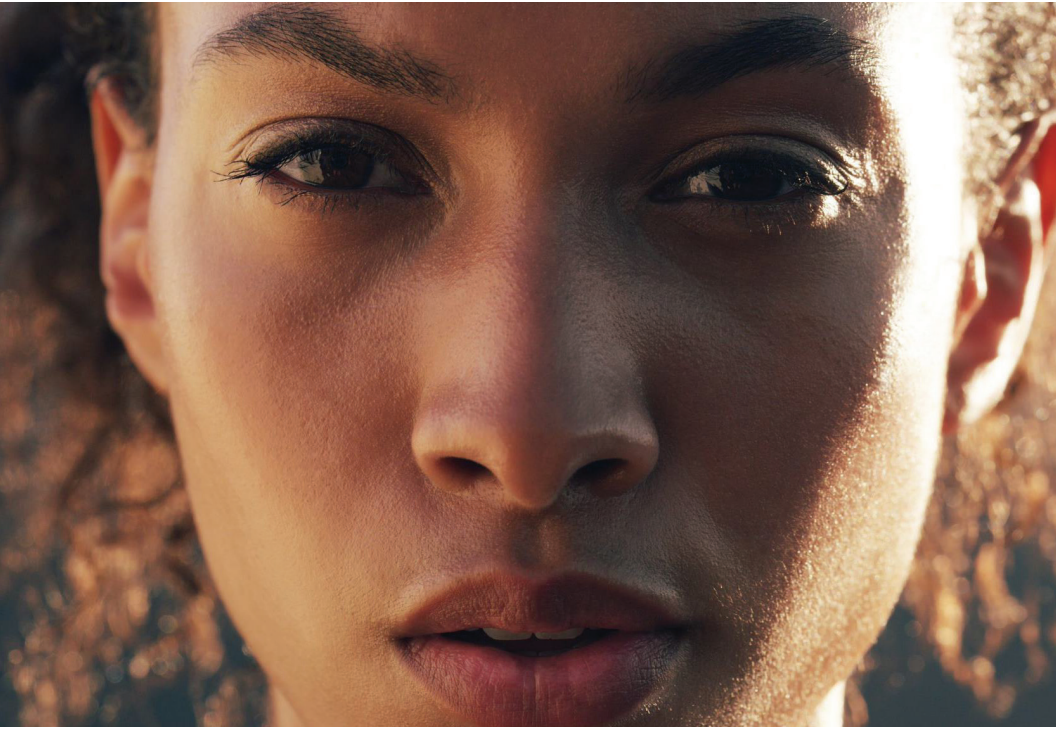


CIVIL AND CRIMINAL JUSTICE

The Legislative Primer Series
for Front-End Justice

Conditions and Rights for Women in Jails



NATIONAL CONFERENCE OF STATE LEGISLATURES

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The National Conference of State Legislatures is the bipartisan organization dedicated to serving the lawmakers and staffs of the nation's 50 states, its commonwealths and territories.

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- Promote policy innovation and communication among state legislatures.
- Ensure state legislatures a strong, cohesive voice in the federal system.

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Introduction

Each year, nearly 11 million people are booked into local jails. At roughly 18 times the number of admissions to state and federal prisons, such jail churn has a significant impact on individuals, communities and government resources. Often overlooked in this issue: women. Women in jail represent the fastest growing correctional population in the country.

Though there are still more men than women involved in our nation's justice systems, the rate of growth of the women's population has vastly increased. In fact, the Bureau of Justice Statistics data show that between 1980 and 2019, the number of incarcerated women (in both jails and prisons) increased by more than 700%.

In 1980, approximately 13,000 women in the U.S. were incarcerated in jails. By 2020, the population had grown to [nearly 115,000](#). From 2016 to 2017, the number of women in jail on a given day grew by [more than 5%](#), even as the overall jail population declined.

In the past few years, legislative interest and momentum in the direction of local justice and jail reform has increased. However, state and local government systems and facilities are predominately designed to handle men. The rapidly growing women's population is now pushing state and local officials to examine how existing policies can be tailored to meet the needs of justice-involved women. Policymakers are also widening the scope and adopting gender-responsive solutions and innovative new programs designed to address the needs of women.

Legislators play a critical role as leaders and supporters of such policy innovations. As community leaders, they can convene the necessary stakeholders to vet, advance and support gender-responsive strategies to improve outcomes for justice-involved women. They can also enact the laws needed to change policies and appropriate funds to support programs.

