

## Women, Incarceration, and Violent Crime: A Briefing in Response to Plans for Building a New Women’s Prison in Massachusetts<sup>1</sup>

*“[T]he effort to divide up the world into the violent and the nonviolent, or into any other sharply drawn dichotomous categories, blinds us too often to the gradations that actually characterize our collective life” (Sklansky, 2021, p. 5).*

### Introduction

The Massachusetts Department of Correction (DOC) has announced its intention to close MCI-Framingham, the oldest functioning women’s prison in the country, by 2024 (Williams, 2020). The primary state prison for women, MCI-Framingham currently houses fewer than 200 women.<sup>2</sup> This number includes women awaiting trial as well as women sentenced on a wide range of governing charges (Cannata et al., 2021).

To replace MCI-Framingham, Governor Baker’s administration plans to build a new women’s prison or substantially renovate an unused men’s prison at an estimated cost of \$50,000,000. That sum is in addition to the operating cost of \$162,000 per woman per year (Cannata et al., 2021).

In response, coalitions of community organizations, academics, social workers, and attorneys argue that the time has come to end the punitive policies that gave rise to mass incarceration; that \$50,000,000 could be put to better use supporting housing, families, education, parks, local businesses and services that build up people, not prisons (Building Up People Not Prisons, n.d.).

The population of women incarcerated for crimes labeled as violent has emerged as a sticking point in efforts to balance concerns for public safety with the rights and well-being of women and communities most impacted by pro-incarceration policies of the late 20th and 21st centuries.

To help ground these concerns in research, this briefing presents an overview of the scholarly literature on women, violence, and crime. That literature is illustrated through the stories of real women who have been incarcerated for crimes classified as violent in Massachusetts.

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<sup>2</sup> [That number includes](#) women who are sentenced, women awaiting trial, and civil commitments. The Massachusetts DOC “female custody population” has decreased by 75% since 2014 (Cannata et al., 2021, p. 12).

Five points clearly emerge from the literature:

- Classification of acts into “violent” and “non-violent” is problematic and inconsistent in American law and practice, and has problematic racial and gender implications.
- Women have very low rates of arrests and convictions for violent crimes.
- Women are more likely to be victims than perpetrators of violent crimes.
- Women who commit violent crimes usually do so in the context of household or intimate partner abuse.
- Women released from prison after serving time for violent crimes are unlikely to commit a subsequent violent crime.

### “Violent crimes”: An ambiguous category

The categorization of crimes into “non-violent” and “violent” is inconsistent over time and throughout the United States. Some acts that lay people may not consider violent, for example, purse snatching, burglary of an empty home, or driving under the influence, are categorized as violent offenses in some jurisdictions but not in others (O’Hear, 2019). Other acts that lay people may consider violent are not always categorized that way. For example, simple assault is not considered a violent felony in most jurisdictions.

While Congress has attempted to provide a uniform definition of a crime of violence, “courts have struggled to assess the scope of that definition” (Smith, 2018, p. 4). According to the Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Program (Federal Bureau of Investigation [FBI], 2018), violent crimes are defined as offenses that involve force or threat of force. That definition, however, allows a great deal of room for interpretation regarding what constitutes the threat of force and whose perception of threat counts. “Police, prosecutors and juries have a great deal of discretion in deciding whether to treat an incident as simple assault [not a violent offense], aggravated assault [a violent offense], or not an assault at all” (Sklansky, 2021, p. 170).

Plea bargaining—which accounts for approximately 95% of criminal convictions—further obscures any clear relationship between a conviction for a crime that has been labeled by the courts or legislature as violent and the action an individual engaged in (Savitsky, 2012). Of particular relevance to this paper, women may be especially likely to accept plea bargains due to coercion from male partners, fear of losing custody of children, and lifetimes of socialization into ideas that women should be agreeable and not challenge authority (Jones, 2011; Sankofa, 2018).

Further complicating matters, in Massachusetts the DOC classifies crimes as violent or non-violent according to criteria that reflect neither commonsense nor widely accepted legal notions of violence. According to the Massachusetts DOC “Prison Population Trends 2020,” **all** crimes against persons and sex crimes are categorized as violent. The Caveats and Definitions section of that document defines person offenses and sex offenses as “primarily set forth” in M.G.L. ch.265 and/or M.G.L. ch.272 (Cannata et al., 2021, pp. 57, 58). Those chapters in the

Massachusetts General Laws comprise long lists of crimes including crimes classified by the FBI and the courts as non-violent (e.g., prostitution and other offenses “against . . . morality”) (M.G.L. ch.272).

