

**Women in Detention:
The Need for National Reform**

Statement for the Record, submitted on March 2, 2015,
by the Arthur Liman Public Interest Program at Yale Law School*
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Focusing on Women in Detention

We thank the Task Force for convening hearings on the federal prison system, and we write to bring attention to the challenges that women—and the families and communities of which they are a part—face. This Task Force can provide important leadership by exploring how the intersection of gender, race, ethnicity, and age affects those in federal prisons. The bipartisan national agenda, committed to lowering incarceration rates and to offering individuals “second chances” to build productive lives, needs to take up the issue of incarcerated women.

Reflective of Arthur Liman’s commitment to a just, limited, and humane criminal justice system, the Arthur Liman Public Interest Program at Yale Law School attempts to understand the uses and implications of incarceration in the United States. During the past few years, we have focused on the challenges that distance from home imposes on prisoners and their families, which we have termed “isolation by place.” In addition, we have done research on the problems flowing from the segregation of individuals while they are incarcerated, or “isolation by rule.”¹

The specific problems faced by women in the federal prison system came into vivid relief when in July of 2013, the Federal Bureau of Prisons (BOP) announced its plan to convert the Federal Correctional Institution (FCI) Danbury, which was the only FCI in the Northeast for women, into a prison for men. The goal was to provide more space for male prisoners who, like women, are often confined in overcrowded facilities.² Under the BOP proposal, many of the women from the Northeast were to be sent to a new federal prison located in Aliceville,

Alabama, more than 1,000 miles away.

Because we are based in New Haven, Connecticut, the Yale Law School has had a long relationship—starting in the early 1970s—with FCI Danbury. Therefore, we joined with a host of others in raising objections to the proposal. In the fall of 2013, Senators Blumenthal, Casey, Gillibrand, King, Leahy, Markey, Murphy, Sanders, Schumer, Shaheen, and Warren raised questions, as did twelve chief judges of federal district courts in the region,³ the National Association of Women Judges (NAWJ), and many others. In November of 2013, the BOP announced that Danbury’s main facility was still to be converted to a male facility but that the BOP would build an additional facility on the Danbury site with beds for women classified as low security.⁴ In the interim, the BOP has relocated the Danbury women, primarily to jails in Brooklyn, New York, and Philadelphia, Pennsylvania. The schedule for creating space for women at Danbury remains unclear, and dozens of post-trial women are in the federal pretrial facilities in Brooklyn and Philadelphia.⁵ These jails have limited programming and do not provide the Residential Drug Treatment Program (RDAP), which helps prisoners deal with drug addiction and provides opportunities to shorten their time in prison.⁶

In short, recent experiences in the federal prison system have made plain the need to bring into focus the challenges facing women in prison. Given that the Colson Task Force has asked for specific and brief recommendations, we limit this discussion to placement and visiting; we know that additional considerations will be brought to your attention by the NAWJ.

Distance, Visiting, and Families

As of the fall of 2014, 1,574,000 individuals were incarcerated in the United States in federal and state prisons; more were held in jails. Of the number in prison, 104,134, or 6.6 percent, were women;⁷ the number of women incarcerated is rising at a rate higher than that of

men.⁸ The number of women in the federal prison system was 14,344, or about 6.7 percent of the total BOP population.⁹

The BOP states that it aims to put inmates within “reasonable” proximity to the areas of their “anticipated release,”¹⁰ and it has defined “reasonable” by noting that “[o]rdinarily, placement within 500 miles of the release area is to be considered reasonable, regardless of whether there may be an institution closer to the inmate’s release area.”¹¹ To use five hundred miles as a goal is to put enormous burdens on anyone—family members, lawyers, clergy, or friends—who hopes to visit. Such distances also undermine the ability to plan for jobs or health services for reentry.

For example, about ten percent of all the women sentenced in the federal system between October 2011 and September 2012 were sentenced in a federal district court in the Northeast.¹² Further, the BOP informed Senators in 2013 that only thirty percent of the then-815 Danbury women with identifiable U.S. home addresses were residents of the BOP’s Northeast region.¹³ Thus, seventy percent of Danbury inmates were far from their homes and families. Indeed, about nine percent of the women were from Texas, and more than five percent from California.

Recognizing the beneficial effects that opportunities to visit can have on prisoners and their families, in 2013, the Department of Justice (DOJ) launched what it terms an “aggressive campaign” to mitigate the harms that incarceration of parents imposes on children.¹⁴ As the DOJ website explained: “We owe these children the opportunity to remain connected to their mothers and fathers.”¹⁵ On June 19, 2013, BOP Director Charles Samuels sent a memo to every inmate incarcerated in the federal system in which he encouraged inmates to maintain parental ties. He explained that “there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them.”¹⁶

Questions abound about the implementation of these commitments. In addition to putting prisoners at great distances from their families, limited visiting hours make it hard for those who can travel to visit.¹⁷ Many facilities have visiting on only a few days a week and for certain hours. But other options exist. Prison policies can promote or discourage visiting, as the chart on page 5, gathered from a recent review of the visiting policies of most of the states and the federal system,¹⁸ makes plain.

