in the Commonwealth (Department of Correction, 1987). Because they account for a small and comparatively nonviolent percentage of those incarcerated, women have traditionally been the "silent minority" within the penal world. In the past several years, however, that status has begun to change. Nationwide statistics on arrest show that the rate of women's involvement in crime is growing faster than the rate for men, and the proportion of women involved in criminal offenses is greater than ever (Tjaden and Tjaden, 1981). The rise in women's criminal activity has sparked interest on the part of both public officials and social scientists, and the unique problems that female offenders face have begun to be addressed.

Social scientists studying the treatment of female offenders by the judiciary are divided over the nature of that treatment. Some researchers assert that women are treated "chivalrously" by the legal system. They point to studies indicating that women are held in custody less often than men, receive fewer convictions, and are given lighter sentences. Other researchers hold that women are at a disadvantage in the legal system. They are critical of the studies done on the relationship between gender and judicial outcome in cases involving adult offenders and point to more recent studies suggesting that much of the difference in treatment between men and women is related more to the prior record of the defendant and the type of crime committed than to gender. These researchers also note that it is only women who engage in traditionally feminine offenses such as property crimes who benefit from "chivalry" and that women who step out of the stereotypic role to commit more violent, personal offenses are actually treated more harshly than men (Chesney-Lind, 1978).

Despite the differences of opinion on how female offenders are treated by the judiciary, there is general agreement that women in prison are at a definite disadvantage to men. Nationally, women have less access to resources within the penal system than do men. Because there are so few correctional institutions for women, women are often remote from family, friends, and community resources (Rafter, 1985). Yet both nationally and statewide, women have a great need for support services. According to a November 1988 report by the state Advisory Group on Female Offenders, most of the women at the Massachusetts Correctional Institution (MCI) at Framingham are mothers with substance abuse problems. Many of them have used intravenous drugs and have histories of physical and sexual abuse. The majority of the female offenders have been incarcerated for nonviolent crimes, and they are in for relatively short sentences. Often they pass through the penal system without receiving the support services they greatly need.

In keeping with the recent recognition of the importance of studying female offenders as they move through all phases of the judicial system, the Gender Bias Study Committee (the Committee) decided to examine the treatment of female offenders within both the courts and penal institutions. We were specifically interested in the treatment of women in such areas as bail, sentencing, and probation, and in comparing their treatment to that received by men in similar circumstances. In addition, we examined the status of women at the Awaiting Trial Unit (ATU) at MCI-Framingham to see if women have the same access to resources as incarcerated men.<sup>1</sup>

The Committee also investigated the treatment of girls and boys brought into the courts. Female juvenile offenders face many of the same problems that confront female adult offenders: many of them have histories of physical and sexual abuse; many have

substance abuse problems; and many must deal with the hardships of teenage pregnancy. The manner in which juvenile offenders are treated by the courts and by the social service agencies that work in conjunction with the courts is an area of intense interest to those concerned with addressing the needs of children, as demonstrated by the comprehensive work of the Commission on the Unmet Legal Needs of Children. In Massachusetts, juvenile delinquents are serviced by the Department of Youth Services (DYS), while youths who have committed status offenses are referred to the Department of Social Services (DSS). Our Committee examined how courts and social service agencies respond to the needs of children under their jurisdiction, concentrating on the ways in which boys and girls are differentially affected by the juvenile justice system. We examined the types of programs offered by DYS and DSS, the availability of the programs to boys and to girls, and the courts' placement of children in these programs. Just as adult offenders deserve fair and impartial treatment, the courts must ensure the fair treatment of juveniles in their care.

## Juvenile Offenders

### Summary of Findings

The treatment of juvenile offenders in Massachusetts has changed dramatically in the last fifteen years. In 1973, the state passed a Children in Need of Services (CHINS) statute that completely revamped the manner in which juvenile offenders are serviced through the courts. The distinction between children charged with status offenses and those found delinquent was emphasized, and the commingling of the two sets of offenders was prohibited. From 1973 on, status offenders were to be serviced by the Department of Social Services (DSS), delinquent offenders by the Department of Youth Services (DYS).

This is the ideal scenario for the treatment of juvenile offenders. In practice, however, the lines between DSS and DYS are not impermeable, and factors other than the nature of the offense influence the placement of offenders. Primary among these are the availability of programs offered by DSS and DYS and the attitudes held by those involved in the servicing of juveniles toward female and male offenders.

The manner in which juvenile offenders are handled by the courts and by DSS and DYS is an area of intense interest to those concerned with addressing the needs of children. A recent report released by the Governor's/Massachusetts Bar Association's Commission on the Unmet Legal Needs of Children comprehensively deals with many of the issues facing juvenile offenders. While our Committee recognizes the many problems dealt with in that report, we concentrated on examining the ways in which boys and girls are differentially affected by the system, particularly in terms of placement in DSS and DYS programs. Examining the issues through a variety of research tools, the Committee found that:

1. There are more female adolescents referred to the Department of Social Services for CHINS in the 14- to 18-year old age group than males. There are, however, more male-oriented programs available through DSS, thus disproportionately affecting services to female adolescents and creating a disparity of treatment based on gender.
2. Female juveniles represent a majority of the commitments to the Department of Youth Services on contempt proceedings in CHINS cases for disobeying a court order. Since the statutory mandate on CHINS cases prohibits placement, commitment, or commingling with DYS clients in DYS programs, DYS detention or commitment on contempt appears to be in conflict with the statute.
3. A majority of the girls both detained and committed to the Department of Youth Services have had previous involvement with DSS; only a small number of the boys in this situation have had previous DSS involvement.

4. Proportionately more girls than boys are detained on bail at DYS in comparison to the number who are eventually committed. In addition, a greater percentage of the girls detained have been charged with minor offenses (such as disorderly conduct or possession of alcoholic beverages) than have the boys.
5. The perception among respondents to the public defenders'/district attorneys' survey is that judges may be more concerned with a girl's likelihood of living on the street than a boy's. Their perceptions are corroborated by testimony from experts working with juvenile offenders. This protective attitude may affect detention rates.
6. DYS programs and facilities are more limited for girls than they are for boys. This is true of both nonsecure and secure facilities. Although there are secure detention facilities for boys throughout the state, there are only two secure (locked) detention facilities for girls, in Waltham and in Brockton. The detention of girls outside of their geographical area seriously limits their access to legal and social services.

Statistics were gathered from the Office of the Commissioner for the Department of Social Services, the Office of the Commissioner for the Department of Youth Services, and the Springfield Juvenile Court. In addition, assistant commissioners and directors of research for both DSS and DYS made presentations to the Committee, and Committee members interviewed several other professionals who provide services to juvenile offenders and work with the courts. Among these were Sandy Wixted, Director of the Children's Hearing Project, and Ken Smith, former Executive Director of the Roxbury Youthworks, Inc.

Responses from the judges' survey and the public defenders'/district attorneys' survey were also used to prepare this report.

## Methodology

Juveniles, whether male or female, are serviced through the juvenile court for both status offenses (runaway, stubborn, truant) and delinquency (criminal) offenses. For status offenses they are serviced by the Department of Social Services, for delinquency offenses by the Department of Youth Services. In both cases, the service usually occurs when work with a probation officer in the court has not been successful.

Prior to 1973, children who committed status offenses were placed at the same training schools as those who were found delinquent (charged with committing crimes), and the two sets of youngsters commingled. The training schools were self-contained, large institutions similar to reformatories in other states. In 1973 Massachusetts passed the CHINS (Children in Need of Services) statute, which encompassed all status offenses. After 1973 all children found to be status offenders could be committed *only* to the Department of Social Services to receive needed services. A fundamental objective of both the CHINS legislation of 1973 and the Federal Juvenile Justice and Delinquency Prevention Act of the following year was to protect the youthful status offender from potentially harmful interactions with youths who are frequently older and more experienced in delinquent activities (Unmet Legal Needs of Children, 1988, p. 40).