Acknowledging the deeply problematic nature of the term “violent crime,” we use it in this document for the following reasons: (1) recognition that all legal concepts are social constructs and that social constructs have real, palpable effects in the world; (2) respect for the perspectives and lived experiences of women who have been victims of violent crimes; and (3) it is the only available classification that offers any insight into the frequency of acts of violence. Our use of the term is not meant to endorse how it is constructed or applied in Massachusetts or elsewhere.

### **Gender, race and the categorization of crimes**

In theory, the U.S. criminal legal system punishes people for particular acts, not for their characters or social identities. The legal system, however, has long used both race and gender implicitly and explicitly in the assessing and punishing behaviors.

Black Americans historically have been described and treated as less able than white people to control their violent impulses. This racialized understanding has taken a variety of forms over the years, from justifying slavery to lynching Black men accused of lusting after white women, to aggressive policing in Black communities and current mass incarceration of Black men. Scholars trace how portrayals of “violent criminals” and “predators” in American legal and public discourse since the late 1960s function as a thinly veiled racist dog whistle invoked to support tough-on-crime political agendas, even during periods in which crime rates are going down (Sklansky, 2021; Alexander, 2010).

Gender, too, shapes statuses and encounters in the criminal legal system. Men and maleness tend to be assumed normative while women’s experiences frequently are described as “unique.” Scholars argue that the criminal legal system is male-centric, beginning with laws that defined women as the property of husbands (and therefore permitted men to rape and “discipline” their wives), and manifested today by judicial disregard for family responsibilities when sentencing individuals to prison (cf. Cook, 2016).

Throughout American history, conventional notions of proper femininity often have led to harsher punishment and stigma for women seen as violating conventional gender norms (Kruttschnitt & Gartner, 2008). For example, a woman accused of harming a child may be portrayed as monstrous—as suffering from a character defect even if the harmful act was a consequence of a particular situation such as coercion by an abusive partner (Roberts, 1997; Weare, 2017). More broadly, one could argue that any physically forceful act performed by a woman is at risk of being seen as deviant.

Women of color tend to be perceived as deviating from societal standards of femininity and treated especially harshly within the criminal legal system (Carlyle et al., 2014; Campbell & Jensen, 2019). In discussing the relationship between “selective chivalry” and race, Romain and

Freiburger (2016) point out that women of color and women in nonheterosexual relationships may have their violent behavior labeled as masculine and excessive. Their analysis of domestic violence cases and prosecutors' decisions to reduce charges found that white women were much more likely to see their charges reduced than non-white women (Romain & Freiburger, 2016).

Scholars hypothesize that there is "selective chivalry" at play in women's sentencing outcomes, where women who commit offenses which more strongly violate gender role expectations are less likely to receive leniency in sentencing (Farnworth & Teske, 1995). This hypothesis has been supported in studies of women who commit violent offenses (Rodriguez, Curry, & Lee, 2006).

## Women at MCI-Framingham

### Paula's Story<sup>3</sup>

*A petite woman now in her fifties, Paula describes herself as having been "a very troubled kid." After a childhood in foster care, Paula was homeless on and off for years. Often turning to sex work as her main source of income, she served a number of short jail sentences for drugs or trespassing. She survived multiple encounters and relationships with abusive men, has been prescribed "dozens of medications for anxiety" and spent several brief stints in psychiatric hospitals.*

*Paula has one conviction for a crime the courts have labeled violent: assault and battery with a dangerous weapon. She explains, "I was living on the streets, drinking and [taking] pills and heroin. I was at the end of my rope and my family shut me off with [no more] money. I went to my sister's house. We fought, I pushed her, and she called the police." Paula clarifies that this was not punitive but rather her sister was desperate to get her straightened out. "Now we are wicked close."*

*After a year at MCI-Framingham and a post-release facility, Paula was back on the streets dealing with the same problems of poverty, insecure housing, anxiety and substance misuse, and now a crime labeled violent on her record.*

Like Paula, the majority of Massachusetts women caught up in the criminal legal system are charged with offenses directly related to poverty, histories of abuse, poor health and substance misuse. Many of the women cycle in and out of jail, shelters, hospitals, treatment programs and temporary housing (cf. Sered & Norton-Hawk, 2014). For the most part, women sentenced for crimes labeled violent tend to fit the same overall social profile as women sentenced for non-violent offenses.

