

Obstacles Confront Women in Prison and the Women Who Advocate for Them

By Cynthia L. Cooper

Nine months pregnant, Warnice Robinson was shuttled through the crowded waiting room of an Illinois hospital, her legs in shackles and her wrists wrapped in handcuffs. Transported from a correctional facility where she was serving a sentence for shoplifting, the worst of her birthing experience was yet to come. With three guards on hand, she was shackled to the bed by one foot and one hand, unable to sit, stand, walk around, double over, or even clutch her stomach during 18 hours of labor.

“Where did they think I was going?” Robinson asked state legislators at a hearing in 1999.

“She described the cruelty and absurdity in a way that I could not,” says Chicago lawyer Gail T. Smith, executive director of the Chicago Legal Advocacy for Incarcerated Mothers (CLAIM). “She talked about the pain of the experience, the humiliation, and the sense of connection to slavery.” Horrified lawmakers, many of them women, put legislation in place in Illinois to ban the shackling of pregnant women—one of only two states to do so.

Similar bruising stories of women prisoners propelled Smith to found CLAIM after she graduated from New York University School of Law in 1985. Since then, the population of women in prison has exploded, their situations deteriorated, and the possibilities for legal recourse worsened. Sexual abuse by correctional officers, substandard medical care, inability to be in contact with children, and loss of parental rights make women’s prison experiences especially harsh, advocates say. Across the nation, the small cadre of 100 or so lawyers for women prisoners—90 percent of whom are also women—are intrepid in their determination but stretched to the limits and greatly in need of pro bono help.

“Once you see the inequity, it’s very hard to turn away. It’s impossible, actually,” says Deborah LaBelle, an attorney in Ann Arbor, Michigan, who took her first prisoner case in 1985 as a favor to a lawyer who had become ill. She is now the guiding force behind class action litigation on behalf of 400 women prisoners in Michigan with sexual-abuse complaints against male correctional officers.

Women’s Inmate Population Does Not Match Stereotypes

While the crime rate has remained steady, incarceration has increased. This is no more evident than in the number of women behind bars. Yet, women are a small and often ignored minority within the penal system. According to the Department of Justice, 181,179 women were incarcerated in federal, state, and local correctional institutions at the close of 2003, two and a half times the number in 1990. But women still account for only 9.2 percent of the total inmate population. At the end of 2003, U.S. correctional institutions held 1.97 million men. In eight years, the male inmate population increased by 29 percent, compared with 48 percent for women.

“The most critical concern, and the underlying concern, is the number of women in prison and the length of their sentences,” says Ellen Barry, a Northern California lawyer who was awarded a MacArthur Foundation “genius” grant in 1998 for her work on behalf of women in prison.

In the case of women, the increase in prison population can be traced directly to drug enforcement policies, which have expanded arrests and extended sentences, even for minor violations, says Kirsten D. Levingston, a lawyer who directs the Criminal Justice Program of the Brennan Center for Justice at New York University. “I don’t think the general public has an understanding of women in prison. They are almost an invisible population,” Levingston says.

Who are the women in prison? Eighty percent are convicted of nonviolent drug or property offenses (often drug-related), and only 18 percent are incarcerated for violent crimes, according to Bureau of Justice statistics. Many in the “violent” category are battered women who struck back at assailants, advocates say. Two thirds of incarcerated women are mothers of minor children; 6 percent are pregnant when they are sent to prison. A shocking number have histories as victims of sexual or physical abuse prior to incarceration.

Extensive studies by Dr. Angela Browne of the Harvard School of Public Health found that 90 percent of the women in the New York state prison system had been victims of physical violence or sexual assault in their lifetimes—more than 80 percent as children. The Department of Justice found that a majority of previously abused women in prison used drugs on the outside, which advocates describe as self-medication.

Drug crimes discriminate against people in poor communities, Levingston says, because the poor are arrested while the affluent (“the Rush Limbaughs,” she says) get treatment.

Far from the cigarette-behind-the-ear stereotypes of incarcerated women in B-movies, Levingston says, “when you look at the women in the criminal justice system, you are looking at the most vulnerable of vulnerable in the country: people who have health issues, have suffered abuse, haven’t been able to get the help they need.”