In 1973 conditions also changed for delinquent offenders. All the massive, punitive training schools were closed, and the Department of Youth Services began to service children charged with delinquent offenses in a range of community-based programs and secure facilities (Margolis, 1988, p. 3). Deinstitutionalization took place more quickly for boys than for girls, with the closing of girls' training schools lagging behind the closing of boys' schools.<sup>2</sup>

Beginning in 1986, a drastic increase was noted by DYS of judges electing to invoke their contempt of court power in CHINS cases where youths failed to comply with court-ordered treatment plans administered by DSS. As a result, these youths were ordered detained by DYS and were even committed to the custody of DYS based on the contempt of court finding. By taking this action the courts effectively authorized the commingling of delinquent and status offender populations in DYS-operated facilities—

## Discussion of Findings

a situation that is in direct conflict with both the Massachusetts CHINS statute and the Federal Act on Juvenile Justice (Unmet Legal Needs of Children, 1988, p. 40).

Aware of current court practice, the Executive Office of Human Services (EOHS) has formulated and mandated an interagency agreement, signed by both DSS and DYS, for DYS-committed juveniles on CHINS contempts. The agreement mandates a service plan formulated by a team from both departments that meets the needs of the child and also addresses the goals of returning the child to the custody of DSS as quickly as possible. The return of custody to DSS is then formalized by a motion to rescind the commitment order to DYS (DYS and DSS Interagency Agreement of May 1988).

**1.**

**There are more female adolescents referred to the Department of Social Services for CHINS in the 14- to 18-year old age group than males. There are, however, more male-oriented programs available through DSS, thus disproportionately affecting services to female adolescents and creating a disparity of treatment based on gender.**

The majority of the CHINS referrals to DSS statewide in the 14- to 18-year old age group are girls.<sup>3</sup> According to 1986 DSS statistics, 56% of the referrals in that age group were girls.<sup>4</sup> Data gathered at the Springfield Juvenile Court highlight the numbers at the local level: 53% of the total CHINS petitions filed in 1983 involved girls; 56% in 1984; 57% in 1985; 59% in 1986; 61% in 1987; and 58% in 1988.

Despite the preponderance of adolescent girls in DSS care, experts indicate that the majority of services and programs provided for youths in this age group by the Department of Social Services are male-oriented. DSS statistics for 1988 reveal that 50% of the slots available in community residential programs serving children 7 to 18 years old were for both boys and girls; 32% were exclusively for boys, while only 18% were exclusively for girls. This means that despite the higher number of adolescent girls referred to DSS, there are 238 fewer residential placements available statewide for girls than there are for boys.<sup>5</sup>

According to testimony received by the Committee, DSS and other agencies dealing with juveniles find that programs and providers (such as foster homes and residential programs) are hesitant to service teenage girls because they believe that they are more difficult to work with than adolescent boys.<sup>6</sup> Not only do girls make up the majority of runaway CHINS cases,<sup>7</sup> but, because of the wide extent of sexual abuse among girls and the great increase in teenage pregnancy, adolescent girls also have special needs that must be addressed through special programs. Experts interviewed by our Committee noted, however, that these special needs often disqualify girls from the programs that may be available to them. Ken Smith, former Director of Roxbury Youthworks, related the circumstances of pregnant girls who are also drug addicts. Often a drug program will not take such girls because they are pregnant, while a pregnancy program may not accept them because of their drug addiction.

The lack of DSS services for adolescent girls has serious consequences that affect the handling of female juvenile offenders by the courts. Of primary concern to the Committee is the possible relationship between lack of DSS services and the high percentage of girls who are committed to the Department of Youth Services on contempt in CHINS cases.

**2.**

**Female juveniles represent a majority of the commitments to the Department of Youth Services on contempt proceedings in CHINS cases for disobeying a court order. Since the statutory mandate on CHINS cases prohibits placement, commitment, or commingling with DYS clients in DYS programs, DYS detention or commitment on contempt ap-**

According to DYS statistics, 65% of those committed to DYS on contempt proceedings in CHINS cases in 1987 were girls, while the proportion rose to 74% in 1988. The DYS statistics on DSS-involved committed offenders further show that 55% of girls committed to DYS on delinquencies were previously serviced by DSS in some manner, compared with only 23% of boys.

Although judges responding to the juvenile section of the judges' survey reported that the lack of DSS programs is just as likely to influence their decision to commit a male juvenile to DYS as a female, comments from juvenile judges to the Committee indicate that some judges commit girls to DYS on contempt in CHINS cases with the hope that the child can be secured, stabilized, and provided with services not available from DSS.

Whatever the reasons for the commitment of adolescent girls to DYS on contempt in CHINS cases the results are the same: girls who are status offenders are commingled with delinquent offenders to a greater extent than are boys who are status offenders. Since a fundamental objective of the CHINS legislation of 1973 was to protect the status offender from potentially harmful interactions with youths who are experienced in delinquent activities, girls are disproportionately disadvantaged by this placement.

pears to be in conflict with the statute.

3.

A majority of the girls both detained and committed to the Department of Youth Services have had previous involvement with DSS; only a small number of the boys in this situation have had previous DSS involvement.

4.

Proportionately more girls than boys are detained on bail at DYS in comparison to the number who are eventually committed. In addition, a greater percentage of the girls detained have been charged with minor offenses (such as disorderly conduct or possession of alcoholic beverages) than have the boys.

5.

The perception among respondents to the public defenders'/district attorneys' survey is that judges may be more concerned with a girl's likelihood of living on the street than a boy's. Their perceptions are corroborated by testimony from experts working with juvenile offenders. This protective attitude may affect detention rates.

Although the majority of commitments to the Department of Youth Services are males, proportionately more girls than boys are detained on bail in comparison to the number who are eventually committed. In 1987, girls accounted for approximately 13% of the new commitments to DYS and about 19% of those detained. Of the girls detained, 22% were actually committed, in contrast to 32% of the boys. A similar pattern is evident for 1988; in that year, girls made up approximately 12% of the total commitments to DYS and about 17% of the detainees. Of the female detainees, about 17% were committed to DYS, compared with 25% of the boys detained. (See Table 1.) This means that in 1987 and 1988 one-third more girls than boys were detained but not committed.<sup>8</sup>

Table 1

		1987	1988
Boys and Girls as Percentages of Detained and Committed Populations	Girls Detained	19%	17%
	Boys Detained	81%	83%
	Girls Committed	13%	12%
	Boys Committed	87%	88%
		Girls	Boys
Percentage of Detainees Committed to the Department of Youth Services	1987	22%	32%
	1988	17%	25%

Statistics from DYS also reveal that a greater percentage of the girls detained have been charged with such minor offenses as disorderly conduct or possession of alcohol than have the boys. This is not true, however, in the area of commitment; DYS statistics show that there is no significant difference in the types of crimes girls and boys are committed for. Most girls who are committed to DYS have been convicted on serious delinquencies and have about the same proportionate rate of serious versus minor charges as do committed boys (DYS, *Analysis of Commitments*, 1987).

Both the detention rate and the fact that girls are detained on more minor offenses than boys tend to support the perceptions of attorneys and experts working with juvenile offenders that judges and/or probation officers have a more protective attitude toward girls. Almost three-quarters (73%) of the attorneys responding to the public defenders'/district attorneys' survey have observed that judges "appear to be more concerned about a girl's likelihood of living on the streets than a boy's." According to testimony from experts, the concerns that judges have regarding girls focus particularly on prostitution

and the necessity of "getting girls in from the Combat Zone."<sup>9</sup> The more protective attitude towards girls indicated here may be coupled with a subtle bias resulting in the message that young boys don't need protection and can fend for themselves.

Because the overwhelming majority of those committed to DYS are boys (in 1987, 87% were boys; 13% were girls), the majority of programs and facilities provided by that department are for boys. Both the number and types of nonsecure programs available to girls committed to the custody of DYS are more limited than they are for boys.<sup>10</sup> Like the programs offered by DSS, the majority of DYS programs are male-oriented and do not address the specific needs of adolescent girls, such as pregnancy and sexual abuse. There are, moreover, no contracted group home programs for girls, perhaps reflecting the reluctance on the part of service providers to work with female offenders.

The situation for secure facilities is similar: there are only two secure detention facilities for girls in the state. This lack of facilities poses problems for female juvenile offenders that are similar to those facing female adult offenders who are detained at the Awaiting Trial Unit in Framingham. Girls are more likely to be detained out of their geographical areas than are boys; it is more difficult for girls to be visited by their families and other members of their support network; and their access to legal and social services is more limited than that of boys.

