

Moving Beyond Prison: Creating Alternative Pathways for Women

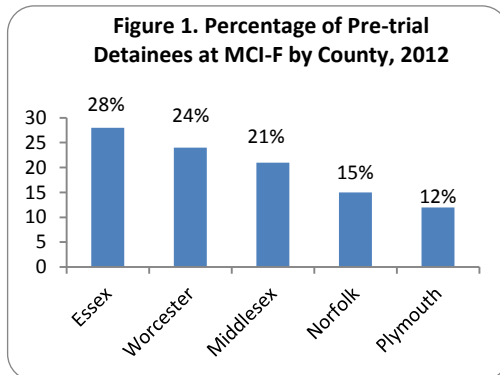
Briefing Note #2 Pretrial Detention and Access to Bail for Women

Every year in Massachusetts, thousands of women are held in pretrial detention, many because of their inability to pay relatively minor bail and court costs. This Briefing Note outlines the long-lasting, negative consequences of pretrial detention for women and their families, and discusses the unique situation of women being held in a medium security prison, MCI-Framingham (MCI-F) because their county houses of correction (HOC) do not hold women. We provide data on the conditions and the length of time detained women wait for trial and describe the problematic aspects of the bail process for women. Since 85% of these women are charged with non-violent offenses, improving the pretrial process would not only reduce the incarcerated population significantly without jeopardizing public safety, it would lower the social and financial costs and lead to more effective interventions for women.

Pretrial Detention

Disproportionate Number of Women in DOC Custody

- Women comprise only 7% of state prisoners under the Department of Correction's (DOC) supervision, yet they comprise 33% of DOC *pretrial detainees*.
- Over one-quarter of the incarcerated women in MCI-F are held in the awaiting trial unit (ATU).
- In 2012, while the average daily population (ADP) of the ATU was 220, the *annual* number of women was 3,075.
- A substantial proportion of the women's pretrial population comes from five counties that do not hold women (see Figure 1). In comparison only 2% of men awaiting trial outside their counties.



Source: Prison Population Trends, MA. 2012. Department of Corrections

Harsh Conditions at MCI-F

- The ATU is the most chronically overcrowded correctional facility in Massachusetts, consistently operating at 330% of capacity.
- The isolation of/lack of public transportation to MCI-F make it difficult for women to maintain connections with lawyers, family members, and treatment providers.
- Women in pretrial detention are not permitted to mix with the sentenced population; and they receive few resources.
- The average length of stay in the ATU at MCI-F is 77 days, compared with shorter stays in other facilities (Table 1).

Table 1. Average Length of Pretrial Detention

Institution	No. Days
MCI-F	77
Suffolk County	64
W.MA WCC	60

Sources: Department of Corrections and County HOC data, 2012

Legal & Financial Costs

- Studies show that people brought into court from pretrial detention have a distinct disadvantage in how they are perceived by court personnel, compared to those coming from the street.
- A sizable proportion of women held pretrial are not found guilty, or are sentenced to probation. A two-week sample of records from a Boston court, 2102, revealed that 60% of the women eventually had their cases dismissed or continued without a finding.
- Women may plead guilty to a lesser offense to remain with their children.
- Depending on the facility, the cost of incarceration for women is estimated at \$33,000-\$48,000 per year. Reducing pretrial detention could save an estimated 100-150 Department of Correction beds/year (based on a 220 ADP).

Lasting Social & Family Consequences

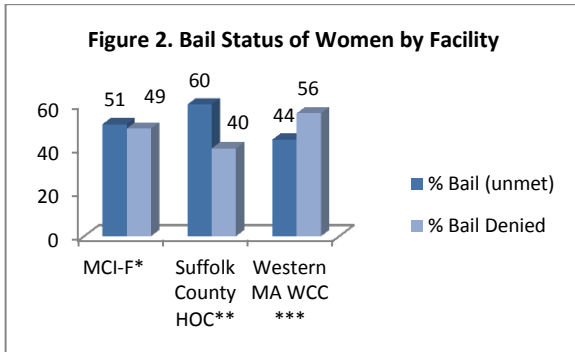
- Numerous institutional studies and national surveys show that 66%-75% of the women in prison are mothers, with an average of 2.3 children. Thus, in 2012, an estimated 5,300 children were affected by their mothers' pretrial detention in MCI-F alone.
- Similarly, studies show that most of the women are single mothers, and the majority still had custody of their children. On arrest, women's children are displaced immediately (unlike children of incarcerated men).
- Regardless of whether they are found guilty or not, family reunification becomes difficult because on arrest women likely lose their jobs and eligibility for housing, educational, and other benefits.

