

A Massachusetts Women's Justice Network (MWJN) Policy Brief

Moving Beyond Incarceration for Women in Massachusetts: The Necessity of Bail/Pretrial Reform

Introduction

Currently, 60% of the U.S. jail population is held in pretrial detention. Therefore, policymakers in Massachusetts and elsewhere who are concerned with the enormous growth in prison populations are exploring ways of reducing the number of people who are held pretrial.¹ A prime motivator of these efforts is avoiding the huge costs of expanding the prison infrastructure, but there is also a growing recognition that reforming bail practices and utilizing alternatives to incarceration (ATI) are more effective than imprisonment for many defendants.

The Massachusetts Women's Justice Network (MWJN) is particularly concerned with the state's bail and pretrial practices for women. The purpose of this Policy Brief is to help policy makers and others understand the reasons for this concern, and to ensure that they are addressed by current legislative and administrative efforts at pretrial reform.

Developments in Massachusetts

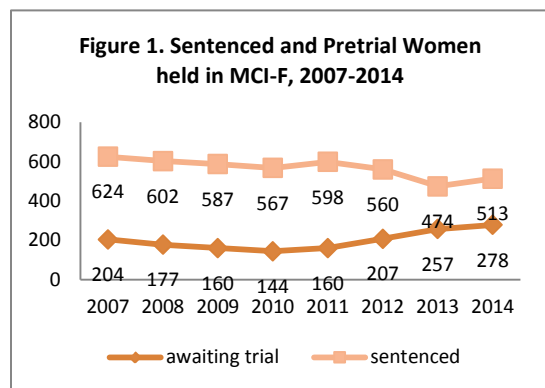
This Policy Brief expands on an earlier Briefing Note produced by MWJN in 2013, illustrating the particular barriers women face in Massachusetts.² Since the 2103 Briefing Note was disseminated, there have been several notable developments:

1. Chief Justice Paula Carey formed a Pretrial Committee, 2013.
2. Experts from the Justice Policy Institute, Washington D.C. and Maine Pretrial Services presented data on Pretrial/bail reform to five key audiences: legislators, the Committee for Public Counsel Services, the Criminal Justice Commission, the Trial Court Pretrial Committee, and at an open forum, 2013.
3. A statewide Pretrial Working Group formed, 2013.
4. The Massachusetts Bail Fund expanded aid to defendants in Worcester, 2014.
5. The Criminal Justice Commission's Pretrial Subcommittee issued a recommendation to continue the exploration of pretrial practices, 2014.³
6. Northeastern University Law School students produced a report, Massachusetts Bail: Alternatives and Options, 2014.
7. Consultants from the National Institute of Corrections reviewed the Massachusetts pretrial detainee population, focusing on Middlesex County, 2015.
8. Bills to reform pretrial practices have been proposed for the 2015-2016 legislative session.

For this longer Policy Brief, we have added newly available data on bail and pretrial detention for women and some key characteristics of the women involved. This effort has been made possible through close cooperation with the research division of the Department of Corrections, and key administrators at the Massachusetts Correctional Institution at Framingham (MCI-F), and two houses of correction.

Women in Pretrial Detention: an Update⁴

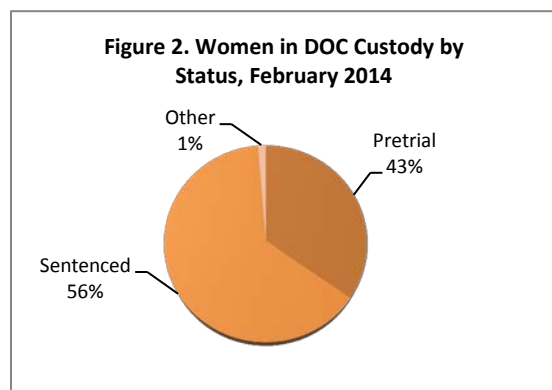
1. Between 2012 and 2014, the number of pretrial women held in the Awaiting Trial Unit (ATU) at MCI-F increased, and overcrowding worsened.



The *annual* estimated number of women held in the ATU increased from 3,075 in 2012 to 3,800 in 2014.

