

United States Senate, Committee on the Judiciary, *Hearing on the Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*, held on November 6, 2013

Statement for the Record

**Submitted by the Arthur Liman Public Interest Program at Yale Law School*
November 13, 2013**

The Arthur Liman Public Interest Program¹ at Yale Law School appreciates the opportunity to submit this statement in connection with the Senate Judiciary Committee's November 6, 2013 hearing, *Oversight of the Bureau of Prisons & Cost-Effective Strategies for Reducing Recidivism*. We applaud the Committee for putting on its agenda questions about efforts by the Federal Bureau of Prisons (BOP) to implement cost-effective strategies to reduce recidivism.

This statement first discusses how, upon learning about the BOP's proposal to limit placement opportunities for women in the Northeast, the Liman Program began efforts to map where facilities for federal prisoners were and to identify the roles that gender and jurisdictions of sentencing play when considering options for placements of incarcerated individuals. Second, we provide a brief overview of research demonstrating that incarcerated individuals who have opportunities for education and who can maintain ties with their families and communities are more successful while in prison and upon release.

As we explain, these studies make plain that *where* individuals are incarcerated has an impact on access to programs and to other resources that contribute to lowering recidivism rates. Further, for those prisoners who are parents, opportunities for children to visit are especially important, given that children of prisoners face special challenges. Because more women than men took care of young children prior to incarceration and because women have fewer placement options in the federal system, women disproportionately suffer the burdens of distance from children. Third, we outline the efforts, recently undertaken by the federal government, to try to lower the costs that incarceration imposes on children of prisoners.

Fourth, we detail what can be learned from public information about where men and women are currently incarcerated in the federal system and about the judicial districts in which they were sentenced. As the data and appendices below illuminate, the decisions to locate federal prisons in certain parts of the country result in placing many inmates at great distances from the districts in which they were sentenced and to which they may well be released. Moreover, given the few placement options provided for women, that subset of the population is often at a greater distance from families and from ready access to volunteer programs than are men.

Fifth, we discuss approaches available to the BOP to fulfill the goals it recognizes—to “place each inmate in an institution that is reasonably close to the anticipated release area”² and

* A full version of this statement, including endnotes, maps, and appendices, can be found at: http://www.law.yale.edu/documents/pdf/Liman/Senate_Judiciary_Committee_BOP_Oversight_Hearing_Liman_Statement_for_the_Record_Nov_12_2013.pdf_website.pdf. Institutional affiliation provided for identification purposes only.

then to help that person move toward release and reentry. From the publicly available data, implementation of those goals often appears to fall short of these aims. Given that distance makes visiting difficult and, for families with limited incomes, in many instances impossible, the BOP could effectuate a cost-effective strategy to lower recidivism by reviewing each inmate's eligibility for reclassification, treatment programs, education, and for Second Chance Act release to a residential reentry center (RRC or halfway house). After identifying individuals eligible for these opportunities, the BOP could provide these programs and alternatives or find facilities for inmates closer to their families. Our suggestions build on the model used when discussion of FCI Danbury came to the fore. As we understand it, once concerns were raised about the decision to move so many women away from the Northeast, the BOP undertook an individualized review and determined that dozens of women housed at Danbury were eligible for alternative placements.

Institutionalizing a process of individualized reviews for both women and men in the federal prison system would help to keep individuals as close to their home communities as possible and facilitate their successful reintegration upon release. Doing so would comport with the BOP's own goals of supporting prisoners who are parents and of helping all prisoners to move towards reentry, and this approach would also fulfill the directives of both Congress and the Executive branch.

I. The Proposed Closure of FCI Danbury as a Facility for Women Prompted the Liman Program to Undertake a Study of Federal Offenders' Proximity to Home

Over the last several months, the Liman Program has been exploring the impact of the distances federal prisoners are placed from their homes and families on their likelihood of successfully re-entering their communities upon release. The Liman Program has learned about this issue by undertaking a study, *Prison Visitation Policies: A Fifty State Survey*, which provided the first comprehensive comparison of prison visiting policies in all of the states and the BOP.³ A second Liman Program study, *Administrative Segregation, Degrees of Isolation and Incarceration: A National Overview of Policies*, surveyed state and federal policies on the use of administrative segregation, the degrees of isolation imposed on inmates in segregation, and those inmates' eligibility for visits.⁴ A third study, which is currently underway, aims to map placement opportunities for women and men within the federal system and to compare the distances between prisoners' residences and their sites of incarceration.