This report will examine the population of women in the front-end of the justice system. It will provide an overview of the limited research and the gaps in research on who justice-involved women are, what they have experienced, and how they got there. It will also discuss the varying approaches jurisdictions are using to address the distinct needs of justice-involved women, to improve conditions of confinement and support reentry services.

What We Know

THE LIFE PATH

Women inherently have unique and different pathways into the criminal justice system than men and thus require different services and responses.

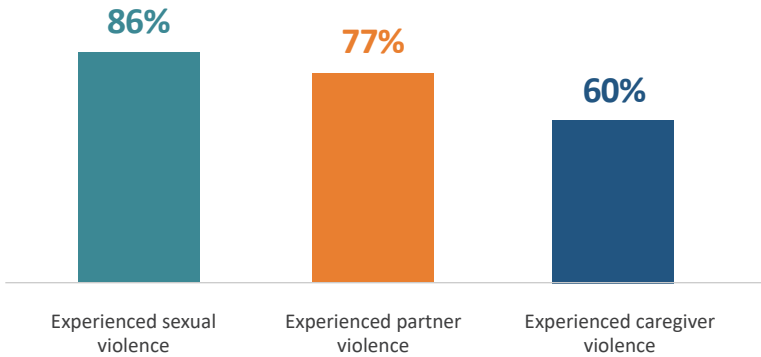
Research has also shown many women in the criminal justice system suffer from mental health and substance use disorders. A Department of Justice [study](#) found a majority of women in jail had at least one assessed mental health disorder in their lifetime, and one in four women met criteria for serious mental illness, post-traumatic stress disorder or substance use disorder. Another [study from the Bureau of Justice Statistics](#) reported that women incarcerated in prisons and jails had higher rates of mental health problems than men. In state prisons, 73% of women had a mental health issue, compared to 55% of men. In local jails, 23% of women reported being diagnosed with a mental health disorder in the last 12 months, compared to 8% of men.

One of the most startling statistics is how many women involved in the justice system have experienced trauma. A Bureau of Justice Assistance publication entitled, [“Women’s pathways to jail: The roles & intersections of serious mental illness & trauma”](#) showed that 86% of the women studied reported having experienced sexual violence in their lifetime, 77% reported partner violence, and 60% reported caregiver violence (parent or guardian). The report went on to say that “experiences of victimization predicted risk of offending. Specifically, intimate partner violence contributed to risk for commercial sex work/trading sex and drug dealing/charges. Witnessing violence contributed to risk for property offenses, fighting/assault, and using weapons. Finally, caregiver violence contributed to risk for running away.”

In a multi-site study of women in jails, **82%** of the sample met lifetime criteria for drug or alcohol use or dependence.

Source: “Women’s pathways to jail: The roles & intersections of serious mental illness & trauma”

Fig. 1 – Prevalence of Victimization



Source: Shannon M. Lynch et al., *Women's Pathways to Jail: The Roles and Intersections of Serious Mental Illness and Trauma* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2012).³² <https://www.vera.org/downloads/publications/overlooked-women-and-jails-report-updated.pdf>

Women of color are disproportionately represented at every stage of the criminal justice system. A [Vera Institute analysis of data](#) noted that approximately two-thirds of women in jail are women of color—44% of women were Black, 15% were Hispanic, and 5% were of other racial/ethnic backgrounds, compared to 36% of women who identified as white.

Most women in jail are single mothers, with [studies](#) finding that 79% have young children when they are incarcerated. This introduces new challenges, such as how the reduction of income can place significant financial hardships on the entire family, and how even a relatively short stay in jail can mean the temporary or permanent separation of children from their mothers.

Not only do women in the justice system have different life paths and characteristics than men in the justice system, but they also face different types of charges.