Girls are also disadvantaged in their ability to enter a secure treatment program. Although there are secure treatment programs available to girls, access to them is limited. A mandatory referral to secure treatment occurs only when a girl has committed a very serious crime, such as murder or armed robbery. Because of the limited number of available slots in such programs, an optional referral to the Secure Treatment Board seldom results in placement.<sup>11</sup>

According to testimony from representatives of the Department of Youth Services, DYS is aware of the need to have a secure detention facility in each regional area for the placement of girls. Because of the increasing awareness at DYS of the special needs of adolescent girls, the Department also recognizes the necessity of establishing more quality programs for girls, particularly for pregnant teenagers. Putting these programs in place is problematical, however, due both to the proportionately smaller number of girls than boys placed with DYS and the fiscal challenges involved in the creation of new facilities and programs.

Testimony, surveys, and statistics all support the conclusion of the Committee that gender is a major factor affecting the handling of juvenile offenders. Although there are serious problems facing both male and female juveniles, evidence suggests that girls are disadvantaged to a greater extent than boys in the area of DSS and DYS placement and service. According to our research, the disparate treatment is a result of two related factors: 1) the lack of programs offered for girls by both DSS and DYS; and 2) the attitudes held by service providers toward female offenders.

Service providers' attitudes are especially critical when examining the relationship between lack of services and treatment of female juveniles. Because adolescent girls have special needs, there is a tendency among service providers to view girls as "harder to handle" than boys. This belief results in a lack of programs for female juveniles in DSS care. The lack of DSS services can, in turn, be related to the disproportionately high percentage of girls committed to DYS either on contempt charges in CHINS cases or on detention for a minor delinquency offense. Judges commit girls to DYS with the hope that they can be secured, stabilized, and provided with services not available from DSS. Once in DYS care, however, girls continue to face similar problems. The majority of DYS programs are male-oriented and often do not meet adolescent girls' specific needs.

By educating service providers to female offenders' needs and by providing strong guidance in the fulfillment of these needs, DSS and DYS can work to improve the

quantity and quality of programs that are available to girls. It is the responsibility of those who fund vendors to ensure that the biases of service providers are not reflected in the programs offered to either girls or boys.

The biases of judges and probation officers are also extremely important, for they may well explain the disproportionately high detention rate of girls in comparison to their rate of commitment. This explanation is plausible since survey results and expert testimony indicate that judges and probation officers hold a more protective attitude toward girls than boys. While our Committee shares the concerns of judges and probation officers about the dangers of girls living on the streets, we must emphasize that the courts should be equally concerned about the dangers faced by boys living on the streets. The type of placement that is given to juvenile offenders by the courts must not be based on paternalistic attitudes which differentiate between boys and girls, but on the kinds of offenses that have been committed and on the specific needs of each offender.

Testimony from representatives of DYS reveals that this department is attempting to deal with the lack of female-oriented programs and facilities. The quality and variety of programs available for girls have improved considerably in the last two years, and a Young Women's Advisory Committee, composed of representatives from all the DYS areas of the state, has recently been formed. The advisory committee works on internal issues, and many of the more recent additions to programs statewide are a result of its recommendations.

While we applaud the recent work of DYS, the Committee makes the following recommendations for improving the conditions of female juvenile offenders:

## Recommendations

1. The Department of Social Services should recognize the needs of its female clients and provide programs that meet those needs. These programs should include:
  - a. more independent living slots.
  - b. short-term, respite placements in small group settings that are personnel secure, with access to services such as schooling and counseling. The DYS secure detention facility, Pelletier, is a good example of what could be achieved.
  - c. services that address the drug problems and parenting responsibilities of girls.
2. Sensitivity training for judges and probation officers is needed to help them become more aware of the paternalistic, protective attitudes that they and others may hold concerning the needs of girls. These attitudes may influence judicial decisions concerning the placement of girls in more protective settings than are warranted and also the detention of girls for minor offenses.
3. The Department of Youth Services should be commended for the strides it has made in equalizing programs and treatment for boys and girls, and should be encouraged to continue to develop more programs that specifically meet the needs of each group.

## Bail and Sentencing of Adult Offenders

An ongoing debate questions whether female adult offenders receive lower bail and more lenient sentences than do male offenders. Our Committee reviewed several studies that attempt to resolve this debate by explaining what appear to be discrepancies in sentencing between male and female offenders. The debate is wrought with serious challenges: in general, women and men commit different types of crimes (Table 2), their criminal histories are dissimilar, the demands of their lives are different, and so are the reasons that bring them to crime. To compare such different populations is a demanding task. Yet this debate deserves attention, for it is at the heart of any investigation of gender bias in the experiences of offenders.

## Summary of Findings



Table 2

## Differences in Offense Patterns for Males and Females

UCR Index Crimes	Percent of all arrests	
	Males	Females
Murder & non-negligent/manslaughter	88%	12%
Rape	99%	1%
Robbery	92%	8%
Aggravated assault	87%	14%[sic]
Burglary	93%	7%
Larceny-theft	69%	1%
Motor vehicle theft	91%	%
Arson	87%	13%

\*Men are more likely than women to be arrested for the more serious crimes, such as murder, rape, robbery, or burglary."

\*Arrest, jail, and prison data all suggest that a higher proportion of women than of men who commit crimes are involved in property crimes, such as larceny, forgery, fraud, and embezzlement, and in drug offenses."

(from: U.S. Department of Justice, Bureau of Justice Statistics, "Report to the Nation on Crime and Justice," 2nd ed., March 1988) (Their source was the FBI "Crime in the United States 1985".)

Recognizing the lack of consensus on this complex issue, and acknowledging that within the parameters of our study we could not arrive at a complete understanding of sentencing and bail setting, the Committee chose to study a few areas where we could make a contribution to the debate. Specifically, we concentrated on the two variables of child-care responsibilities and primary family-income provider responsibilities (family provider), examining the effect of these variables on bail and sentencing. In addition, we looked at the influence on judges' decisions of the overcrowding at the ATU at MCI-Framingham, the distance of MCI-Framingham from the offender's home, and the availability of substance abuse programs. We also sought insight into the treatment of women during the sentencing process.

We regret that we were unable to consider such important factors as criminal history and special treatment needs. These can only be properly determined with a large-scale record search for which we did not have the resources.

The Committee found that:

1. When asked only about the effects of primary child-care or primary family-income provider responsibilities, many attorneys reported that judges set lower bail and give lighter sentences to female offenders than to male offenders charged with similar crimes, independent of their responsibilities in these areas. While these factors do affect bail setting and sentencing, they do not appear to be the major determinants influencing judicial decision making.
2. The Committee was not able to conduct a study that controlled for the differences in types of crimes (e.g., violent versus nonviolent) and criminal histories. Previous studies suggest that these could explain the reported differences in sentencing and bail setting. Gender discrimination could also play a determining role. Our findings indicate the need for monitoring to determine that differences in sentencing are being made for appropriate reasons.
3. A majority of attorneys surveyed reported that judges are not influenced in their sentencing decisions by the distance between MCI-Framingham and the offender's home, though this could be an influence in the case of offenders who live particularly far from the facility.
4. Judges reportedly recognize the substance abuse treatment needs of women to the same extent as they do those of men. The lack of appropriate programs may lead to different sentencing patterns between male and female offenders, though attorneys

surveyed do not agree on whether this results in higher incarceration rates for women or for men.

Unacceptable, paternalistic statements are made to female offenders during the sentencing process, statements that are not made to men.

The Committee administered a survey to public defenders, attorneys working in superior court with the private division of the Committee for Public Counsel Services, district attorneys, and assistant district attorneys (public defenders'/district attorneys' survey). Further, several speakers at the public hearings addressed the issue of sentencing.

In our survey of public defenders and district attorneys, the Committee created a hypothetical situation and asked respondents, based on their experience, to answer questions on sentencing and bail setting. We asked them to think of cases they have handled in which women and men have been charged with similar crimes, and then to compare sentencing and bail setting in those cases. We then incorporated the variables child-care responsibility and family-income provider responsibility, and asked respondents to identify their impact. We also asked questions regarding the impact on sentencing of the ATU at MCI-Framingham and of the substance abuse needs of offenders. Answers reflected the perception of respondents, based on their experiences in the courts.

This report is our Committee's contribution to a continuing debate that attempts to identify the variables which influence judicial decision making in the areas of bail setting and sentencing. We have in no way answered the question of whether women and men charged with similar crimes receive similar sentences and bail. We chose what we saw as two of the most gender-related variables, child-care and family-income provider responsibilities, and isolated these to determine their impact on bail setting and sentencing. The impact of other variables, such as criminal history, is better left to a study that does not try to compare the sexes, but tries to determine whether offenders of both sexes are receiving fair and impartial treatment in the setting of bail and sentences.

