

# WOMEN IN PRISON PROJECT

## Correctional Association of New York

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### Women in Prison and Substance Abuse Fact Sheet

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- The 2004 and 2005 modifications to New York's drug laws reduced the length of some mandatory minimum prison sentences; made certain offenders eligible for re-sentencing; made all sentences for drug offenses determinate (flat, e.g. 8 years) with a period of post-release supervision; increased the amount of narcotics that one must possess in order to trigger a particular charge; and made certain drug offenders eligible to earn additional merit time. These changes represent a small step in the right direction.<sup>1</sup>
- Even with these changes, however, the harshest aspects of the drug laws remain intact: though reduced, prison terms are still too long; judges still do not have discretion to consider mitigating factors when sentencing drug offenders, such as the individual's character, or whether she is a first-time offender, had a minor role in the drug transaction, has a substance abuse problem, or is a parent.
- The main criterion for guilt under the laws remains the amount of drugs a person has in her possession at the time of her arrest, not her role in the transaction. In addition, the reforms did not allocate any additional funding to expand drug treatment or other alternative to incarceration programs.<sup>2</sup>
- The provision of the drug laws that applies to the most serious category of drug offenders – the AI provision – now requires a judge to impose a term of no less than eight to 20 years for first-time, non-violent offenders convicted of selling two or possessing eight ounces of a narcotic substance. For AI offenders with a prior violent felony, the sentence range is from 15 to 30 years.<sup>3</sup>
- Because there are a very small number of women in New York's prisons for AI (5) and AII (38) drug offenses, the recent amendments have provided only limited relief for female drug offenders.<sup>4</sup>
- As of December 31, 2007, 363 AI drug offenders had been resentenced and 231 had been released. Of the 231, 225 were men and only six were women.<sup>5</sup>
- As of December 31, 2007, 355 AII drug offenders had been resentenced and 161 had been released. Of the 161, 150 were men and only 11 were women.<sup>6</sup>
- In 2007, more than 44% of women offenders were sent to prison for drug offenses.<sup>7</sup> Of those women, almost 38% were convicted of B-level drug crimes and more than 59% were convicted of one of the three lowest categories of drug offenses (C, D or E offenses).<sup>8</sup>
- As of January 2008, 2,821 women and 59,823 men were incarcerated in New York State prisons.<sup>9</sup> Nearly one-third of women (905) and almost 21% of men (12,520) in New York's prisons were incarcerated for a drug offense.<sup>10</sup>
- About 84% of women sent to New York's prisons in 2007 were convicted of non-violent offenses, mainly drug and property crimes. Almost 16% of women sent to prison in 2007 were convicted of drug possession only.<sup>11</sup>
- In 1973, when New York enacted the Rockefeller Drug Laws, there were 384 women in the state's prisons, 102 of whom were drug offenders.<sup>12</sup> Since 1973, the number of women in prison for drug crimes has increased by 787%.<sup>13</sup>
- Almost the entire increase (91%) in women sentenced to prison in New York from 1986 to 1995 resulted from drug offenses.<sup>14</sup>
- From 1987 to 2001, the number of women under custody for drug offenses in New York State increased at almost double the rate of the number of men under custody for drug offenses.<sup>15</sup>
- As of January 2007, almost 78% of women in prison and just under 91% of men in prison for drug offenses were African American or Latina,<sup>16</sup> even though studies show that Caucasians use, sell and buy drugs in greater numbers than people of color.<sup>17</sup>