Women’s Custodial Care Sub-Par

Once behind prison walls, women continue to be marginalized. They face not only indifference, but harm. “Women in prison and jails across the USA have suffered a horrifying range of human rights violations,” wrote the London-based Amnesty International in 2000, after issuing a scathing report on women’s prison conditions in the United States. Human Rights Watch and United Nations human rights monitors issued similar criticisms.

Sexual abuse and harassment by male personnel rank high among the problem issues. While male prisoners can encounter sexual misconduct from other inmates, women are endangered by male employees, according to Lara Stemple, executive director of Stop Prison Rape, a nonprofit organization in California. Rape; coerced sex in exchange for favors; voyeurism in showers, lavatories, and dressing areas; fondling; groping; insulting sexual comments; and intimidation to prevent reporting of sexual misconduct are common aspects of incarceration for many women. Research shows that more than one in four women in some midwestern prisons are victims of sexual misconduct, report Cindy Struckman-Johnson and David Struckman-Johnson of the University of South Dakota.

Marilyn Shirley, a former federal inmate incarcerated on a drug charge, was awakened at 3:30 a.m. by a male prison guard, who marched her to a stockroom and forced himself on her, she says. “(The) more that I begged and pleaded for him to stop, the more violent he became. He tried to force me to perform oral sex on him. He then threw me against the wall and violently raped me,” Shirley later testified. Fearful of reprisal, Shirley formally reported the rape upon her release five months later. “Rape should not have been part of my punishment,” she says.

From 1995–1998, California, Texas, and federal prisons, which hold the most women prisoners, reported 506 sexual misconduct complaints against staff, according to a General Accounting Office report. In 2002, 33 guards in Ohio were fired for inappropriate sexual activity, Stop Prisoner Rape found. Federal legislation, the Prison Rape Elimination Act of 2003, authorized a commission to study the extent of sexual assault in prison.

In New York, lawyers responding to women inmates’ complaints undertook their own survey. “We interviewed hundreds of women about their experiences and came to believe there was a real problem,” says Lisa Freeman, an attorney at the Prisoners’ Rights Project of the Legal Aid Society in New York, which brought a federal class action in March 2003. The lawsuit alleges that the state took insufficient steps to protect women from coerced and forced sexual activity by male employees.

New York state is fighting the sexual abuse allegations, relying, in part, upon a Clinton-era law, the Prison Reform Litigation Act of 1996 (PRLA), which intended to eliminate frivolous litigation by prisoners. The law places such stringent conditions on court access that it also impedes legitimate complaints, say advocates. One provision requires prisoners to exhaust the internal grievance procedure, posing real barriers for women who are sexually abused, Stemple says. “A woman might have to report the abuse to the person who commits the offense, or to one of his buddies. A real code of silence exists among prison staff. It keeps prisons from accountability,” she says.

Deborah LaBelle agrees. Women can face retaliation for reporting staff misconduct, LaBelle says, and, in some cases, prisoners can be disciplined for merely filing a “grievance” if a reviewing officer rules against it.

The PRLA also places caps on attorneys’ fees, requires physical documentation of injury, and prevents long-term monitoring by courts. “It’s really difficult for anyone inside, and the PRLA has made it harder,” LaBelle says. Adding to the struggle against sexual abuse, male correctional officers in Michigan object to solutions that would prevent male personnel from guarding women in a state of undress, claiming in litigation that such rules are gender-based employment discrimination.

Health Care Suffers

Difficulties in seeking legal recourse for women inmates extend to other life-and-death issues, including health care.

Women enter prison in poorer health than do their male counterparts, according to the Department of Justice. Gynecological needs are constant for women, but monetarily pressed correctional systems are designed to treat the predominant male population. Health-care problems have resulted in court-ordered changes in California, New York, and Washington state. Still, problems persist, advocates say.

Gwen E. Anderson was in ill health when she was sentenced to prison in Washington state in April 2002 at age 64 and convicted of embezzlement. Anderson suffers from an abdominal aortic aneurysm, a condition that had killed other women in her family. In prison, she was unable to get an appointment with a doctor for eight months, and then treatment was denied, she says. "The medical [department] is cruel. They make everyone feel like drug addicts, or 'you're a convict, and you only get to serve your time.' What right do they have to treat people like that? I did a bad thing. But I wanted to live. And the judges have no idea how hard it is," Anderson says. Released in September 2004, she entered a hospital for surgery within days.