The general feeling among attorneys who responded to our survey is that female offenders have lower bail set and receive lighter sentences than males offenders when charged for similar crimes. Both public defenders and district attorneys believe this to be true whether or not the woman or man has primary child-care responsibilities or is primary family-income provider, though these factors do have some impact on decision making. Approximately 90% of the respondents to the public defenders'/district attorneys' survey reported that, for similar crimes, women who *do not* have primary child-care responsibilities often or sometimes have lower bail set and receive lighter sentences than men *with* child-care responsibilities.<sup>12</sup>

Similar results were found in considering the role of offenders as primary family-income providers. Though attorneys reported that women often have lower bail set and receive lighter sentences in cases where the female offender is the primary provider and male offender is not, many reported that when these roles are reversed women are treated more leniently. Approximately seven out of ten respondents indicated that judges often set lower bail and give lighter sentences to female offenders who are primary providers than to men who are not. However, half of the attorneys responded that female offenders who are *not* primary providers are often given lighter sentences and have lower bail than men who *are*; over 80% noted that this occurs often or sometimes. Though the role of primary provider plays a part in bail and sentencing decisions, other issues appear to have a greater influence.

## Methodology

## Discussion of Findings

1. When asked only about the effects of primary child-care or primary family-income provider responsibilities, many attorneys reported that judges set lower bail and give lighter sentences to female offenders than to male offenders charged with similar crimes, independent of their responsibilities in these areas. While these factors do affect bail setting and sentencing, they do not appear to be the major determinants influencing judicial decision making.

2. The Committee was not able to conduct a study that controlled for the differences in types of crimes (e.g., violent versus nonvio-

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Public testimony received by the Committee tended to corroborate the survey results. Hampshire County Sheriff Robert Garvey testified that judges tend to give women lighter sentences than men and are more likely to give women a sentence of probation for offenses for which men would be incarcerated. One explanation given for this was that judges are aware of the conditions at MCI-Framingham and are reluctant to sentence women there, particularly when it is far away from the offender's home community. This explanation was not strongly supported in our public defenders'/district attorneys' survey where almost three-quarters of respondents reported that judges rarely or never take into account the distance between MCI-Framingham and the offender's home in sentencing female offenders to a house of correction. It is possible, however, that the remaining quarter of the respondents—those who believe judges do take distance into account—are from the four western counties where proximity is more often an issue. Respondents to the public defenders'/district attorneys' survey were almost evenly divided in their perceptions as to whether judges take the overcrowded conditions at the ATU at MCI-Framingham into account when setting bail for female offenders: 51% noted that they often or sometimes do, while 49% reported that they rarely or never do.

According to Lila Austin of Social Justice for Women, 90% of the women in MCI-Framingham are chronic substance abusers. We asked respondents to the public defenders'/district attorneys' survey to explain how the perceived availability or unavailability of substance abuse treatment programs in the Commonwealth's correctional facilities affects the sentencing of men and women. A majority of the respondents indicated that judges recognize the substance abuse treatment needs of women to the same extent as they do those of men. Seventy-five percent stated that in sentencing offenders to probation, judges require men and women to participate equally in substance abuse treatment programs.

The lack of substance abuse treatment programs may lead to different sentencing patterns between male and female offenders. Forty-three percent of the female respondents and 32% of the male respondents reported that, in general, judges are unable to require participation in substance abuse programs when they feel it is appropriate to do so because there are not enough programs available for either women or men. Just over one-half (52%) feel that the lack of programs for women leads to different incarceration rates for men and women. Interestingly, almost one-third of those who felt this way thought it leads to a higher incarceration rate for women, while the rest thought it leads to a lower incarceration rate for women. This difference of opinion remains unexplained.

In the public defenders'/district attorneys' survey, we asked respondents to note how often they have observed "judges make paternalistic statements to female offenders during the sentencing process that [they do not make] to men." We did not attempt to define such statements for respondents, leaving that open to their own experience. We feel strongly that inequitable treatment, especially if expressed in protective, demeaning terms, is unacceptable in the courts.

Male and female attorneys disagree about the frequency with which judges make paternalistic statements to female offenders during the sentencing process that they would not make to men. Sixty-two percent of the women attorneys who responded noted that such statements occur sometimes or often, while over one-third (37%) of the men responding thought the same. That more than half of the responding women and one-third of the responding men believe that paternalistic statements by judges "sometimes or

often" occur in court indicates that gender-biased attitudes are being openly expressed in some courts in the Commonwealth and may possibly be affecting the disposition of cases involving female defendants.

Controlling only for an offender's role in child care or financial support, we found that these variables do not appear to have a primary influence on judicial decision making in the areas of bail setting and sentencing. The conclusion of the Committee is that though our data regarding these variables are informative, other factors must be considered to thoroughly understand differences in the experiences of men and women at the bail setting and sentencing stages. Since women and men have very different criminal involvements, it would be more informative and better directed to look at the crimes committed, criminal histories, and life circumstances of all offenders and to determine whether disposition takes all of those factors into account in an unbiased manner.

In addition, we conclude that the sentencing decisions of judges often rely on the availability of substance abuse treatment programs. Though our information varies as to the differential effect on women and men, it is clear that the lack of these programs hurts both groups and makes the job of the judge much more difficult. The court system must recognize that substance abuse treatment is an important need for the offender population, and it must help the system move to a more comprehensive model of the treatment of offenders.

Many attorneys reported that paternalistic statements are made to women in the sentencing process that are not made to men. This demonstrates that some judges still subscribe to sexist notions regarding the role of women. In breaking the law, these women have deviated from behavior acceptable for women, and some judges seem to let them know that they do not approve. This is unacceptable in our courts.

To better understand and eradicate the effects of sex stereotypes on sentencing, we make the following recommendations:

Research indicates that female offenders most frequently engage in nonviolent property crimes and suffer more from family and economic difficulties than do male offenders. Therefore, the Committee recommends that the judiciary keep abreast of current research into the types of crimes committed by female offenders, suggested causes for their criminal behavior, and the current thinking on steps necessary to curb further criminal activity. Judges, in setting criminal sentences, should be cognizant of the factors that are unique to female offenders and should craft criminal dispositions that address their needs.

M.G.L. c. 123, §35, provides that the Department of Mental Health, in conjunction with the Department of Public Health, shall provide the district courts of the Commonwealth with a list of available substance abuse treatment programs on a monthly basis. However, the Department of Mental Health is no longer responsible for providing substance abuse treatment services and that responsibility now lies with the Department of Public Health. We recommend that the statute be revised to reflect that change. In addition, a mechanism for ensuring that this information is available to the judges of the Commonwealth, both in the superior court and district court departments, should be established between the Department of Public Health and the Office of the Chief Administrative Justice of the Trial Court.

In addition, the judiciary should recognize that the lack of appropriate substance abuse treatment programs inhibits the ability of judges to accomplish their objectives in sentencing, whether through probation or incarceration, and it should become an advocate for additional resources in the Department of Correction or through the community-based programs.

Training programs such as the Judicial Training Institute and the Flaschner Institute should incorporate into their curriculum sessions to heighten the awareness of judges to the possibility that gender bias influences their decision making. Programs on gender bias should include training on the proper, respectful way to address female offenders.

## Conclusion

## Recommendations

## Summary of Findings

### Probation

The Committee's report on overcrowding in the women's correctional facility in Framingham demonstrates the need for alternatives to incarceration, including probation. In discussing probation, it is important to remember that women's lives and the types of crimes they typically commit are different from those of men. Thus, the risks female probationers pose to society and the needs they have are also different. Lila Austin, codirector of Social Justice for Women, explained at the Committee's public hearing in Boston that "women have special needs based on their historical and present day conditions in society." Probation officers must take these special needs into account in order to provide fair and effective probationary treatment. For these reasons, the Committee decided to consider the practices of the probation system to determine if they are sensitive to the particular conditions of women on probation. In examining the practices of the probation system, the Committee concentrated on the risk/need classification system. Of primary concern to us was the extent to which the system is sensitive to the risks and needs of female offenders.