In the same period, the *average daily population* in the ATU increased from 207 to 278 (Figure 1).

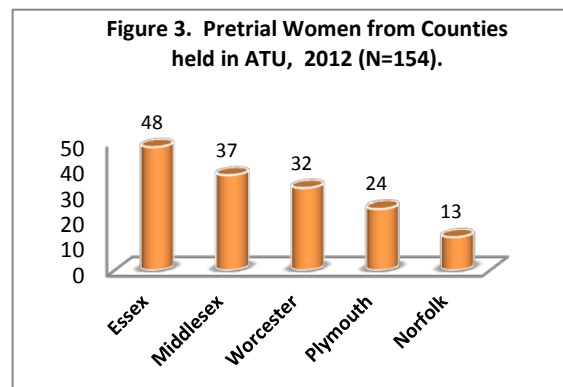
2. Between 2012 and 2014, the percentage of pretrial to sentenced women in the ATU increased; and the overcrowding continued to be the highest of all DOC facilities.



In February 2014, 43% of the women imprisoned in MCI-Framingham were held pretrial compared to 36% in 2012 (see Figure 2).

The overcrowding situation in the ATU had worsened to **439% over capacity**, the worst overcrowding in its history, far exceeding any other correctional facility in MA.⁵

3. Many women with pretrial status are taken to the women's prison in Framingham because of a lack of county facilities.



Although pretrial women from Worcester County were moved in 2014 from MCI-F to the Western Massachusetts Women's Correctional Center (WMWCC) for women, women from four other counties are still held in the state prison.⁶

In 2014, 70% of the incarcerated women (N=90) held in the W.MA Women's Correctional Center from Worcester were pretrial.⁷ The geographical distance to their home community, families and attorneys, has *doubled* compared to the ATU, MCI-F.

56% of the 273 women held pretrial were held in the ATU instead of their counties. The majority of women come from Essex and Middlesex counties (see Figure 3).

Note:

We are not suggesting that more county pretrial facilities be built to house pretrial women, but rather, that women have more equitable opportunities to stay out of detention.

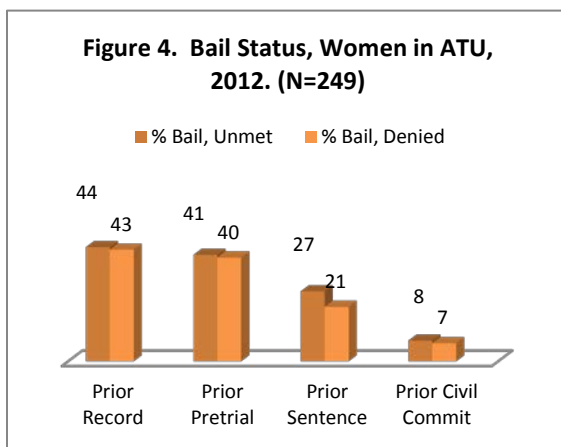
4. Women continue to be detained because they cannot pay bail, often of relatively small amounts.

Institution	Bail Amount	Could not pay
MCI-Framingham	\$2000 or less	83%
Suffolk County House of Correction	\$2000 or less	88%
W. MA Women's Correctional Center	\$2,000 or less	77%

In 2012, 36% of the women held in the ATU could not pay bail under \$500.⁸ Between 77% and 88% of women held in other parts of the state could not pay bail of under \$2,000 (Table 1).

Updated information from the W.MA Women's Correctional Center shows that by 2014, only 13 out of 135 (10%) women in the pretrial unit had bail amounts of \$5,000 or less.⁹

5. Comparing detained women who were denied bail with those who could not pay bail revealed they had similar records.¹⁰



43% of women with a *prior record* were denied bail compared to 44% who could not pay bail;

40% with a *prior pretrial* status were denied bail compared with 41% who could not pay bail;

21% with a *prior sentence* were denied bail compared with 27% who could not pay bail (see Figure 4).

6. Between 2012 and 2014, the average number of days that women were held pretrial in the ATU increased in the ATU, MCI-F.