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<sup>3</sup> "Paula" is a pseudonym. Sered has interviewed Paula numerous times over the past decade as part of ongoing research with formerly incarcerated women in Massachusetts (Sered & Norton-Hawk, 2014).

Altogether fewer than 200 women are incarcerated at MCI-Framingham (Cannata et al., 2021). According to the Massachusetts DOC, most new commitments to MCI-Framingham (67% of new court commitments in 2020 and 76% of new court commitments in 2019) are for offenses labeled non-violent (Cannata et al., 2021; Cannata et al., 2020). Because offenses labeled violent typically result in longer sentences, women convicted of these crimes make up a larger part of the prison population: 75% of the female population in DOC on January 1, 2021 had a governing offense that was labeled by the courts as violent (Cannata et al., 2021). However, as noted above (see “‘Violent crimes’: an ambiguous category” section), serious problems with the classification criteria used by the Massachusetts DOC mean that the numbers of women incarcerated for “violent crimes” is less than meaningful.

## Women as victims and perpetrators: A hazy distinction

### Nan’s Story<sup>4</sup>

*Nan had long suffered from poor mental health when she met Frank in the mid-1990s. For a time, she sold sex to finance their life together, but typically they were unhoused and out of money. After a year or so, Nan became pregnant and Frank became abusive. Several months into the pregnancy, they broke into a house she believed to be empty. The homeowner returned, however. Nan then ran outside, where she heard a shot fired. Nan and Frank were convicted of second degree murder.*

*Nearly fifteen years later, Nan was allowed an appeal on the basis of newly revealed information regarding Frank’s abuse. At the second trial, she testified that Frank constantly threatened to kill her and the baby and physically prevented her from escaping his control. She stated that all of her actions to help cover up the murder were induced by a fear of Frank. Nan explained that her failure to speak about her abuse earlier was also due to fear, as she and Frank were incarcerated before and during trial in the same building. Experts testified that Nan’s experience of abuse had made her unable to defend herself before the Court out of fear of Frank, and explained that her behavior was consistent with battered women’s syndrome. The Court did **not** find in her favor.*

*Five years after her unsuccessful appeal Nan was granted parole. Frank is still in prison where, according to reports, he continues his violent and abusive behavior.*

According to the FBI’s crime data, of all offenses that the FBI labels violent, only 17% of incidents reported in 2019 involved female suspects (FBI, 2019). Criminologists offer a variety of explanations for this gender gap (Kanazawa & Still, 2000). Recent scholarship points to cultures of “toxic” masculinity in the perpetration of violent crimes (Marganski, 2019).

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<sup>4</sup> A pseudonym. The details are gleaned from Court records and newspaper reports.

The literature emphasizes one outstanding characteristic of women charged with committing crimes that are typically labeled violent: the experience of having been a victim of abuse. Women who have been victims of childhood abuse are substantially more likely to be arrested for crimes alleged to be violent both as juveniles and as adults than women who have not (Widom & Osborn, 2021; Pizarro, DeJong, & McGarrell, 2010). Even among women with extensive histories of disadvantage and victimization, childhood physical abuse has been found to be the strongest predictor of adult involvement with the criminal justice system (Cernkovich et al., 2008; see also Morash et al., 2018; Leigey and Reed, 2010).

In a national study of women serving life sentences (nearly all for murder), 80% of respondents reported having experienced physical abuse, 77% having experienced sexual abuse, and 84% having witnessed violence at home (The Sentencing Project, 2019). Research particularly notes the role of abusers in introducing women to drugs and alcohol, and encouraging or forcing women to engage in illegal acts (cf. Fedock, 2018).

An analysis of data from the U.S. Department of Justice *Survey of Inmates in State Correctional Facilities* found that the vast majority of offenses labeled violent committed by women involved single victims who were current or former intimate partners or other family members or friends. Forty-two percent of the offenses took place in a family residence, most often one shared by the woman and the victim (Willison, 2016). These results indicate that women are much less likely than men to commit acts of violence against strangers.

In a national survey of 604 women serving time for murder or manslaughter, at least 30% said they were protecting themselves or a loved one from physical or sexual violence, 33% said that they had been convicted of committing their crime with a male partner, and 13% said that they had been convicted of committing their crime with their abuser under duress from the abuser. (van der Leun, 2020<sup>5</sup>; see also Campbell & Jensen, 2019). A study of 525 women at a mental health center who had suffered abuse and who had committed at least one crime found that nearly half had been coerced into committing crimes by their abusers (Loring & Beaudoin, 2000).