We began to gather the data reported here in response to the BOP's announcement in the summer of 2013 that it planned to transform its only facility in the Northeast for women—FCI Danbury, Connecticut—into a low-security facility for men. At the time of the announcement, FCI Danbury housed some 1,100 women, while the satellite camp adjacent to the main facility was designed to hold about 150 women (under the plan, the satellite camp would have remained a facility for women). According to data from the Sentencing Commission, about 10 percent of the women sentenced (to terms of incarceration or otherwise) in the federal courts each year come from the Northeast. Transforming Danbury into a facility for men would have meant that female prisoners from the Northeast, and those sentenced in the future, would have almost no opportunity to be incarcerated close to home.

We learned recently that, in response to concerns raised by numerous Senators from the Northeast region, eleven chief judges of federal district courts in the Northeast (see Appendix 1), the National Association of Women Judges (NAWJ) (see Appendix 2), the American Bar Association, the Osborne Association, and many others, the BOP modified its plans and has committed itself to making bed-space available at Danbury for women who are citizens and who are sentenced in or come from the Northeast.⁵

Much more needs to be done. Our research suggests that, although the BOP has a policy of aiming to keep inmates “reasonably close” to the communities to which they will be released, the BOP defines “reasonably close” as any location within 500 miles of a prisoner’s community.⁶ That distance is challenging and for low-income families, such distances may preclude all possibilities of visiting. Moreover, many male and female prisoners across the country are incarcerated even farther than 500 miles from home.

II. Inmates Who Have Programming Opportunities and Visitors Do Better While in Prison and Are Less Likely to Recidivate

Several studies conclude that prisoners who participate in educational programs and/or receive visits while incarcerated function better in prison⁷ and have a better chance of staying out once they are released.⁸ The explanations for these findings may be straightforward: a large literature suggests that “social connections that are maintained during the period of incarceration can be an important resource in helping released prisoners achieve positive post-release outcomes,”⁹ and that inmates who are connected to their families, friends, places of worship, and communities are better able to readjust to life outside prison.

Where inmates are incarcerated affects, among other things, what programs will be available to them, the likelihood that they will interact with volunteers from the surrounding community,¹⁰ and their ability to receive visits. A study released by the RAND Corporation in 2013 offers a “meta-analysis” of data on correctional education and concludes that taking educational courses while incarcerated reduces an individual’s risk of recidivism by 13 percent.¹¹ Further, while many programs can be and should be available to both women and men, some programming also needs to address the disparate social circumstances of prisoners of different genders. For example, many more female prisoners report having been victims of physical and sexual abuse, and men and women may take on different parental responsibilities.¹²

Indeed, research has demonstrated the importance of maintaining parent-child relationships and the particular relevance of parenting to women in prison. As of 2008, the United States imprisoned more than 810,000 parents; children under the age of 18 whose parents were incarcerated numbered more than 1.7 million.¹³ During the last few decades, the number of children with a mother in prison has more than doubled,¹⁴ and mothers entering prisons were far more likely than fathers to have lived with their children in single-parent households.¹⁵

Prison terms make it very difficult to maintain family ties, which is essential both to ensuring successful family reunification and to avoiding termination of parental rights under the federal Adoption and Safe Families Act (ASFA). That statute imposes timelines under which state authorities begin to terminate parental rights; under ASFA, unless they are in the care of relatives, children who spend a period of fifteen out of twenty-two months in foster care can

become the subject of such proceedings.¹⁶ Data also establish that children of female inmates have a five times greater probability of being in foster care than children of male inmates.¹⁷ Thus, incarceration of parents increases the risk that children may lose legal ties with their parents, and children of incarcerated women are especially at risk. Studies also detail that children of prisoners often have behavioral and emotional problems, experience difficulties at school, and become involved in the juvenile and criminal justice systems.¹⁸

Programs for visitors, and for children in particular, may mitigate some of these problems.¹⁹ Because parents' relationships with young children depend more on physical expressions of affection and less on written communication than relationships between adults, contact visits are especially important. For example, in one study, Zoann K. Snyder, Teresa A. Carlo, and Megan M. Coats Mullins discussed the salutary effects of a mother-child visitation program on the reported and observed wellbeing of incarcerated mothers, on mother-child relationships, and on mothers' perceptions of their children's welfare.²⁰

Despite these findings, available information about the geography of federal prisons demonstrates that children have difficulty visiting their incarcerated parents, and that the obstacles to visitation are particularly acute for children of women prisoners. Some years ago, a study found that mothers in the federal prison system were incarcerated an average of 160 miles further from family than their male counterparts.²¹ More recently, in an October 2010 report entitled *Mothers Behind Bars*, the National Women's Law Center concluded:

[T]he number of women incarcerated in the Federal Bureau of Prisons (BOP) system increased from 1,400 to over 9,000 between 1980 and 1998. There were 13,746 women in Federal BOP custody as of June 2009, according to the most recent data available. Approximately 56% of these women have children. Because there are only twenty-eight federal facilities for women, most women are too far from their families to receive regular visits.²²

Indeed, Karen Casey-Acevedo and Tim Bakken found that the majority (61%) of mothers incarcerated in the maximum-security state prison that they studied had not received any visits from their children, and that "perhaps the most significant determinant of whether an inmate receives visits is the distance between her home county and the prison to which she is committed."²³ This study also emphasized the importance of contact visits with children.

III. The Bureau of Prisons, Department of Justice, and the White House Have All Launched New Efforts to Enable Better Opportunities for Family Contact for Prisoners

In 2013, the Department of Justice (DOJ), with White House support, launched what it terms an "aggressive campaign" to mitigate the harms that incarceration of parents imposes on children.²⁴ As the DOJ website explains: "Research shows that maintaining contact and healthy relationships in spite of the barriers represented by prison walls is not only possible but beneficial, for both the children and their parents. We owe these children the opportunity to remain connected to their mothers and fathers."²⁵

In June of 2013, the White House recognized twelve Champions of Change For The Children Of Incarcerated Parents. At the event, Deputy Attorney General James M. Cole remarked:

[A]ddressing these children's needs requires a coordinated effort of multiple government agencies and social service entities to implement collaborative approaches. This Administration is committed to providing support to children of incarcerated parents and their caregivers. Through an interagency working group led by the White House, agencies across the Administration have been taking a hard look at the issues these children, their caregivers and their parents confront and how we can provide more support.²⁶

In August of 2013, the White House continued its efforts by hosting a conference to help social scientists, lawyers, and judges learn how to “reduce the collateral costs [of incarceration] to children.”²⁷ The conference, “Parental Incarceration in the United States: Bringing Together Research and Policy to Reduce Collateral Costs to Children,” was jointly sponsored by the American Bar Foundation and the National Science Foundation and was held in the White House Executive Office Building on August 20, 2013. Participants reviewed the latest research findings and began to develop recommendations for policymaking bodies. Emily Bever Nichols of the University of Virginia noted that “policy and programming should focus on expanding school-based services and drop-out prevention for youth with household member incarceration.”²⁸ Myrna Raeder, Professor of Law at Southwestern Law School, urged that “judges should be better trained concerning the impact of parental incarceration on children to take better advantage of their discretion in sentencing, particularly when the defendant has committed a nonviolent crime and has sole or primary parenting responsibility.”²⁹ She argued that to sustain parent-child contact, “judges should have the power to take distance from home into account in sentencing, as well as the power to decide where a prisoner should be housed.”³⁰

The Justice Department has also directed the BOP to support “programs to enhance family relationships, improve inmate parenting skills, and redesign visitation policies in its system.”³¹ On June 19, 2013, BOP Director Charles Samuels sent a memo to every inmate incarcerated in the federal system in which he encouraged them to visit with their children; he explained that “there is no substitute for seeing your children, looking them in the eye, and letting them know you care about them.”³²

IV. The Distribution of Women and Men in the Six Federal Bureau of Prisons Regions

Our question is how these goals fit with what is known about the placement of prisoners, their distances from family, and the rules and regulations for visiting. As noted above, the BOP aims to put inmates within “reasonable” proximity to the areas of their “anticipated release,”³³ albeit defining “reasonably close” as distances that can make visiting, programming, and release plans difficult to achieve. Specifically, BOP Program Statement 5100.08, which was issued in 2006, provides in part:

The Bureau of Prisons attempts to place each inmate in an institution that is reasonably close to the anticipated release area. Ordinarily, 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.³⁴

Our research makes plain that thousands of federal prisoners are sent far from the jurisdictions in which they were sentenced. More research is needed to learn the percentage of women and men whose security classifications permit them to be in less secure facilities and the relationship of anticipated release areas to placement. Further, data are needed on how the disciplinary transfer system works and where programs are available. Thus, the overview provided below offers just one facet of the research that needs to be done. The details underlying the summary that follows are provided in Appendices 4 and 5.