In 2012, women's inability to pay bail resulted in an *average* pretrial stay for women of 60-77 days. In 2014 the average length of stay in the ATU at MCI-F **increased** to 100 days (2014 data not available for Suffolk County and W.MA WCC).

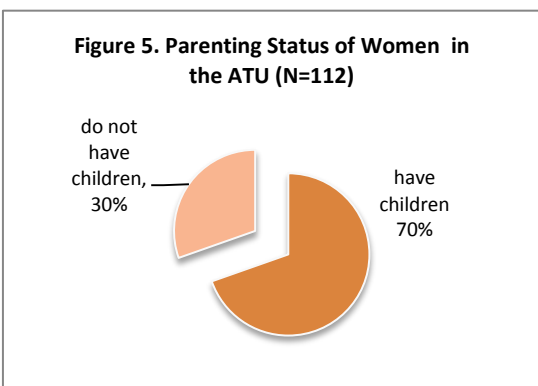
7. Studies have shown that many pretrial defendants never receive a custodial sentence.

A UK study showed that about 60% of pretrial women defendants did not receive a custodial sentence,¹¹ and another study of pretrial defendants in New York City (gender data unavailable) showed a similar percentage of pretrial defendants were given probation, had cases dismissed or continued without a finding; or were sentenced to time served.¹²

New Information Highlights the Collateral Consequences of Women's Pretrial Detention

Women's detention places a burden on their children, families, and friends who, in many instances try to take over family caregiving responsibilities without being given adequate notice, preparation, or support. Although the literature informs us that maintaining family connections is one of the key concerns for incarcerated women (and men), there are almost no data on women and their family connections in pretrial detention. In 2014, we were fortunate to obtain such data based on a one day survey in the ATU undertaken by the MA Department of Correction and MCI-F.¹³

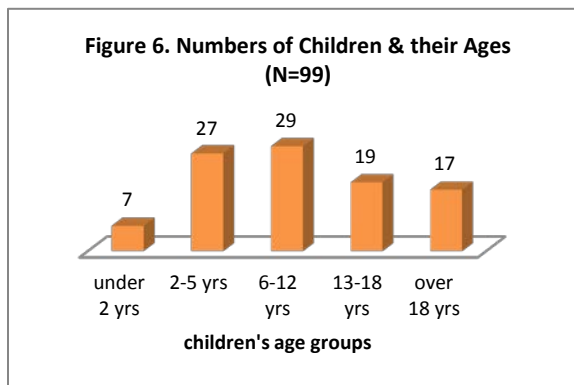
1. The data revealed the sizable number of women who were mothers



70% of women were mothers and the primary caretakers of their children when they were admitted (see Figure 5).

When women are arrested their children are forced to move from their primary residence (unlike the children of men who typically leave children with their primary caretakers, usually the mothers).¹⁴

2. The data revealed the sizable number of young children who were affected by their mothers' pretrial detention

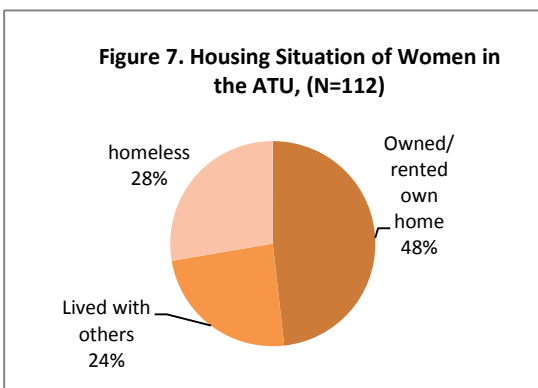


Almost one hundred children were affected by their mothers' detention in the ATU.

One-third of the children were under school age; and about one half were of school age (see Figure 6).

Because of the ATU's geographic isolation it is very difficult for the children to visit their mothers.

3. The data showed the vulnerability of women's housing status.

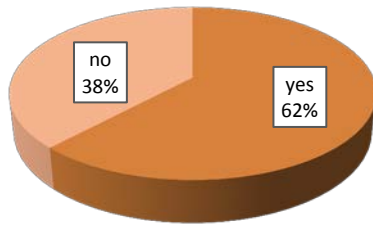


Half of the women in the ATU sample were either homeless or had lived with others prior to detention (see Figure 7).