It is not unusual for a woman to be convicted in a joint venture—a situation in which one person commits a crime in the presence of another, with both individuals facing charges for the offense, which was the case in Nan’s story. In Massachusetts, conviction for a joint venture requires the other person to have knowingly and intentionally participated in the commission of the particular crime. Intent, however, can be difficult to ascertain or disprove, particularly in situations in which the co-defendant is afraid of the perpetrator.

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<sup>5</sup> This study consisted of written surveys filled out by incarcerated women. Not all respondents answered all the questions.

## Intimate partner violence

### Sherl's Story<sup>6</sup>

*Sherl was convicted of murder in the first degree in the death of her ex-partner, Tommy. As she disclosed to the police, Tommy regularly abused and assaulted her. The morning of the incident, a friend witnessed Tommy dragging Sherl by force up to Tommy's apartment. The friend alerted a family member of Sherl's. That person came to the apartment and interrupted a beating. The friend, family member, and Sherl left and then returned to Tommy's apartment with a weapon. The family member shot Tommy multiple times.*

*On appeal, the Court found that Sherl's attorney had failed to call expert witnesses to testify about the impact of abuse on Sherl's mental state, her rational intellect, and her free will. The Court ordered a new trial. The trial was not held but she was released under supervision and required to attend a variety of programs and court dates.*

Men are the offenders in 80% of incidents of intimate partner violence (Fridel & Fox, 2019). Rates of men killing women within marriage are five times greater than the rates of women killing men (Ellis, Stuckless, & Smith, 2015).

As in Sherl's experience, incidents of women's violence towards male intimate partners usually occur in the context of violence against them by their male partners, and tend to be motivated by self-defense and fear (Swan et al., 2008). The New York State Department of Correctional Services found that 67% of women sent to prison in 2005 for killing someone close to them were abused by the victim of their crime (New York State Department of Correctional Services, 2007). An earlier New York study reported that 93% of women convicted of killing intimate partners had been physically and/or sexually abused by an intimate partner during adulthood (New York State Division of Criminal Justice Services, 1996).

Increases in severity and frequency of intimate partner violence abuse may lead women to the belief that killing the abuser is necessary for survival. The need for self-defense is further illustrated by the fact that married women are more likely to kill within a marriage while married men are more likely to do so as their spouses are trying to leave the marriage (Ellis, Stuckless, & Smith, 2015).

Despite greater understanding of how gender disparities fuel power differentials associated with domestic violence, the number of women arrested for domestic violence has increased in recent decades. This likely reflects changes in policing and prosecutorial practices rather than actual behavior (Miller, 2001). Scholars point out that the wave of "mandatory arrest" and other pro-arrest policies implemented across the U.S. through the 1990s had the unintended

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<sup>6</sup> "Sherl" and "Tommy" are pseudonyms. Her story is based on Court records.

consequence of increasing arrests of *victims* of intimate partner violence (Kraft-Stolar et. al, 2011; Richie, 1996; Bierria & Lenz, 2019; Hovmand, Ford, Flom, & Kyriakakis, 2009; Frye, Haviland, & Rajah, 2007; Chesney-Lind, 2002; Renauer & Henning, 2005).

Mandatory arrest policies have disproportionately affected marginalized women, especially Black women (Richie, 1996; Reeves & Meyer, 2021; West, 2004; Romain & Freiburger, 2016). These policies also have resulted in the criminalization of girls involved in intra-family conflict, particularly girls of color (Sherman, 2016).

## Recidivism: A reality check

### Betti's Story<sup>7</sup>

*Betti was convicted of second degree murder for killing a client in the mid-1990s. At that time, she supported herself through sex work, was involved in a relationship with an abusive man, and used drugs to manage her post-traumatic stress disorder.*

*Due to her good behavior in prison, she was released on parole after serving almost two decades, but was sent back to prison several months later for drug use. A few years later, she was freed again, until she tested positive for cocaine after several years on the outside. Released for a third time a year later, the conditions of her release include being home each night between 10 p.m. and 6 a.m., wearing an electronic monitoring device, regular screening for drugs and alcohol, one-on-one mental health counseling, and attendance at Alcoholics Anonymous or Narcotics Anonymous group meetings three times a week.*

Individuals sentenced for crimes labeled violent have low rates of rearrest for this category of crime (Nellis & Bishop, 2021; Daftary-Kapur & Zottoli, 2020). A meta-analysis of studies examining predictors of violent and non-violent recidivism found that even women with criminal histories that contain more crimes labeled as violent tend to be arrested in the future for crimes labeled non-violent rather than those labeled violent (Collins, 2010).