The benefits of supporting prisoners' relationships with their families and communities are well documented and widely accepted.¹⁹ Thus, we recommend that the Colson Task Force:

- **Propose a revision to BOP's placement guidelines to require that each prisoner be housed within 100 miles of his or her release area and to do so, to consider placements in appropriate state as well as federally run facilities;**
- **Request that BOP make available information on the districts from which inmates are sentenced and their placements in facilities so as to enable regular reviews of the distances at which inmates are housed; and**
- **Convene hearings addressed to current BOP visiting policies so as to develop a set of proposed reforms that would encourage and facilitate family relationships, religious community, and reentry planning.**

Promoting and Discouraging Prison Visits: Policy Examples from the States²⁰

<p style="text-align: center;">ALLOWS VISITING</p> <ul style="list-style-type: none"> - No limit on number of visitors on an inmate’s list (e.g., California) - No limit on visiting days (e.g., New York maximum security) - Overnight family visits (e.g., Mississippi) - Virtual visits supplementing, but not replacing, in-person visits (e.g., Oregon) - Locate prisons near urban populations (e.g., Rhode Island) - Provide subsidized public transit to remote prisons (e.g., New York) - Provide “special” visits for out-of-state or long-distance visitors (e.g., Alaska) - Allow young children to visit without ID (e.g., Arkansas) - Allow inmate-to-inmate visits (e.g., New Jersey) - Allow visits from former felons (e.g., Hawaii) - Define “immediate family” broadly (e.g., Kentucky) 	<p style="text-align: center;">PROMOTES VISITING</p> <ul style="list-style-type: none"> - Policies accessible online (e.g., South Dakota) - Plain-language visitor handbook (e.g., Connecticut) - Local rules accessible online and clearly posted at each facility - Promote and encourage visitation in policy (e.g., Colorado) - Provide toys in visit room (e.g., Florida) - Provides grievance procedures when visits are terminated or prohibited (e.g., Maine) - Less restrictive dress codes (e.g., New Mexico) - Less invasive search procedures (e.g., New York) - Allow diaper bags for infants (e.g., North Dakota) - Provide children’s play areas in visiting rooms (e.g., Missouri) - Allow breastfeeding during visits (e.g., Wisconsin)
<p style="text-align: center;">DISCOURAGES VISITING</p> <ul style="list-style-type: none"> - Prohibit toys in visiting room (e.g., New Hampshire) - Restrictive dress codes (e.g., Utah) - Invasive search procedures (e.g., Texas) - Terminate visits if children misbehave or make noise (e.g., Rhode Island) - Require multiple forms of ID (e.g., West Virginia) - Prohibit visitors from being on more than one inmate’s list (e.g., Alabama) - Limit frequency of changes to inmates’ visitor lists (e.g., Mississippi) - Waiting period for visitors removed from one inmate list and added to another (e.g., Arkansas) - Require visitors to reapply every year (e.g., Utah) 	<p style="text-align: center;">PROHIBITS VISITING</p> <ul style="list-style-type: none"> - Limit number of visitors on an inmate’s list (e.g., South Dakota) - Limit visiting days or hours (e.g., Virginia) - Send inmates to prisons far from families or out of state (e.g., federal BOP) - Prohibit visits from friends of the opposite gender for married inmates (e.g., Oklahoma) - Require proof of legal status for noncitizens (e.g., Washington) (recently repealed) - Deny contact visits as punishment (e.g., Michigan) - Visits by appointment only (e.g., Delaware) - Prohibit visits from persons with a recent drug arrest (e.g., Idaho) - Prohibit visits from former felons (e.g., Michigan) - Prohibit visits from people not known to inmate prior to incarceration (e.g., federal BOP) - Limited visiting with minors (e.g., Indiana)

¹ ISOLATION AND REINTEGRATION: PUNISHMENT CIRCA 2014 (Judith Resnik, Hope Metcalf, & Megan Quattlebaum, eds. Arthur Liman Program, Yale Law School, 2014, available by request); Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation: A Fifty State Survey*, 32. YALE L. & POL'Y REV. 149 (2013); HOPE METCALF, JAMELIA MORGAN, SAMUEL OLIKER-FRIEDLAND, JUDITH RESNIK, JULIA SPIEGEL, HARAN TAE, ALYSSA WORK & BRIAN HOLBROOK, LIMAN PUBLIC INTEREST PROGRAM, ADMINISTRATIVE SEGREGATION, DEGREE OF ISOLATION, AND INCARCERATION: A NATIONAL OVERVIEW OF STATE AND FEDERAL CORRECTIONAL POLICIES (July 2013), available at www.papers.ssrn.com/abstract=2286861.

² John Pirro, *FCI Danbury Converting Back to Men's Prison*, NEWS TIMES (July 3, 2013), available at <http://www.newstimes.com/news/article/FCI-Danbury-converting-back-to-men-prison-4645323.php>.