A [majority of women](#) in jail are charged with nonviolent, low-level offenses. For example, a [2003 jail exit survey](#) from Davidson County, Tennessee, showed that 77% of the women were arrested for property or drug possession misdemeanors and that the most frequent charge for all the surveyed women was failure to appear. A [similar jail exit survey of 517](#) women in Tulsa County Oklahoma showed:

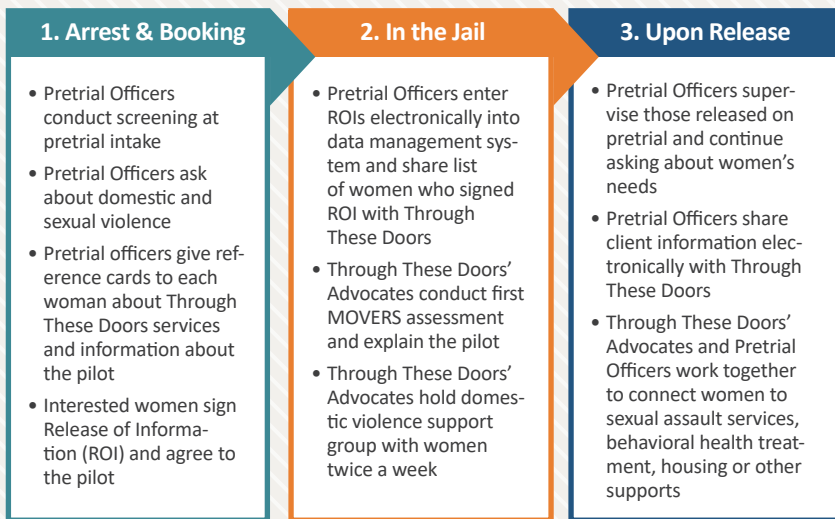
- For 58% of the women, the most serious offense was a municipal or misdemeanor offense.
- 36% were charged with a felony offense.
- 57% had at least one prior arrest.
- 43% had no prior arrests.

Reentry with Project Safe Release— Cumberland County, Maine

In 2003, researchers interviewed and analyzed the client records of 100 incarcerated women who were receiving services from Through These Doors—a domestic violence resource center serving Cumberland County, Maine. It was found that 93 of the women had experienced abuse prior becoming involved with the justice system. Despite the frequency in which justice-involved women are victims of violence, many jails and justice agencies find it difficult to appropriately screen, gather histories, and incorporate these findings into case management plans. Through These Doors partnered with Maine Pretrial Services to establish “Project Safe Release”. It was an opportunity to reduce the amount of time women remain in custody by safely releasing “women who are on pre-trial contracts while also ensuring their safety in the community from partners who cause harm...”

This pilot program aims to improve the screening process used when asking women in custody about their victimization experiences, refer eligible women to Through These Doors while they are incarcerated, assess each woman’s experiences, and synchronize services for women who are granted pretrial release or who have served their sentences. Some observed outcomes from Project Safe Release include reduced barriers to pretrial release, increased calls to the Through These Doors hotline, improved case management and coordination of services, and more efficient data exchange between agencies.

Fig. 2 – Process Map for Project Safe Release



Sources: *Decreasing Gaps in Service for Women Who Are Incarcerated* Assisting Women Throughout the Justice Continuum

Studies show that when women do commit violent offenses, they are usually targeted towards relatives or intimate partners. “Women are often incarcerated for crimes connected to intimate partner violence, such as defense against an abusive partner or the inability to keep children from being harmed by an abusive partner.”

TRAUMA EXPERIENCED IN THE JUSTICE SYSTEM

Women are at an extreme risk of experiencing trauma while involved in the justice system, particularly while incarcerated. Jails are not equipped to meet the needs of trauma survivors. For women struggling with mental health disorders and trauma, any specialized treatment can be especially scarce, leaving many issues unaddressed, which can exacerbate the destabilization a jail stay often causes.

Women are also disproportionately represented among victims of violence in correctional settings. The [rate](#) of sexual victimization by another incarcerated person is three times higher for women in prison than for men and allegations of sexual victimization perpetrated by facility staff is also common. Moreover, the Substance Abuse Mental Health Services Administration [notes](#) that everyday occurrences during incarceration can exacerbate underlying trauma in women. “Strip searches, room searches that inevitably involve inspecting personal items, cuffs or restraints, isolation, sudden room changes, yelling and insults—these experiences keep old wounds open, prevent healing and change, and may invoke old patterns of self-protective responses (including violent outbursts) that only make things worse.”

The Role for State Legislatures and Justice-System Stakeholders

The rapidly growing population of incarcerated women is pushing state and local officials to examine how existing policies can be tailored to meet the needs of justice-involved women.