- Almost 55% of women in New York State prisons are from New York City and its suburbs.<sup>18</sup> Most women in prison lived in low-income communities before their arrest.<sup>19</sup>
- More than 88% of women in New York's prisons report having an alcohol or substance abuse problem prior to arrest.<sup>20</sup>
- 70% of women in treatment report having been abused as children compared with 12% of men.<sup>21</sup>
- The National Center on Addiction and Substance Abuse at Columbia University reports that drug and alcohol abuse play a role in the incarceration of 80% of the individuals imprisoned in U.S. jails and prisons.<sup>22</sup>
- A 1997 RAND Drug Policy Research Center study concluded that drug treatment reduces serious crime (against persons as well as property) by as much as 15 times more than incarceration.<sup>23</sup>
- A five-year evaluation of the Kings County Drug Treatment Alternative to Prison (DTAP) Program found that participants were 67% less likely to recidivate two years after leaving the program than non-participants.<sup>24</sup>
- The study also found that DTAP graduates were three and a half times more likely to be employed than they were before arrest. DTAP achieved these results at about *half the average cost* of incarceration.<sup>25</sup>
- It costs almost \$37,000 to incarcerate a person in a New York State prison for one year,<sup>26</sup> and more than \$66,000 to incarcerate a person in a New York City jail for one year.<sup>27</sup>
- The cost of outpatient drug treatment ranges from \$4,300 to \$7,500 per person per year and residential treatment is generally less than \$20,000 per person per year.<sup>28</sup>
- There are not enough women-specific treatment programs in New York. In 2006, less than 6% of the total number of drug treatment programs certified by the State Office of Alcoholism and Substance Abuse Services (OASAS) had a women-only component.<sup>29</sup>
- Almost 62% of women admitted to OASAS certified treatment programs in 2006 either had children or were pregnant at the time of admission. Only about 2.5% of the total number of OASAS-certified drug treatment programs provided residential care for both parents and children.<sup>30</sup>
- Many drug treatment programs are designed to respond to the experiences of male substance abusers, and as a result, are often ineffective for women participants. In addition, because women's substance abuse is often tied to their histories of trauma and abuse, addiction treatment methods that are not women-centered (such as confrontational group sessions) can reignite past trauma and have harmful consequences.<sup>31</sup>