The Committee found that:

1. The risk/need classification system appears to rely on a rigid format designed to identify the risks and needs of male offenders, perhaps disregarding certain characteristics of female offenders. Notably, the factor of employment raises the question of whether the supervision levels and plans of female probationers, who often have child-care responsibilities and are unable to work outside of the home, require them to meet more stringent requirements of supervision than male probationers.
2. Significantly fewer women commit crimes against the person and have had fewer court appearances than their male counterparts, yet they are subject, on average, to longer supervision than men (i.e., 21 months to 20 months).
3. The personal and family issues faced by the typical female offender appear significantly greater in number and complexity than those of the typical male offender. Among other consequences, this may result in the female offender having to contend with a myriad of bureaucracies and agencies. Such an experience can be overwhelming and self-defeating.

## Methodology

The basis of our study is the November 1988 report prepared by Carmen Cicchetti, Director of the Research and Training and Developmental Division of the Office of Commissioner of Probation. The report, entitled *The New Female Offender*, is a compilation of data designed to provide profile information on a subset of female offenders in Massachusetts. The study focused on 1,009 adult female offenders who committed street-level offenses (e.g., assault, breaking and entering, and larceny) and who were subsequently placed on risk/need probation supervision in the superior, district, and Boston municipal court departments. These women represent 14% of the risk/need forms received by the probation office between July 1, 1987, and February 29, 1988. The questions the study attempted to address were: "Who are these offenders?"; "What types of crimes do they commit?"; and "What socio-economic characteristics tend to be statistically associated with their criminal activity?" Central to the study is the format and structure of the risk/need classification system utilized by probation officers.

The Committee relied on testimony from the public hearings held in Springfield, Boston, and Worcester. Testimony from the Commissioner of Probation, Donald Cochran, was particularly informative. We also reviewed the recent standards and forms for the risk/need classification system that became effective January 1, 1989. These forms and standards set out the procedure and substance of the system and its implementation. Finally, we examined a 1984 report prepared by the Probation Office which collected and compared profile offense characteristics (Office of Commissioner of Probation, 1984). This report also analyzed surrender practices and supervision strategies and their relationship to recidivism.

## **The Massachusetts Probation System**

In 1891, Massachusetts was the first state to pass a statewide probation law (Augustus, 1984). Originally, probation was seen only as an extension of incarceration. Both shared the goal of rehabilitation. The goal of probation was to provide individualized treatment where containment was not successful. The 1960s brought a disillusionment with incarceration. Funds were diverted to community-based alternatives, at times decreasing the funding of probation. At the same time, the overcrowding in facilities all over the nation turned attention to probation as an alternative to incarceration. Authors of the *Assessment of the Massachusetts Probation System*, prepared in October 1987 for the Massachusetts Council for Public Justice, posit that the public's shift in the 1980s to a more punitive attitude toward crime, coupled with prison overcrowding, will require probation agencies to "develop their capacity to handle increased caseloads including more serious offenders who otherwise would have been incarcerated" (Massachusetts Council for Public Justice, 1987). For every offender incarcerated in Massachusetts in 1987, eleven offenders were on probation. Current criminal justice policies, including the forceful and persistent efforts by both state and local communities to alleviate jail and prison overcrowding, reveal that the criminal justice system's reliance on probation will only continue to increase.

In Massachusetts, the principal goal of probation appears to be improving the future behavior of the offender. Under the recently adopted and revised standards and forms of the risk/need classification system that became effective January 1, 1989, the purpose of probation is "the promotion of law-abiding behavior by the offender in the community."

Probation supervision in Massachusetts can take one of three forms: risk/need supervision, driving under the influence of alcohol supervision, and administrative supervision. Under the new standards, where more than one form of supervision is applicable, the probation officer is required to exercise the type of supervision that prescribes the highest level of contact.

Risk/need supervision is typically exercised in all felony, misdemeanor, and delinquency cases in which supervision is ordered by the particular court. The risk/need classification system consists of the following:

- 1) Compilation and review of all necessary and pertinent investigative and evaluative data.
- 2) Completion of the Offender Profile Form, which is a compilation by a probation officer of background information on the probationer gathered from a variety of sources. This information is central to the risk/need assessment and to the development of an effective supervision plan.
- 3) Completion of the risk/need Offender Assessment Form.<sup>13</sup>
- 4) Completion of a written supervision plan consistent with the assessment, that addresses the offender's risk and needs and the enforcement of court orders.

The risk/need classification system delineates three sets of characteristics. The first set of characteristics is of an identifying nature: name, date of birth, sex, offenses, and ethnicity. The second set of characteristics includes eight specific categories relating to the "risk" that the probationer will commit another crime. These are: prior record during the past five years; prior periods of probation supervision during the past five years; age of first offense; residence changes during the past twelve months; employment during the past twelve months; family structure; substance abuse; and attitude. The probation officer scores the offender in each of the risk categories and totals the figures. The resulting figure determines the level of supervision, either maximum, moderate, or minimum. A notable exception to this scheme is the fact that an offender whose offense involves the threat of serious harm or the infliction of serious harm is automatically classified at the maximum supervision level for the first four months.

The third set of characteristics involves information on the "needs" of the

individual probationer which may influence that person's criminal behavior. These include such variables as: "educational level," "employability," "marital/family," "social," "alcohol," "drug use," "counseling," and "financial management." The probation officer assesses the needs of the offender by identifying areas where problems related to criminal or delinquent behavior exist and areas where they do not. An "Adult Risk/Need Scoring Grid" guides officers in assessing the data. These data are combined with the investigative data, the offender profile, and the risk data to develop a written supervision plan for the offender. Finally, the initial risk/need assessment is subject to periodic reassessment and classification at four, twelve, and eighteen month intervals.

It was immediately evident to our Committee that the Office of Commissioner of Probation (Probation Office) is an active and innovative agency which is constantly appraising and evaluating its methods of supervisory determination and supervision plans. It is responsible for many innovative programs (see Massachusetts Council for Public Justice, Inc., 1987) and maintains an active research, training, and developmental division which prepares studies and reports on probation practices. Moreover, the Probation Office maintains a comprehensive training and retraining program for probation officers, keeping them abreast of new developments and theories of criminal behavior and treatment. The Probation Office is also in the process of automation. This will greatly increase its capacity to collect, monitor, and collate data for further study. These practices identify the Probation Office as a promising and responsive mechanism from which a continuing understanding of female offenders and their treatment will emerge.

## Discussion of Findings

### 1.

**The risk/need classification system appears to rely on a rigid format designed to identify the risks and needs of male offenders, perhaps disregarding certain characteristics of female offenders. Notably, the factor of employment raises the question of whether the supervision levels and plans of female probationers, who often have child-care responsibilities and are unable to work outside of the home, require them to meet more stringent requirements of supervision than male probationers.**

The probation officer has the difficult task of identifying the risk a probationer poses for recidivating, determining the individual's needs for assistance, and balancing the two to devise a supervisory plan. The Probation Office supplies its officers with a form that lists those characteristics deemed valid for identifying these risks and needs. The Committee recognizes that clear guidelines are crucial both for uniformity and for assisting the probation officers in this complex task. We are concerned, though, that the factors used in the form to identify risk and need are based on characteristics validated only as determinants of risks and needs of men, and that they may misrepresent the different risks posed and needs experienced by women.

The most pressing example regards the factor of employment as determining a probationer's risk to recidivate and her or his need for assistance. According to the risk assessment, if a probationer is not employed or only sporadically employed, that person may pose a higher risk and, therefore, is more likely to get a higher level of supervision. Likewise, the probationer with high employment needs is likely to be recommended to participate in programs to assist that person in becoming more employable.

In its study of offenders placed on risk/need probation supervision for the period from July 1, 1987, to February 29, 1988, the *New Female Offender* report revealed significant employment differences for female and male offenders. During the year prior to being placed under probation supervision, male offenders were employed longer, with a higher percentage of female offenders than male offenders employed less than two months. This difference may be explained by the fact that many women stay in the home to take care of their children. According to the same report, 48% of female offenders included in the study have children, compared to only 24% of male offenders. Likewise, 30% of these women are responsible for supporting children, as opposed to only 18% of the men. In other words, if a woman is not employed, she may be at home taking care of children, yet if a man is not employed he may be on the streets with no occupation at all. If the use of employment as a risk and a need in determining levels and plans of supervision is based on an assessment of the impact of employment (and unemployment) in men's lives, we are concerned that women may be assessed according to inappropriate criteria.