INNOVATIVE JUSTICE SYSTEM RESPONSES

I. ARREST

As noted above, most women involved in the justice system are mothers. The [International Association of Chiefs of Police](#) (IACP) have recognized that the arrest of a parent can have significant impact on a child including causing shock, anxiety, fear and anger. They note, “Incarceration of a mother can have the most severe and long-lasting consequences for her child, as she is most often the primary, if not the only, caregiver. Separation from a primary caregiver represents a crisis for children ...”

In 2014, the IACP adopted a model policy and measures to safeguard children when a parent is arrested. The overriding policy statement reads,

“It is the policy of this department that officers will be trained to identify and respond effectively to a child, present or not present, whose parent is arrested in order to help

minimize potential trauma and support a child’s physical safety and well-being following an arrest.”

In 2021, Louisiana [enacted legislation](#) containing guidelines for law enforcement to identify and ensure the safety of children upon the arrest of a parent. Specifically, it requires an officer during an arrest to, when practicable:

- Inquire whether the person is a parent or guardian of a dependent child under the care, custody, or control of the arrested person at the time of the arrest and if they may be at risk as a result of the arrest.
- Ascertain whether a child is present at the time of arrest.
- Give an arrested person a reasonable opportunity, including providing access to telephone numbers stored in a mobile telephone or other location, to make alternate arrangements for the care of a child under his or her care, including a child who is not present at the scene of the arrest.
- Provide an arrested person the opportunity to speak with a child who is present, prior to such caregiver being transported to a police facility.

II. PRETRIAL DIVERSION

[Pretrial diversion programs](#) reroute people away from traditional criminal justice processing after arrest, but prior to adjudication or final entry of judgment. Pretrial diversion is designed to address factors, called criminogenic needs, that contribute to involvement with the legal system. Laws generally require that participation in diversion is voluntary and that the accused has access to counsel prior to making the decision to participate. Individuals are diverted prior to entry of judgment or conviction and a guilty plea may or may not be required. Successful completion of the program results in a dismissal of charges.

One example of a successful pretrial diversion program is [ReMerge of Oklahoma County](#), which is partially funded by the Oklahoma Department of Corrections and the Oklahoma Department of Mental Health and Substance Abuse Services. This program is for pregnant women assessed as high-risk, high-need and mothers facing non-violent felony charges. Participants are referred by the district attorney’s office to a four-phase program that “provides safe and sober housing, food, clothing, transportation, access to mental and physical health care, and addiction recovery as baseline support.”

ReMerge participants are assigned a team including a case manager, a therapist, a health and wellness manager, an education and employment manager and peer support to help them meet competencies required in each phase. The program takes approximately 19 months to complete; since 2011, ReMerge has graduated 149 women who parent a total of 372 children. Diverting women from formal case processing and keeping families together has saved Oklahoma approximately \$32 million dollars by serving women in their communities and [breaking the intergenerational cycle of incarceration](#).



III. COMMUNITY-BASED SENTENCES FOR CAREGIVERS

Research shows that strong relationships with family and children has a correlation with decreased arrest rates for women. A few states like Massachusetts, Oregon, Washington and Tennessee have enacted legislation expanding the use of community-based sentences as an alternative to incarceration for parents of dependent children who are convicted of a crime. Other states like Missouri and Louisiana have also considered this type of legislation.

Washington State's Parenting Sentencing Alternative was created in 2010 under [Substitute Senate Bill 6639](#). Due to this law, judges can waive a term of incarceration and impose 12 months of community supervision that includes conditions for treatment and programming. To be eligible for the sentencing alternative, the parent must have physical custody of the minor children, and they cannot have current or prior convictions for a felony sex or violent offenses.

Initial findings show that these laws do work and Washington [found](#) that participants were 71% less likely than those in a control group to be convicted of a new felony in the two years after their discharge.