"What you see happening to women is that they are discounted, dismissed, not believed," says Patricia Arthur, Project Director of the Institutions Project at Columbia Legal Services in Washington state. Arthur points to a Washington woman who died of a peptic ulcer because prison authorities did not believe her complaints; others, she says, face lifelong disabilities.

A prison litigator since 1982, Arthur was honored in June 2004 with the King County Washington Women's Lawyers Award. In 2003, she settled a nine-year-old class action lawsuit seeking better health care for women prisoners by suggesting that settlement funds be used for an independent patient advocate to investigate health-care complaints in the women's facilities. The first task of the soon-to-be-hired advocate may be looking at the lack of HIV treatment at women's institutions, which forces sick women to travel for hours to a male prison.

Family Concerns Trail Women Prisoners

Other legal obstacles confront women who have minor children. "If you go in and talk to women, the issue that they raise consistently is what is happening with their kids. That's a primary social issue," says Ellen Barry, who founded Legal Services for Prisoners with Children in San Francisco in 1978 and now works as a consultant.

Family issues extend the length of incarceration. Women are concerned about finding homes for their children during the period of incarceration, communicating or visiting with children from prison, preserving parental rights, and providing for family needs post-conviction.

While both men and women in prison are parents, the children of incarcerated mothers are much more likely to be displaced, according to the Child Welfare League. Ninety percent of children with incarcerated fathers live with the other parent, 8 percent are with relatives or friends, and only 2 percent are in foster care. Only 25 percent of children with incarcerated mothers live with the other parent; 65 percent are with relatives or friends, and 10 percent are in foster care.

Approximately 200,000 minor children have a mother in prison. The incarcerated mothers are usually at distant prisons, making visits impossible or rare. Under tight prison restrictions, even a phone call can be a challenge.

The situation for sentenced mothers is further complicated by the 1997 federal Adoption and Safe Families Act, which requires that parental rights be severed if a parent is absent for 15 months in a 22-month period, even when no permanent foster care placement is in sight. The punishment for incarcerated mothers may extend to the loss of their children for life.

Mothers who are able to reunite with their families post-prison encounter other obstacles under "drug war" laws. A drug conviction can translate into lifetime denial of welfare benefits, public housing, and college financial aid, regardless of rehabilitation.

Each week, dozens of requests for help on parenting issues land on the desk of Cassie Pierson, one of two staff attorneys with Legal Services for Prisoners with Children. "It's depressing to open letter after letter: 'My parental rights are being terminated and I don't know why,'" says Pierson, a former teacher who went to law school in her mid-40s out of a desire to advocate for children.

Even well-meaning alternatives fail to consider children's needs, Pierson says. She describes one of the few halfway house programs in the state that permits a small number of inmates to live with children under the age of six. But eligibility is considered only after a mother is transported to a distant prison, during which time other child care arrangements must be made.

Many glitches arise. Pierson advocated for a frantic mother who was ordered back to prison because of a failed drug test. The woman denied any drug or alcohol intake. Pierson discovered a high level

of false positive readings with the drug screen, and, when authorities finally agreed to a second test, the woman passed. But without systemic changes, other mothers are confronting the same problem.

Help Wanted

Increasingly, the assistance of private attorneys and pro bono aid from law firms is critical, Barry says. “The handful of attorneys who do this full time can’t possibly address the needs. We couldn’t do class action work without the involvement of corporate law firms that can handle complex litigation,” Barry adds.

Volunteer attorneys who take even a single parental rights case make a difference and receive unanticipated benefits, Pierson says. The women inside prisons are isolated and need information, research, citations, contacts, and facilitators. Not infrequently, they are relieved that someone has listened. “Sometimes there is a little victory. But we see the law as more than litigation. I get a lot of letters from women who just say ‘thank you.’ I save all those letters, and they keep me going. A little bit of work can go a long way in the lives of these women,” Pierson says.

Editor’s Note: Myrna S. Raeder, a 2002 recipient of the Commission on Women’s Margaret Brent Women Lawyers of Achievement Award, was honored for her work in promoting gender equity in the criminal justice system, including her significant contributions on behalf of non-violent incarcerated women and their children. Ms. Raeder is a professor at Southwestern University School of Law in Los Angeles.

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