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- <sup>1</sup> Chp. 738 [2004] New York Laws; Chp. 643 [2005] New York Laws. A. O'Connor, *A Summary of the Rockefeller Drug Law Reform Legislation*, Legislative Review, New York State Defenders Association (September-December 2004); *Rockefeller Drug Reform Update: New Law Permits Re-Sentencing of A-II Offenders; Dispute re: Eligibility Requirements*, *Pro Se* Vol. 15 No. 4, Prisoners' Legal Services of New York (Fall 2005). William Gibney, *One Year Later: New York's Experience with Drug Law Reform*, The Legal Aid Society (December 2005).
- <sup>2</sup> *Id.*
- <sup>3</sup> Chp. 738 [2004] New York Laws; Chp. 643 [2005] New York Laws.
- <sup>4</sup> Figures derived from Table 6A: (Under Custody for Drug Possession) Felony Crime Class by Predicate Felony Status by Gender by Ethnic Status for Drug Possession Commitments; Under Custody Population NYDOCS Jan 1 2008 and Table 7A: (Under Custody for Drug Sale) Felony Crime Class by Predicate Felony Status by Gender by Ethnic Status for Drug Sale Commitments; Under Custody Population NYDOCS Jan 1 2008, New York State Department of Correctional Services, prepared on February 14, 2008.
- <sup>5</sup> Letter from New York State Department of Correctional Services Commissioner Brian Fischer, February 14, 2008.
- <sup>6</sup> *Id.*
- <sup>7</sup> Table 1B: New Court Commitments to NYSDOCS by Month Received: Jan 1 to Dec 31 2007 (Women Only), New York State Department of Correctional Services, prepared on February 14, 2008.
- <sup>8</sup> Figures derived from Table 2A: (Admissions for Drug Possession) Felony Crime Class by Predicate Felony Status by Gender by Ethnic Status for Drug Possession Commitments; 2007 New Court Commitments to NY DOCS for Drug Possession and Table 3A: (Admissions for Drug Sale) Felony Crime Class by Predicate Felony Status by Gender by Ethnic Status for Drug Sale Commitments; 2007 New Court Commitments to NY DOCS for Drug Sale, New York State Department of Correctional Services, prepared on February 14, 2008.
- <sup>9</sup> Table 1. Age & Minimum Sentence and Table 2. Number of Female Offenders Undercustody at Willard, Statistics on Female Offenders, prepared by New York State Department of Correctional Services on 1/25/08. Table 4A: Crime by Predicate Felony Status by Gender; Under Custody Population NY DOCS Jan 1 2008, New York State Department of Correctional Services, prepared February 14, 2008 (hereinafter Table 4A: Crime by Predicate Felony Status by Gender).
- <sup>10</sup> Table 4A: Crime by Predicate Felony Status by Gender.
- <sup>11</sup> Table 1B: New Court Commitments to NYSDOCS by Month Received: Jan 1 to Dec 31 2007 (Women Only), New York State Department of Correctional Services, prepared February 14, 2008.
- <sup>12</sup> Letter from New York State Department of Correctional Services Director of Public Information, May 15, 2001.
- <sup>13</sup> Table 4A: Crime by Predicate Felony Status by Gender.
- <sup>14</sup> Marc Mauer, et al., *Gender and Justice: Women, Drugs, and Sentencing Policy*, The Sentencing Project (1999).
- <sup>15</sup> *Men and Women Undercustody: 1987-2001*, State of New York Department of Correctional Services (2004).
- <sup>16</sup> Figures derived from Table 4B: (Under Custody Whites Only) Crime by Predicate Felony Status by Gender by Ethnic Status; Under Custody Population NYDOCS Jan 1 2008; Table 4C: (Under Custody African American Only) Crime by Predicate Felony Status by Gender by Ethnic Status; Under Custody Population NYDOCS Jan 1 2008; and Table 4D: (Under Custody Hispanic Offenders Only) Crime by Predicate Felony Status by Gender by Ethnic Status; Under Custody Population NYDOCS Jan 1 2008, New York State Department of Correctional Services, prepared on February 14, 2008.
- <sup>17</sup> See *The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties*, Justice Policy Institute (December 2007), at 6 and 7.
- <sup>18</sup> Table 5: Region and Indictment County by Sex; Under Custody Population NYDOCS Jan 1 2008, New York State Department of Correctional Services, prepared February 14, 2008.
- <sup>19</sup> For example, about 37% of women in state prisons nationwide had incomes of less than \$600 per month prior to arrest. Lawrence A. Greenfield and Tracy L. Snell, *Women Offenders*, Bureau of Justice Statistics, U.S. Department of Justice (December 1999, rev. 10/3/00), at 8.
- <sup>20</sup> *Hub System: Profile of Inmate Population Under Custody on January 1, 2007*, New York State Department of Correctional Services (June 2007), at 55. By comparison, the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services reports that 1.5% of the female population nationally can be classified with illicit drug dependence or abuse. *Substance Dependence, Abuse and Treatment: Findings from the 2000 National Household Survey on Drug Abuse*, Section 2.3, U.S. Department of Health and Human Services, SAMHSA Office of Applied Studies (2002).
- <sup>21</sup> *Behind Bars: Substance Abuse and America's Prison Population*, The National Center on Addiction and Substance Abuse at Columbia University (January 1998).
- <sup>22</sup> "CASA Study Shows Alcohol and Drugs Implicated in the Crimes and Incarceration of 80% of Men and Women in Prison," The National Center on Addiction and Substance Abuse at Columbia University, CASA Press Release (January 8, 1998).
- <sup>23</sup> J.P. Caulkins, W. L. Schwabe and J. Chiesa, *Mandatory Minimum Drug Sentences: Throwing Away the Key or Taxpayers Money?*, The RAND Corporation (1997).
- <sup>24</sup> *Crossing the Bridge: An Evaluation of the Drug Treatment Alternative-To-Prison (DTAP) Program*, The National Center on Addiction and Substance Abuse at Columbia University, CASA (March 2003).
- <sup>25</sup> *Id.*
- <sup>26</sup> James J. Stephan, *State Prison Expenditures, 2001*, Bureau of Justice Statistics, U.S. Department of Justice (June 2004), at 3.
- <sup>27</sup> *Preliminary Mayor's Management Report February 2007*, City of New York, Michael R. Bloomberg, Mayor, at 120.
- <sup>28</sup> *Close-up on the New York State Economy: Rockefeller Drug Laws Are Too Costly for NYS*, Gleason Center for State Policy, Center for Governmental Research, Inc. (January 2002), at 3.
- <sup>29</sup> Figures derived from New York State Office of Alcoholism and Substance Abuse Services (OASAS) data, prepared by OASAS on January 3, 2008.
- <sup>30</sup> *Id.*
- <sup>31</sup> *Caught In The Net: The Impact of Drug Policies on Women and Families*, Report prepared by the ACLU, Break the Chains, and The Brennan Center for Justice at NYU School of Law (2005); *Substance Abuse and the American Woman*, The National Center on Addiction and Substance Abuse (June 1996).