IV. DIGNITY FOR INCARCERATED WOMEN

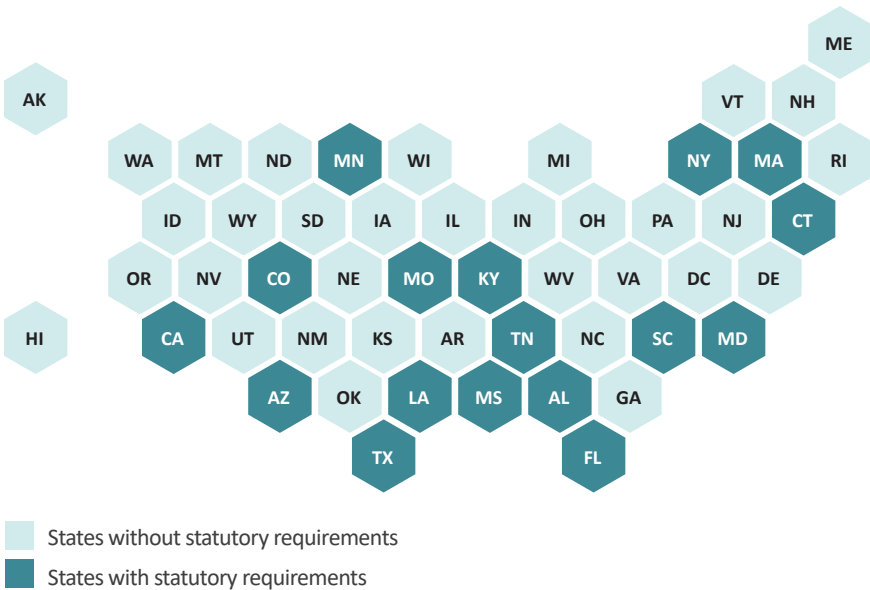
The unique needs of women while in confinement is an issue that has especially come to the attention of state and federal policymakers. In its last two sessions, Congress has

considered the “Dignity for Incarcerated Women Act,” which would provide certain protections for women in federal facilities. In the last five years, many states like California, Florida, North Carolina, and Mississippi, have enacted legislation that provide unique rights and protections for women in not only prisons, but in jails as well.

» **Access to Feminine Hygiene**

Seventeen states have statutes requiring an adequate amount of feminine hygiene products be made available to incarcerated women. Some of these state laws only apply to state prisons, but a recent push has been to expand requirements to local jails. For example, Kentucky had provisions in statute that required it for prisons, but recently added the requirement for local jails. Most of the states provide clearly in statute that the feminine hygiene products must be available at no cost to the woman, while other states are silent on the issue or provide free hygiene products to only those deemed indigent.

Fig. 3 – Statutes Requiring Adequate Feminine Hygiene Products for Female Inmates



» **Interaction with Officers who are Men**

A few states have enacted legislation limiting the interactions of male officers with incarcerated women. For example, in [California](#), a male correctional officer cannot conduct a physical search on an incarcerated woman or enter an area where women may be undressed, including restrooms or shower areas. There is an exception to this prohibition if a woman presents a risk of immediate harm to herself or others or if there is a medical emergency in the area. In those cases, “circumstances for and details of the exception shall be documented within three days of the incident,” and documentation must be re-

viewed by the warden and retained by the institution for reporting purposes. Florida and Louisiana have similar provisions.

In South Carolina, “correctional facilities, local detention facilities, and prison or work camps must limit, when practical, bodily inspections of a female inmate by male officers when the female inmate is naked or only partially clothed.”

Connecticut, Texas and Virginia have broader statutory language limiting interaction with officers of the opposite sex.

» **Treatment of Incarcerated Pregnant Women**

From 2019 to 2021, at least 14 states introduced and passed legislation pertaining to treatment of pregnant persons in jails. In 2021, Mississippi [enacted legislation](#) that requires additional food and supplements as ordered by a physician for incarcerated pregnant women. In Virginia, the state created standards for postpartum treatment and requires all facilities under the Virginia Department of Criminal Justice Services to provide training to staff on the care of pregnant women. Colorado has a similar requirement.

At least six states, Arkansas, Colorado, Florida, Georgia, Kentucky, Maryland have also eliminated the use of restrictive housing or solitary confinement for women who are pregnant or post-partum.

A significant legislative trend in the last few years has been to statutorily change the way shackles are used on pregnant women.

During labor, shackles and restrictions can cause cramps and intense pain because women are not able to adjust position during contractions. There is also a risk of falls during labor. Shackling after childbirth can cause undue sanitary issues because of movement restriction. Thirty-seven states now limit or prohibit shackling and restricting, but many of the laws differ in scope.