We present the issue of employment only as an example of ways in which a list

of factors identified as valid determinants of a man's likelihood to recidivate and his need for assistance may not be valid for women. Other factors on the assessment form, such as "social support networks," "financial problems," and "attitude," are very broad and therefore open to an interpretation based on the model of the male probationer. The Committee cannot say that these factors are not being considered in light of the circumstances of women's lives. We are nonetheless concerned that the factors on this form, which are based on the model of the male probationer, may not be valid for women, and that factors which are more important for women may not be included.

This idea is not new to the Probation Office, which addressed this issue in the *New Female Offender* report. The Office advised the Committee that it recognizes the potential for the risk/need classification system to be used in an overly rigid manner, possibly resulting in women being placed in higher levels of supervision, with more demanding plans, than may be warranted. The Office indicated that the process for completing a risk/need assessment incorporates both discretion and the consideration of factors unique to female probationers. To ensure that probation officers are sensitive to these issues and are aware of the circumstances and factors to consider when completing risk/need assessments, the Probation Office has initiated a series of ongoing training programs for probation officers and their supervisors.

According to the *New Female Offender* report, only 16% of the women who are under risk/need probation supervision have committed crimes against the person, compared to 27% of men (Table 3).

**Table 3** Comparison of Characteristics of Female and Male Offenders on Risk/Need Probation Supervision

Offender Characteristics	Female	Male
Person Offenders	16%	27%
Property Offenders	37%	35%
Drug Offenders	37%	23%
Other Offenders	10%	15%

(From: Cicchetti, Office of Commissioner of Probation, "The New Female Offender," November 4, 1988.)

2.

Significantly fewer women commit crimes against the person and have had fewer court appearances than their male counterparts, yet they are subject, on average, to longer supervision than men (i.e., 21 months to 20 months).

Likewise, women on probation generally have had fewer court appearances than their male counterparts. Whereas only 20% of the women studied in the report had three or more court appearances during the previous five years, 32% of the men had this many appearances. Similarly, 53% of these women had no prior court appearances, compared to only 34% of the men. Given these statistics, it is unclear why women are given, on average, longer terms of probation supervision than are men.

Length of supervision is determined by the judge when the offender is referred to probation. As the Committee could not complete a study comparing dispositions of similar crimes in similar circumstances, we cannot determine why this disparity exists. We recognize that a longer supervision may address women's needs for assistance, but we are concerned, nonetheless, that this disparity, though slight, may in fact be a burden disadvantaging women.



3.

**The personal and family issues faced by the typical female offender appear significantly greater in number and complexity than those of the typical male offender. Among other consequences, this may result in the female offender having to contend with a myriad of bureaucracies and agencies. Such an experience can be overwhelming and self-defeating.**

A female offender placed under probation supervision faces obstacles to a crime-free life that are generally not encountered by male probationers. The typical female probationer is a single parent whose family responsibilities inhibit her employment opportunities. Her criminal activity may have been influenced by the need to support her children. As stated above, female offenders are more likely to have children than are male offenders (48% of female offenders, 24% of male offenders) and are more likely to be responsible for supporting children (30% of female offenders and 18% of male offenders). Almost all female offenders have a drug abuse problem as well. In addition, more female offenders (41%) face family problems than male offenders (28%), though this category is not clearly defined in the report. Women also report having greater financial difficulties than men (52% and 36%, respectively) (Office of Commissioner of Probation, 1988). Commissioner Cochran testified to these problems at the Boston public hearing, stating that "fifty-five percent of the females under supervision are what I would call economic and alcohol [and] substance abuse-related offenses."

Consequently, the range of personal and family challenges faced by the typical female offender are significantly greater in number and complexity than those faced by a male offender. While there is a broad range of governmental and social agencies available to assist a female offender with her problems, the number of agencies with which she must be involved and the number of bureaucracies with which she must contend can be overwhelming and self-defeating.

Testimony before the Committee indicated that many women do in fact become overwhelmed by the number of agencies to which they must report or be accountable. The anxiety and everyday problems naturally occurring from working with numerous agencies may make it more difficult for a woman to address her problems, rather than help her solve them. For example, a female offender with one or more children may find herself simultaneously on the caseloads of the Department of Welfare for aid and job training, the Department of Employment and Training for employment referrals, the Department of Revenue for child support enforcement, the Department of Social Services for child custody, the Department of Public Health for substance abuse counseling, the Department of Mental Health for family counseling, and a local housing authority, all in addition to her responsibilities to the Probation Office. As research on probation practices in southeastern states indicates, this may result in a greater likelihood of a probation violation (Norland and Mann, 1984).<sup>14</sup>

## **Conclusion**

The original risk/need classification system was based on a model of a male probationer. The Committee commends the Office of Commissioner of Probation for examining this model and the women subject to it. The Committee concludes, however, that several areas remain where there is a risk of punishing women for their inability to conform to a system that may not take into consideration the ways women's lives are different from men's. In addition, we are concerned that women have slightly longer supervisory periods than men. The length of these periods is inconsistent with the fact that women commit less violent crimes and have fewer prior court appearances than men.

## **Recommendations**

1. In keeping with its demonstrated commitment to recognizing the unique circumstances of female probationers, we recommend that the Probation Office continue its research on this issue, focusing on recidivism and the supervisory plans of women and men. Studies should investigate the appropriateness of each factor included in the risk/need assessment to ensure that all are valid determinants of the risks and needs associated with women.

In particular, we recommend that in the next revision of the forms the Probation Office include the factor of employment within the home, so that it can determine whether to include this permanently on the forms. Inclusion of this factor should aim to identify the extent to which female offenders have family care responsibilities that prohibit them from being employed outside of the home. Researchers should attempt to determine whether this means that such women are occupied and therefore less

likely to commit crimes, or whether the extra financial demands of child care cause them to commit crimes to support their families. The scoring of the factor of employment within the home would be determined by this empirical study of the actual effects of employment on the risk of recidivism and the needs for assistance of women on probation.

2. We encourage continued training of probation officers on issues specific to women's lives so that they can assist offenders in obtaining the resources necessary to avoid a return to crime.
3. The *New Female Offender* report does not reveal how many offenders (male or female) violate the conditions of their respective probations and what form these violations take. The Committee recommends that the Office of Commissioner of Probation investigate patterns of technical violations of probation that might stem from gender bias. A comparison between men and women would appear to be useful, since it may be that women, given their greater child-care responsibilities, are susceptible to more technical violations than men. Such a study would also be informative as to the attitudes and practices of the probation officers who report or do not report these violations.
4. There is currently no established service available to help a female probationer coordinate and, if necessary, resolve the sometimes conflicting and overwhelming demands of the agencies trying to help her. We bring this concern to the attention of the Office of Commissioner of Probation and recommend that the Office both devise steps to alleviate this problem and train its personnel to be sensitive to the issue. In addition, we suggest that the Department of Probation contact the Executive Office of Human Services so that the two offices can work together to develop a means of coordination.
5. The Commission to Eliminate Gender Bias in the Courts should assist the Probation Office in these research and training endeavors and should request a meeting with the Probation Office in one year's time to discuss the progress made in meeting the needs of female probationers.

## Correctional Facilities

Women, whether they are held awaiting trial or serving sentences, pose unique challenges to the judicial system that are just beginning to be recognized and confronted by Massachusetts officials. Public officials are also beginning to look at differential treatment of men and women in the system that may be a result of gender bias. One outstanding aspect of this bias is that almost all female offenders and detainees are incarcerated at one central facility, MCI-Framingham, regardless of the reason they are being held. Only a small number of women are at other state or county facilities. Men awaiting trial or serving shorter county sentences are housed in local county facilities.

The Committee examined the unique needs of incarcerated women and the effects of the centralization of women's facilities. We examined the impact of centralization on conditions at the Awaiting Trial Unit (ATU), access to counsel, bail hearings, community contact, enrollment in community-based programs, and the availability of health services and treatment programs.

The Committee found that:

1. Women involved in the criminal justice system have needs unique to them as women, which require specialized responses.
2. The Awaiting Trial Unit at MCI-Framingham has been dangerously overcrowded for years, with women held there under deplorable conditions.
3. Female detainees and offenders are almost all held at MCI-Framingham. Because they are held at one centralized facility, rather than more localized facilities, they are at a significant disadvantage to similarly situated men who are held in county facilities much closer to their home area.