Middle-aged and older women are especially unlikely to be arrested after getting out of prison. Analysis of the U.S. Bureau of Justice Statistics recidivism data found that of women who were 45 years or older at the time of their release from prison, only 4% were rearrested within three years of release, and those serving sentences for violent offenses had lower rearrest rates than those serving sentences for property or drug offenses (Deschenes, Owen, & Crow, 2007). This low recidivism rate is similar to the 3% rate for a cohort of nearly 200 elderly women serving life sentences in Maryland who were released en masse in the wake of the *Unger v. Maryland* ruling that their sentences were unconstitutional (Justice Policy Institute, 2018). These findings are

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<sup>7</sup> A pseudonym. The details are gleaned from Court records and newspaper reports.

especially significant in light of the mostly older demographic of women serving life sentences in Massachusetts.

As in Betti's case, even among women who are reincarcerated, the instigating factor is likely to be violation of terms of parole—such as failing a drug test or failing to comply with curfews or requirements to attend Alcoholics Anonymous (AA) meetings—rather than a new criminal charge. Sered and Norton-Hawk (2014) found that Massachusetts women often experience the conditions of parole as setting them up for a return to prison (for example, a woman with little income may not be able to pay a babysitter to look after her children while she attends AA meetings).

While states may hope or claim that prison serves a rehabilitative function, data show that women who serve *longer* sentences are at *increased* risk for committing violence in the future, even when controlling for criminal history (Collins, 2010; see also U.S. Sentencing Commission, 2019, p. 25). Women who are incarcerated for long periods lose important social ties to their communities, ties that can help them avoid involvement with the police and courts (Copeland, 1997). For the majority of women in the prison system who are mothers, loss of parental ties takes a heavy toll. Thus, rather than rehabilitating or reforming women, long periods of incarceration may counterproductively further lock women into cycles of incarceration.

## Conclusion

In this paper we have reviewed studies showing that convictions for crimes labeled violent versus those labeled non-violent are inconsistently defined, racially driven, discretionary, and are poor reflections of actual events. Assessment of trends in so-called “violent” crime must, therefore, take into account local variability, reporting mechanisms, judicial interpretation, prosecutorial inclination, plea bargaining and a host of dynamic statutory, cultural and idiosyncratic factors.

When gender is taken into consideration, the issues are even more complex. By singling out certain women as “violent perpetrators” in contrast to “innocent victims,” we elide the reality that all women are at risk of assault and abuse in a society permeated with gendered and sexual violence, and that most any woman will do what she can to protect herself and her children—even if these acts may sometimes seem inappropriate to those who have not walked in her shoes.

Unfortunately, public and political understanding of these complexities remains limited. Across the country, a major hurdle for meaningful change in the criminal legal system is that decarceration efforts often target only certain groups of incarcerated persons, in particular, those sentenced for so-called “non-violent” drug offenses (Jones, 2020; Sundt et al., 2015; Thielo et al., 2016). Public support for releasing people with convictions for crimes labeled violent, even elderly people, has tended to be very low, despite data showing very low rates of additional charges for violent crimes post-release (Ivanov, Novisky & Vogel, 2021; Gottschalk, 2016).

Although the label “violent crime” does not correlate with actual violence or with commonsense understandings of what an act of violence might entail, use of the label reinforces the idea that many incarcerated women have been violent and could be violent again if not held in a very secure prison setting. Prison construction, then, may seem essential for public safety.

The data, however, makes it clear that women’s “violent crimes” are rare, tend to be situational in the wake of intimate partner violence, and are nearly always a one-time event. Women serving time for conviction of a violent crime should not all be treated as inherently violent, dangerous, or needing to be kept in a high-security environment.

In sum, the research literature supports the argument that the population of women convicted of crimes classified as violent by the Massachusetts DOC should not be used as justification for spending millions of taxpayer dollars on constructing a new women’s prison. Not only is prison construction unlikely to contribute to public safety, it draws funds that would be more effectively spent implementing educational and social programs shown to reduce violence against women and girls; safe and sustainable housing for women and girls facing abuse from family members and intimate partners; and programs and practices that support healthy communities and help people resolve problems in non-adversarial and non-violent ways.

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