[Oklahoma law](#) directs all correctional facilities to use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an incarcerated person is pregnant. The measure prohibits the use of any kind of restraint when transporting a person who is in labor, while the person is delivering the baby, or while the person is recuperating from the delivery. [Nebraska](#) restricts the use of shackling of pregnant women unless there is a determination that there is a substantial flight risk or other substantial security risk. The law dictates that even in extraordinary circumstances the medical professional attending to the patient can request removal of restraints. The Nebraska law also has a provision for redress. It states, “Any prisoner or detainee restrained in violation of the Healthy Pregnancies for Incarcerated Women Act may file a civil action which shall be pursued as a tort claim under the Political Subdivisions Tort Claims Act or the State Tort Claims Act.”

V. REENTRY

According to the advocacy organization [Prison Policy Initiative](#), women and girls accounted for at least 1.8 million releases from local jails in 2013 (the last year jails were surveyed) and about 81,000 women were released from state prisons nationwide in 2016. [Research](#) shows women have a significantly higher need for reentry services and encounter more obstacles upon release than men, whether being released from long- or short-term stays. [Other studies](#) have also shown that formerly incarcerated women are more likely to be homeless than formerly incarcerated men.

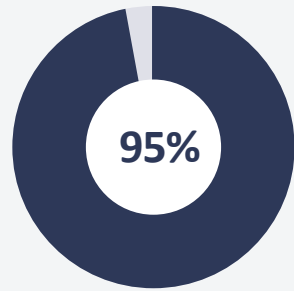
In one [National Institute for Justice](#) survey with pre-release interviews, women reported their greatest needs were education (95%), employment (83%) and job training (83%).

In that vein, occupational licensing policies and criminal record clearing laws can help all people, but especially women, reenter society and find and maintain employment—a critical aspect of reducing recidivism.

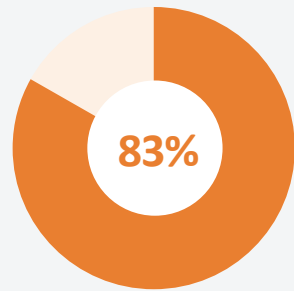
The National Inventory of Collateral Consequences of Conviction catalogs over 15,000 provisions of law in both statute and regulatory codes that limit occupational licensing opportunities for individuals with criminal records. [State policymakers](#) across the country are actively addressing this issue by enacting legislation that does not categorically exclude individuals with records from obtaining an occupational license. For example, in [New Hampshire](#), a licensing agency cannot deny a license on the basis of a prior conviction, unless the agency has considered the nature of the crime and whether there is a direct relationship to the occupation, and may consider factors such as the time since the conviction and rehabilitation efforts.

State lawmakers are also [enacting measures](#) to make it easier to—or even automatically—clear

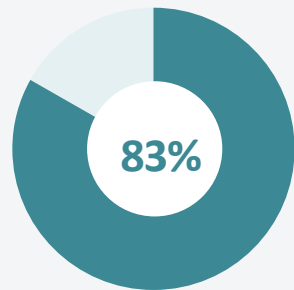
Fig. 5 – Women’s Greatest Reentry Needs



Education



Employment



Job Training

Source: National Institute for Justice survey with pre-release interviews



or expunge criminal records. Currently, 20 states have at least one statutory automatic record clearing provision. Connecticut, Michigan, New Jersey, Pennsylvania, and Utah have enacted legislation that automates the automatic record clearing process, sometimes known as “clean slate laws.”

Currently, **20 states have at least one** statutory automatic record clearing provision.

Conclusion

For the most part, traditional justice responses have focused primarily on men. But with the number of women involved in the justice system growing, policymakers and justice stakeholders are looking at gender appropriate responses to divert, rehabilitate and improve conditions of confinement for women who find themselves in the justice system. State and local policymakers are looking at well-crafted laws, programs and policies that reduce the unnecessary involvement of women in the justice system and preserve important family bonds while maintaining public safety.

Resources

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Anne Teigen is an associate director for NCSL's Criminal and Civil Justice Program in NCSL's Denver office. Other NCSL staff contributors included Arthur Wagner, policy associate, Kate Bryan, intern, Sarah Brown, director, Alison Lawrence, associate director. The author would also like to thank Laurie Garduque of the John D. and Catherine T. MacArthur Foundation.

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Anne S. Teigen
Associate Director
Criminal and Civil Justice Program
303-856-1652
Anne.Teigen@ncsl.org



NATIONAL CONFERENCE OF STATE LEGISLATURES

Tim Storey, Executive Director

7700 East First Place, Denver, Colorado 80230, 303-364-7700
444 North Capitol Street, N.W., Suite 515, Washington, D.C. 20001, 202-624-5400

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