## Summary of Findings

4. Framingham's distance from other parts of the state results in severe limitations on women's access to:
  - a. attorneys and other legal assistance.
  - b. bail review hearings.
  - c. enrollment opportunities in prerelease and specialized community-based programs.
  - d. visitation with children, family, and community contacts.
  - e. desperately needed health services and treatment programs.

## Methodology

In preparing this section we relied on testimony from witnesses at our three public hearings and from experts with whom we held in-depth discussions on specific issues. We also reviewed responses to a written survey of district attorneys and public defenders. There is an extensive body of literature on the courts and the criminal justice system which we reviewed with particular attention to women in state correctional facilities. One of the most helpful sources was the report of the Massachusetts Advisory Group on Female Offenders released in May 1988.

## Discussion of Findings

### 1.

**Women involved in the criminal justice system have needs unique to them as women, which require specialized responses.**

There is a heightened sensitivity in Massachusetts to the special needs and circumstances of female offenders. The Advisory Group on Female Offenders in its excellent report submitted to the Department of Correction and the Governor's Anti-Crime Council has done much to identify the ways in which the criminal justice system must change to achieve equal treatment of the sexes—the "equality" issue—while recognizing the basic differences between the sexes—the "uniqueness" issue.

Women in prison face a unique set of problems and have special needs that their male counterparts do not have. The female offender looks different from her male counterpart, in both etiology and outcome (Gornick, 1987). One of the most outstanding differences is women's relationship to children. Most incarcerated women are mothers (80-85%); of these, 90-95% are single mothers (Kate De Cou, Hampden County Sheriff's Department, testifying at a public hearing).

Many women in prison have been battered and/or have been sexually abused. In the past five years, the significance of sexual and physical abuse in women's pasts has received widespread attention among researchers, clinicians, and advocates working on issues relating to women's mental health. A recent survey at MCI-Framingham revealed that 100% of the women sampled have histories of one or more of the following: child sexual or physical abuse, rape, battering, or forced prostitution (Gornick, 1987). In addition, incarcerated women face a condition common to incarcerated men. According to Lila Austin, codirector of Social Justice for Women, which provides substance abuse treatment at MCI-Framingham, roughly 90% of the women in MCI-Framingham are chronic substance abusers with a high percentage of those using intravenous drugs.

With regard to the types of offenses among both arrested and incarcerated women, the percentage of women charged with violent offenses committed against persons (e.g., murder, armed robbery, aggravated assault) is small and less than that for men (see "Bail and Sentencing of Adult Offenders"). Furthermore, while there has been a sharp increase in women's arrest and incarceration rates, the rates can be almost entirely accounted for by increases in property crime categories.

A recent study conducted by the Massachusetts Department of Correction addressed the length of stay of women in MCI-Framingham during 1986. The study established that 89% of all women serve less than six months in Framingham; 54% serve less than sixty days (testimony of Kate De Cou). The majority of Framingham inmates are convicted of property offenses and are serving short sentences.

One additional difference between female and male prisoners is that women file much less litigation regarding conditions in which they are held. For example, men held

in Suffolk County are protected by a consent decree that prohibits the sheriff from putting more than one man to a cell. Suffolk County women have been held six to a cell at the Awaiting Trial Unit at MCI-Framingham for years but do not have the protection of any legislation. On average, women are convicted of much less serious crimes and serve much shorter sentences, and this difference may underlie the smaller degree of legal actions. It may also be that women prisoners do not have access to legal assistance interested in these problems.

We believe that the typical female offender would benefit greatly from local community corrections. Women need to be near their children and families, close to the community-based services they will need upon release. They have an overwhelming need for substance abuse treatment programs that are available in the community. They also need access to work release, family-involved counseling, and critical reintegration planning.

The ATU is dangerously overcrowded. The Department of Correction reports that the unit is currently at 558% overcapacity (*Springfield Union-News*, September 16, 1988). This means that women are often held five or six to a cell. Plans call for 100 beds to be added to the ATU in the spring of 1989. This will reduce but not eliminate overcrowded conditions.

Only 13% of those women held in the ATU are ultimately sentenced to MCI-Framingham (Department of Correction, 1983). The women who are committed to the ATU are usually unable to meet a relatively low bail. One-third of the women are held because they are unable to post bail of less than \$500 (Advisory Group on Female Offenders, 1988).

The overcrowding also makes visits and phone contact with the outside very difficult. Phone calls are the most common means for women to contact family and friends to post bail, make postrelease plans, garner support, and arrange for legal assistance for child/family matters. Yet only two staff phones and three pay phones are available during restricted hours for the roughly 100 women in the ATU.

While there is general agreement that the conditions at the ATU are deplorable, there is currently no court oversight of this facility, as there is for many of the local jails. Therefore, planning agencies and authorities often leave women out of the equation when devising solutions to overcrowding (Testimony of Kate De Cou).

Alternatives that lessen overcrowding are the day reporting and alternative sentencing programs which have been funded by the Executive Office of Human Services and the Department of Correction. These programs allow women with minor offenses to remain in the community or return to the community at an earlier time while serving sentences.

Much progress has been made in recent years in Massachusetts in recognizing and confronting problems of gender bias in Massachusetts correctional facilities. Yet one critical difference between the experience of incarcerated men and women remains: in few exceptions county facilities in Massachusetts do not house women.

County detainees include people awaiting trial, as well as those serving sentences of less than two-and-one-half years. Female county detainees prior to the mid-1970s were held in local county jails. The small number of women in these county facilities are often held in terrible conditions with the only advantage being their proximity to their home community. Due to serious overcrowding in the local jails and the resulting federal court action restricting the population at Boston's Charles Street Jail, women were transferred to the Massachusetts Correctional Institution at Framingham. MCI-Framingham, the result, is really several institutions in one facility: an awaiting trial unit, a house of correction, and a state prison. Men continue to await trial in local county facilities and serve their sentences according to their status in county facilities and/or state prisons (Ornick, 1987, p. 8).

## 2.

**The Awaiting Trial Unit at MCI-Framingham has been dangerously overcrowded for years, with women held there under deplorable conditions.**

## 3.

**Female detainees and offenders are almost all held at MCI-Framingham. Because they are held at one centralized facility, rather than more localized facilities, they are at a significant disadvantage to similarly situated men who are held in county facilities much closer to their home area.**

Because women comprise approximately 5% of the inmate population, some corrections officials originally thought that there might be advantages for women in centralization. We have not found that to be the case. Holding almost all women in one facility in the state, distant from most areas and severely overcrowded, has subjected them to substantially inferior conditions to men held for similar reasons.

The disparity between the experiences of men and women offenders was eloquently stated by Robert Garvey, Sheriff of Hampshire County, in his public testimony. Summarizing from his statement contrasting the situations of men and women, Garvey notes that a man awaiting trial is held in a local county jail; he has reasonable access to legal counsel; he will have visits from family and friends usually from the same area. Community-based services are available to him. Medical services and records from area health facilities are easily accessible.

In contrast to this picture we found that a woman in awaiting trial status is shipped off to an overcrowded and maximum security Awaiting Trial Unit at MCI-Framingham, removed from easy access to legal counsel, family and friends, and community-based services. For the woman serving her sentence, the situation is worse. Female offenders are isolated geographically and limited in their possibilities for meaningful programs such as work-release, family-involved counseling, and reintegration.

Complete decentralization, as in the past, with small numbers of women held in each county jail is not the alternative. A regionalized system might obtain the benefits of centralization without the disadvantages of the current situation.

The centralized detention of women awaiting trial at MCI-Framingham results in women having far less access to their attorneys than do men awaiting trial in local facilities. Many attorneys find it difficult, impracticable, or impossible (given their busy trial calendar) to travel to Framingham. A defense attorney practicing in western Massachusetts testified that she has to devote an entire day to visiting a client in MCI-Framingham and could therefore see her clients only once before trial. As a result of their being in Framingham, many women do not even meet their attorneys until the day of their trial.

Similar complaints were garnered from our survey of public defenders and district attorneys. Over two-thirds of the public defenders surveyed found that overcrowding at the ATU impeded their ability to see their clients. According to survey responses, public defenders generally visit their male clients in county facilities twice as often as they do their female clients in Framingham, and several public defenders noted that they often do not confer with their clients until the day of the trial.

Women's access to bail hearings is limited. Over half (59%) of the public defenders and district attorneys surveyed noted that men in county facilities generally have greater access to bail review hearings than do women held at the ATU in Framingham.