Although almost half of the women had rented or owned their own homes, they were at risk of losing them through non-payment of rent or eviction as a result of their incarceration.

4. The majority of the women in the ATU sample had substance abuse issues, but women are unable to participate in services available to other MCI-F prisoners.

Figure 8. Women in ATU with Substance Abuse History (N=111)



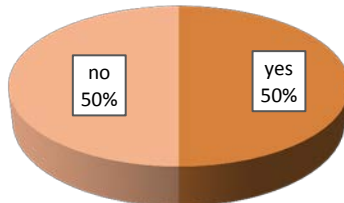
Over 60% of women reported a substance abuse history, with 80% stating they wanted treatment (Figure 8).

However, women in the ATU cannot benefit from substance abuse programs and resources available to other prisoners because they are not permitted to mix with the sentenced population.

Access to resources during the pretrial stage is inconsistent. Women held pretrial in other facilities, e.g. W.MA WCC have access to resources.

5. Many women in the ATU have serious mental illnesses, often with multiple diagnoses.

Figure 9. Women with Mental Health Issues in the ATU (N=112)



Half of the women have a **mental health illness** (see Figure 9). Their diagnoses include Anxiety/PTSD, Schizophrenia, Depression and Bi-Polar Disorder. Almost three quarters of the women had 2-3 diagnoses.

In addition, 27% of women claimed to have **chronic illnesses** ranging from dental to heart and pulmonary problems.

6. Loss of homes, possessions, and eligibility for benefits

Women unable to pay rent or make arrangements while held in the ATU may not have homes to which they can return. If they live in public housing and are accused of substance abuse offenses they may be evicted. Often, they lose their possessions as well.

7. Exclusion for from prison resources.

Because women are not classified while in pretrial detention, as a result of their detention, these women are likely denied the treatment they need urgently for substance abuse, mental illness, and the effects of trauma.

Costs to the State:

There are huge financial implications for the state of housing a large pretrial population of women. Using simple cost estimates for services used, we estimate that the cost of pretrial detention for one woman with two children, for an average 100 day stay in the ATU would be at least \$35, 416.

- The cost of the average 100-day stay in the ATU of \$15,616 (based on \$57,526 a year).¹⁵
- The costs displaced to other state agencies: including foster cares of approximately \$7,000 a year per child (an underestimate, based on 2003 data) or \$3,800 for 100 days for two children.
- The cost to the individual and her family of lost income. A person in a minimum wage job would lose \$16,000 for 100 days.
- Even when grandparents and other family members step in to take over caregiving responsibilities, there are significant costs and disruptions to their lives and those around them.

Validated Pretrial Risk Assessments and Pretrial Services Can and Should be Adapted for Women

The positive outcomes of selected instruments and services are well documented, and many of the suggested bail/pretrial reforms are appropriate for both men and women.¹⁶ However, because women have a unique set of challenges, we recommend some adjustments to some of the following pretrial approaches:

Administrative Improvements¹⁷

- Adopting routine administrative mechanisms—phone calls and emails—to remind defendants of court dates.
- Using validated pretrial risk assessment instruments and gender-responsive resources to estimate whether defendants have a low/medium/high risk of failure to appear (FTA) could go a long way to mediate the negative outcomes of pretrial detention, and in fact, could lead to positive life-changes.
- A validated 7-10 item risk assessment instrument could replace the current 17-item MA court screening sheet to determine minimum/medium/high risk of failure to appear (FTA).¹⁸
- Ensuring that outstanding warrants and other hindrances to bail and pretrial release are addressed.
- Training and informing judges and court personnel in pretrial service approaches, implementation mechanisms, and outcomes.
- Eliminate cash bail as the standard criterion for release or securing funding assistance for bail, reducing the amount of bail, waiving bail, using community service instead of bail, and using unsecured bonds.