Reviewing Bail Practices

- The main objective in setting bail is to provide assurance that a defendant will appear in court. The assumption is that a person should be released on personal recognizance *without sureties* unless there is a risk of a non-appearance (M.G.L. c. 276 sec. 58).
- The law is clear that bail cannot be set or denied based on dangerousness. If a defendant is deemed dangerous, an order of detention is imposed and bail is not a factor in their incarceration (*United States v. Salerno*, 481 U.S. 739, 754, 1987; M.G.L. c. 276 sec. 58A).
- The law is clear too, that bail should not be determined on the ability of defendants' ability to pay. Any amount set higher than would ensure the defendant's appearance in court is prohibited under Massachusetts Declaration of Rights and the 8th Amendment of the U.S. Constitution (*United States v. Salerno*, 481 U.S. 739, 754, 1987; M.G.L. c. 276. sec. 58A).

Access to Bail is Problematic

- A substantial proportion of women are held pretrial because they cannot meet bail and court costs. As Figure 2 shows, 51% of women held in MCI-F, 60% in Suffolk County HOC, and 44% of women in the Women's Correctional Center, Western Massachusetts are held because they could not pay bail.
- Figure 2 shows also that within the same facilities 49%, 40% and 56% respectively were "denied bail," often for parole/probation violations.



Sources: County Houses of Corrections' Institutions

- Women often fail to pay relatively minor bail. As Table 2 shows 36% of women in the ATU in MCI-F had bail of \$500 or less; and although data on the lower bail amounts are not available from the other sites, anecdotal evidence indicates the same trend.
- Although bail may be waived, reduced through negotiation in court, or substituted by community service, such actions are often not pursued.

Table 2. Bail Amounts by Institution

Institution	Bail Amount	%
MCI-F	Under \$500	36%
	500-999	19%
	1000-1499	21%
	1500-1999	7%
Suffolk County HOC	\$2000 or less	83%
	\$2000 or less	88%
Western MA WCC	\$2,000 or less	77%

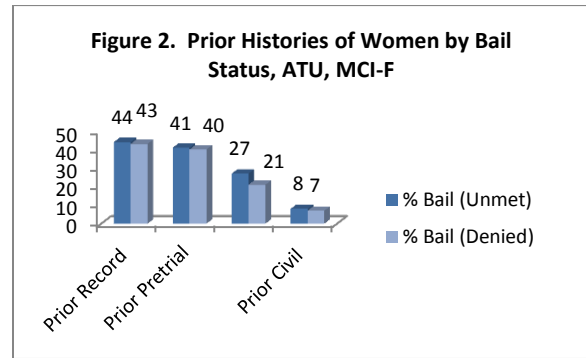
Sources: Institutional data, 2012

Inconsistent Practices

- Theoretically, women are denied bail because they are deemed to be a flight risk, i.e. do not have steady employment, own a home, and have clear community ties; or because they have outstanding warrants or prior histories of probation and parole revocations.
- Yet, as Figure 3 shows, there are almost no differences among women held in the ATU, MCI-F in the percentages of women with prior pretrial status, sentence, civil commitment, or record among those granted/not granted bail.

Note: Acknowledgements go to Martha Lyman, Ph.D., W.MA Women's Correctional Center; Rhianna Kohl of DOC; and Meg Tiley for their valuable contributions in providing data.

Contact Erika Kates, ekates@wellesley.edu for citations.



Sources: Institutional data, 2012

Massachusetts Bail Process Presents Special Challenges

- The use of a state facility for county women, its isolated location, and the lack of public transit results in hours of travel for family members and others attempting to assist women with bail.
- Massachusetts is one of the few states utilizing bail commissioners; most commissioners have fulltime court employment, and are often unavailable during the day, and on weekends.
- Unlike other states, Massachusetts courts do not use specialized pretrial services to screen and monitor defendants to assure court appearances, and/or to diverting them from criminal justice into programs.
- In MA we have negligible use of pretrial, although it is feasible under MA General Law, Ch. 276A, Secs. 1-7.

Caveat: Difficulties of Obtaining Data

- Each court keeps case file/docket information on defendants' pretrial and trial status, but these data are not aggregated. Thus, court data for this Brief were obtained from a two-week random sample of one Boston court, undertaken by a member of MWJN. The data on women held pretrial were obtained from three correctional institutions.

Recommendations:

Build on Existing Initiatives

1. Assist women with bail by building up the Bail Fund initiated by the Criminal Justice Coalition, and set aside funds for women.
2. Review emerging mental health/substance abuse diversion initiatives e.g. jail diversion under the Department of Mental Health, and a pilot diversion and treatment program initiated by the Department of Public Health, operated by Highpoint.
3. Review Western Massachusetts efforts to reduce pretrial detention through the efforts of diverse agencies to develop a one-page gender-responsive screening instrument.

Introduce New Options

1. Encourage all involved court personnel to review practices in granting/denying bail to women.
2. Establish a system of professional pretrial services, as in many other states, to divert women from criminal justice through appropriate treatment and resources.
3. Introduce focused-data collection and review to monitor practices and outcomes.