The process of posting bail for a woman held at the ATU at MCI-Framingham is also made more difficult by the distance from her home community. For example, a family in Barnstable who wants to bail their female relative has to go to Framingham to present the money. If they don't have a car, they will have to take two or three different buses and a taxi, and they will have to arrive during certain restricted hours. By contrast, a man's family can present his bail at the county sheriff's office. Alternatives for bailing women at the county sheriff's office even if she is held elsewhere are under consideration.

For some time, Hampden and Middlesex counties have had female staff assigned as full-time liaisons to MCI-Framingham. These individuals expedite bail reviews, seek alternative residences, call the women's lawyers, and assist women in moving back to the county from which they came. The Executive Office of Human Services recently funded additional positions in Suffolk, Essex, Worcester, Norfolk, and Bristol.

The centralization of detainees in MCI-Framingham also affects women's enrollment in community-based programs that might serve as an alternative to being held in lieu of bail or that might assist women when they leave Framingham. Such enrollment is considered extremely difficult since most programs require a personal intake interview. If program representatives will routinely visit local jails, they find travel to Framingham prohibitive. Thus many female inmates lose the benefits that such programs could offer (Advisory Group on Female Offenders, 1988).

As we indicated above, most incarcerated women are mothers (80-85%); and of these, 90-95% are single mothers (Testimony of Kate De Cou). The distance between Framingham and the home area that most imprisoned women come from creates a great barrier to contact between them and their children. There may be few visits or no visits during the entire time that a woman is at MCI-Framingham. The children and mothers often suffer serious emotional consequences.

The distance from Framingham to a woman's home area also decreases the likelihood that she will receive visits from family members, clergy, friends, and others who might offer support and resources for return to the community.

The life experiences and current situation of most incarcerated women necessitate specialized health services and treatment programs. "The simple fact that women bear children means there needs to be special programming to maintain the family unit and prevent harm to the unborn fetus and the new infant" (testimony of Lila Austin, Social Justice for Women, at Boston public hearing). A new program, which began operating in 1989, provides a model for how women's special needs can be addressed. The Neil Houston House, a structured residential program that offers high-risk prenatal care, substance abuse treatment, family services, and reintegration services, now offers women on prerelease status an alternative to prison.

As indicated earlier in this report, at least 90% of the women have a history of substance abuse. Substance abuse treatment should be available for all incarcerated women who need it. There is currently a twenty-bed facility at the Massachusetts Psychopathic Hospital for women held under section 35.

A recent survey at MCI-Framingham revealed that 100% of the women sampled have histories of one or more of the following: child sexual or physical abuse, rape, incest, or forced prostitution (Gornick, 1987). We believe that this indicates a need for counseling programs to be available to all incarcerated women. In addition, women who are awaiting trial or sentenced women who have serious mental health problems housed at MCI-Framingham and do not receive adequate care.

There is a longstanding controversy concerning how and where these mental health services should be provided. Some people argue that a permanent facility dedicated to providing mental health care for incarcerated women is the best solution to ensure that this need is met. Critics of this view fear that such a facility will become a "bridgewater" for women, referring to the bad conditions at the comparable facility for men. Plans are underway for a fifteen-bed forensic care unit in a secure setting at Metropolitan State Hospital. However, this will not fully meet the needs of women at MCI-Framingham who need mental health treatment.

Some argue that treatment should be provided at MCI-Framingham, and, according to Amy Singer of the Executive Office of Human Services, a day treatment program is currently operating there. Staff at Bridgewater State Hospital have received substantial training in how to handle prisoners with mental health problems, but comparable training has not been provided to staff at MCI-Framingham.

Deborah Cushner of the Women's Bar Association suggested in her public hearing testimony that there is need for a more efficient cooperative referral system between the Department of Correction and the Department of Mental Health to place women in beds

c. Enrollment opportunities in prerelease and specialized community-based programs.

d. Visitation with children, family, and community contacts.

e. Desperately needed health services and treatment programs.

in state hospitals wherever available.

Lila Austin testified at the Boston public hearing that women from MCI-Framingham are stigmatized by the mental health system and therefore some units refuse to take them. She recommends special training and support for mental hospital staff so that they are open to accepting these women for treatment and are able to provide appropriate care.

## usion

Raised awareness of incarcerated women's needs and innovative new programs point the way toward meeting the unique needs of the female offender and eliminating inferior treatment of women. But this new awareness and the new programs are still the exception and not the rule. Women held in the ATU at MCI-Framingham are in deplorable conditions, without access to counsel and services that would allow them to successfully reintegrate into the community. The impact of this tragedy is doubled because most of these women have children whose lives are also damaged.

## mmendations

1. Women awaiting trial and serving county sentences must not all be held in one centralized facility. Current plans call for the construction and/or establishment of regional facilities in Hampden, Bristol, Essex, and Suffolk counties. These should be established as quickly as possible to reduce the severe overcrowding and place women closer to their home communities.

During the year proceeding the opening of any regional facility, county officials must plan for the arrival of women prisoners. This should include hiring female staff, training all staff, and establishing appropriate programming and services.

If the building of new county houses of correction is subject to delays and lengthy construction timelines, alternative locations should be considered. However, we do not advocate a return to the conditions that existed before centralization, where the number of women in each county facility was too small to provide the necessary range of services. When beds are designated for women in new or expanded facilities, they should be protected from cuts forced by the pressure for additional beds for men.

2. Facilities that incarcerate women must address their special needs regardless of their representation in the total inmate population or the pressures of budget constraints. The Department of Correction, county officials, the advocacy community, and the Commission to Eliminate Gender Bias in the Courts should work in coalition to oversee the creation of new beds for women to ensure that their needs are met in the present and over the long term.
3. Until women are moved back to local facilities every effort should be made to encourage community-based service providers to give priority to those county women held away from their home communities. Alternative arrangements should be made for intake procedures for women while they are held in MCI-Framingham.
4. Whenever a woman can remain in the community, such as through local detoxification facilities, day-reporting centers, or alternative sentencing programs, this should be encouraged.

## otes

1. The Committee regrets that it could not study the very important issue of prostitution. For a comprehensive study of this issue in Florida, see Levine, 1988.
2. Interview with Sandy Wixted, Director of the Children's Hearing Project.
3. In the 6- to 13-year old age group, boys slightly outnumber girls. The explanation of this offered by Janet Eustis, Deputy Commissioner of DSS, is that girls remain fairly passive until about 13 years old, whereas boys begin acting out at a much younger age.
4. Statistics provided by Janet Eustis, Deputy Commissioner of DSS, and Julia Herskowitz, Director of Research, DSS.
5. According to Janet Eustis of DSS, services are beginning to recognize the special needs of adolescent girls, and more programs are becoming available to them.

3. Sandy Wixted and Ken Smith, former Executive Director of Roxbury Youthworks.

7. Testimony of Sandy Wixted. Professionals working with juvenile offenders believe that girls run away from a poor or abusive situation, whereas boys try to "tough" it out or are out in the community committing delinquencies.

3. DYS statistics supplied by Dr. Susan Guarino, Director of Research, DYS.

1. Testimony from Sandy Wixted.

0. Nonsecure programs available to girls include foster homes, noncontract group home programs, DARE family services, and a new independent living program. Nonsecure programs are unlocked facilities that are personnel secure.

1. According to Francine Pope of DYS Program Development, programs in secure treatment for girls have recently become more comparable to those for boys, including a skills building segment in the maximum security program.

2. It is worth noting that comparing sentences for similar crimes, almost three-quarters of the public defender/district attorney respondents find that judges give lighter sentences to women with child-care responsibilities than to men without these responsibilities. In setting bail, the proportion is even more extreme: 83% of the respondents note that judges often set lower bail for women under these conditions.

3. The risk/need form was first validated in 1980 with funding from the National Institute of Correction, implemented on a statewide basis in 1982, and revalidated in a later study. The most recent form became effective January 1, 1989.

1. The Norland and Mann study revealed that a greater proportion of violations for men than for women were based on new criminal charges. In contrast, charges against women were found to be disproportionately technical violations of probation. Interviews were undertaken to identify why women are reported for technical violations given the overcrowded correctional facilities and the consequent concern for revoking only the most serious cases. The researchers concluded that, from the probation officer's perspective, some women became troublesome for two reasons: they made time-consuming demands that tended to be organizationally disruptive, and the kinds of problems they experienced tended to lie beyond the interests of the agencies serving them (i.e., welfare, children, interpersonal relations).