Gender-informed Approaches

- Risk assessment instruments should include questions on whether defendants are the primary caretaker of dependent children or the elderly, sick, and infirmed (lowering the risk score).
- Risk assessment tools should count women's shelters as 'legitimate' addresses. Often they provide supportive services as well as shelter, thus lowering the risk score.
- Recruitment efforts to engage women in pretrial services should involve women's advocates who know how to engage with women who have experienced trauma and have knowledge of women's needs and resources
- All personnel within the court setting and the appropriate human service agencies services should be trained in the importance of a trauma-informed approach.
- Women who are detained pretrial should have access to adequate detox and health care treatment, education, and participate in discussions regarding the caregiving arrangements for their children.

Pilot Project to Expand Alternatives to Pretrial Detention

- Massachusetts could lead the nation in expanding pretrial services for women by initiating a *pretrial services pilot project for women*. The project should incorporate residential and non-residential resources to ensure women are housed, engaged in services and treatment, and kept safe until their court dates.
- The pilot project should collect data on all procedures and practices women encounter, and evaluate the implementation process, participation, and outcomes for women and their families. Data on cost factors and the systemic impact of such a pilot should be included in an independent evaluation.

Ongoing and Comprehensive Data Collection

- There should be a comprehensive review of data needs and outputs, as well as utilization and analysis to inform policy and practices. This should be a participatory process with involvement from a broad constituent base.
- Data should be collected in formats suitable for guiding policy and practice, e.g., gender by race/ethnicity, and all other demographic variables, including family resources.

The Gender & Justice Project acknowledges the continuing support of the Gardiner Howland Shaw Foundation; and the assistance of members of the MWJN who reviewed and commented on earlier drafts of this policy brief.

Endnotes

- ¹ Schnacke, T. 2014. *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*.
- ² Kates E. 2013. Briefing Note No.2. *Pretrial detention and Access to Bail for Women in MA*. Wellesley Centers for Women.
- ³ The Criminal Justice Commission (formerly the Governor's Criminal Justice Commission) formed in 2012, partly in response to the findings of the Correctional Master Plan, 2012 that it would cost \$1-2 billion to house the projected population of prisoners in 2020. In fall, 2014 the CJC produced 28 recommendations, one of which focused on pretrial programs.
- ⁴ These data update those in of Briefing Note #2.
- ⁵ *Population Trends 2013*. MA Department of Correction. 2014.
- ⁶ Communication from Superintendent Patty Murphy of the Western MA Women's Correctional Center, Chicopee.
- ⁷ Supt. Patty Murphy provided this updated information, March 2015.
- ⁸ This section is based on data obtained from the MA Department of Correction, MCI-F and the houses of correction in response to requests.
- ⁹ This decline indicates a change in court practices but more information is needed.
- ¹⁰ Bail can be denied if defendants have outstanding warrants, prior records of failure to appear (FTA) for court, and if there is a perceived risk of committing an additional offense.
- ¹¹ Prison Reform Trust, 2007.
- ¹² Fellner, 2011; Offender Management Caseload Statistics (2010) Ministry of Justice UK
- ¹³ Questionnaires were distributed to 128 women in the ATU on a specific day in October, 2013. Thanks to Rhianna Kohl, director of Planning, Policy and Research, MA DOC and Superintendent Lynn Bissonnette, MCI-F.
- ¹⁴ Studies since the 1980s of federal, state and local institutions have highlighted consistently the special circumstances of justice-involved women as mothers. It is estimated that 75% of women in prison are mothers; with an average of 2.3 children.
- ¹⁵ Cost data obtained from Population Trends. 2013. MA Dept. of Correction.
- ¹⁶ Schnacke, T. 2014. *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*.
- ¹⁷ See bibliography below for references used for this section.
- ¹⁸ The Laura and John Arnold Foundation published numerous reports of validated studies based on a brief, objective risk assessment instrument.¹⁸ Using a similar short instrument, the Maine Pretrial services program classified their caseload as 18% as low risk, 52% as average risk, 28% as above average, and 2% as high risk. In 2013, only 1% of 1948 clients in the Maine Pretrial Services failed to appear for their court date.¹⁸ The staff refers defendants to services and communicates regularly with probation and other court personnel about clients' progress.

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