³ Letter to Charles E. Samuels, Jr., Director, Federal Bureau of Prisons from Christopher Murphy, U.S. Senator Connecticut; Kristen E. Gillibrand, U.S. Senator New York; Richard Blumenthal, U.S. Senator, Connecticut; Patrick Leahy, U.S. Senator, Vermont; Charles E. Schumer, U.S. Senator, New York; Jeanne Shaheen, U.S. Senator, New Hampshire; Robert P. Casey, Jr., U.S. Senator, Pennsylvania; Bernard Sanders, U.S. Senator, Vermont; Angus S. King, Jr., U.S. Senator, Maine; Elizabeth Warren, U.S. Senator, Massachusetts; and Edward Markey, U.S. Senator, Massachusetts (Aug. 2, 2013).

⁴ Press Release, Sen. Murphy, *Senators Announce Changes to FCI Danbury Transfer* (Nov. 4, 2013).

⁵ ANNA ARONS, KATHERINE CULVER, EMMA KAUFMAN, HOPE METCALF, MEGAN QUATTLEBAUM, JUDITH RESNIK, & JENNIFER YUN, ARTHUR LIMAN PUBLIC INTEREST PROGRAM, YALE LAW SCHOOL, DISLOCATION AND RELOCATION: WOMEN IN THE FEDERAL PRISON SYSTEM AND REPURPOSING FCI DANBURY FOR MEN (Sept. 2014), available at http://www.law.yale.edu/images/liman/Liman_DanburyPrisonReport_9.3.14.pdf; see also Press Release, Sen. Blumenthal, *New Report Exposes Extensive Delays in Danbury Women's Prison Renovations; Blumenthal, Murphy to Call on Bureau of Prisons to Expedite Transition and Mitigate Harm* (Sept. 2, 2014).

⁶ RDAP is a 500-hour, nine- to twelve-month intensive drug treatment program; if inmates successfully complete the program, they become eligible for a sentence reduction of up to twelve months. See 18 U.S.C. § 3621(e)(2) (B) (2010). An inmate may also receive other benefits for successfully completing RDAP, including financial awards, consideration for the maximum period of time in a community-based treatment program, preferred living quarters, and special recognition. BOP PROGRAM STATEMENT 5330.11, Psychology Treatment Programs, at 19-21 (Mar. 16, 2009). Those who decline to participate may become ineligible for furlough or Federal Prison Industries work assignment, and their choice may be factored into decisions about how much time they may spend in community confinement. *Id.* at 21-22. The BOP is required by statute to provide RDAP, subject to funding. See 18 U.S.C. § 3621(e)(1).

⁷ E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013, at 1, 5 (Sept. 2014).

⁸ Todd D. Minton and Daniella Golinelli, *Jail Inmates at Midyear 2013 – Statistical Tables* (Aug. 12, 2014), available at <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>.

⁹ FEDERAL BUREAU OF PRISONS, INMATE GENDER, available at http://www.bop.gov/about/statistics/statistics_inmate_gender.jsp (last visited Dec. 7, 2014).

¹⁰ BOP PROGRAM STATEMENT NO. 5100.08 (Sept. 12, 2006).

¹¹ *Id.*

¹² See U.S. SENTENCING COMMISSION, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, available at http://www.ussc.gov/Research_and_Statistics/Annual_Reports_and_Sourcebooks/2012/sbtoc12.htm (last visited Nov. 10, 2013).

¹³ See, e.g., Letter from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons, to Hon. Christopher Murphy, U.S. Senator, at 6 (Sept. 27, 2013). The BOP defines the “Northeast Region” to include ten states: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont.

¹⁴ U.S. Dep’t of Justice, *Giving a Boost to Kids of Incarcerated Parents*, THE JUSTICE BLOG (JUNE 12, 2013), available at <http://blogs.justice.gov/main/archives/2950> (last visited Nov. 5, 2013).

¹⁵ *Id.*

¹⁶ Memorandum from Charles E. Samuels, Jr., Director, Federal Bureau of Prisons to All Bureau Inmates (June 19, 2013), available at http://www.bop.gov/news/press/press_releases/Parenting_Message_English.pdf (last visited Sept. 21, 2013).

¹⁷ Johnna Christian, *Riding the Bus: Barriers to Prison Visitation and Family Management Strategies*, 21 J. CONTEMP. CRIM. JUST. 31 (2005).

¹⁸ This chart is derived from Chesa Boudin, Trevor Stutz, & Aaron Littman, *Prison Visitation: A Fifty State Survey*, 32 YALE L. & POL’Y REV. 149 (2013).

¹⁹ See Arons, Culver, Kaufman, Metcalf, Quattlebaum, Resnik & Yun, *supra* note 5 (summarizing research on the benefits of proximity to home).

²⁰ Boudin, Stutz, & Littman, *Prison Visitation: Promoting and Discouraging Visiting*, drawn from *A Fifty State Survey*, 32 YALE L. & POL’Y REV. 149 (2013)