As of August 24, 2013, the BOP incarcerated 218,864 prisoners. The vast majority (204,289 or 93.3 percent) of these prisoners were men. Women numbered 14,575 or 6.7 percent. A small percentage of federal prisoners were pre-conviction, but most (190,142) were post-conviction. Again, the vast majority of that post-conviction population—178,242 or 93.7 percent—were men. A smaller number (11,900 or 6.3 percent) were women.

The BOP divides its system into six Regions.³⁵ Public data permits analysis of the facilities and beds that are available for sentenced men and women in each of these six Regions. In addition to public information from the BOP,³⁶ we also rely on data from the United States Sentencing Commission on how many men and women are sentenced in each judicial district in the federal system.³⁷ Because the Sentencing Commission data include all sentences, whether to a term of incarceration or not, the numbers provided below do not differentiate among sentence types and include individuals who received non-incarcerative sentences, as well as those who are incarcerated in jails rather than prisons.

As is detailed below, the federal prisons in the United States are not distributed evenly across the country, nor are they placed in the same ratios to the districts in which people are sentenced. (Once again, more information is needed about the numbers sent to prison and where prisoners are placed in relationship to their homes.) For example:

- 15 percent of the men and 9 percent of the women in the federal system were housed in the Northeast Region. Of the total prisoners who received federal sentences, 13 percent of the men and 13 percent of the women received their sentences in the Northeast.
- 19 percent of the men and 22 percent of the women in the federal system were housed in prisons in the Southeast Region. In that Region, the contrast between the district of sentencing and the location of federal prisons is clear. Ten percent of the men and 13 percent of the women sentenced in the federal system received their sentences in the Southeast.
- 16 percent of the men and 17 percent of the women in the federal system were housed in the Mid-Atlantic Region, while 11 percent of the men and 13 percent of the women in the federal system received their sentences in the Mid-Atlantic Region.

- 12 percent of the men and 11 percent of the women in the federal system were housed in the North Central Region. In this region, the numbers of those sentenced comes closer to the numbers of those incarcerated. 12 percent of the men and 14 percent of the women in the federal system were sentenced in the North Central Region.
- 24 percent of the men and 23 percent of the women in the federal system were housed in the South Central Region. Here again, the numbers are parallel; 28 percent of the men and 26 percent of the women in the federal system were sentenced in the South Central region.
- 13 percent of the men and 18 percent of the women in the federal system were housed in the Western Region. In the Western Region, the divergence between the districts where people are sentenced and the places they are housed is substantial. 26 percent of the men and 22 percent of the women in the federal system were sentenced in the Western Region.

Looking at the prison facilities and prison populations in each of the six regions in greater detail, the following picture emerges:

Northeast Region: 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. The Northeast Region has 28 facilities for men that house about 27,600 men. The Northeast has 2 facilities for women—FCI Danbury and the camp—that together house about 1,100 women (as of October 2013).

Note: The BOP includes Ohio in the Northeast region. Excluding Ohio, the Northeast has 25 facilities for men that house approximately 23,500 men, and 2 facilities for women that house about 1,100 women.

Southeast Region: The BOP defines the “Southeast Region” to include Puerto Rico and five states: Alabama, Florida, Georgia, Mississippi, and South Carolina. The Southeast Region has 30 facilities for men that house about 34,800 men. The Southeast Region has 5 facilities for women that house about 2,600 women.

Mid-Atlantic Region: The BOP defines the “Mid-Atlantic Region” to include Washington, D.C. and seven states: Delaware, Kentucky, Maryland, North Carolina, Tennessee, Virginia, and West Virginia. The Mid-Atlantic Region has 32 facilities for men that house about 29,000 men. The Mid-Atlantic Region has 3 facilities for women that house approximately 2,000 women. In addition, the Mid-Atlantic Region contains FMC Lexington, in Kentucky, a medical facility that houses about 1,800 male and female prisoners.

North Central Region: The BOP defines the “North Central Region” to include twelve states: Colorado, Illinois, Indiana, Iowa, Kansas, Michigan,

Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin. The North Central Region has 24 facilities for men that house about 21,500 men. The North Central Region has 2 facilities for women that house about 1,300 women.

South Central Region: The BOP defines the “South Central Region” to include five states: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The South Central Region has 35 facilities for men that house about 43,400 men. The South Central Region has 3 facilities for women that house about 2,800 women.

Western Region: The BOP defines the “Western Region” to include ten states: Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. The Western Region has 22 facilities for men that house about 22,300 men. The Western Region has 4 facilities for women that house about 2,000 women.

V. The Tools Available to Reduce Prison Populations and Recidivism: Second Chance Act, Individual Review, and Relocation Opportunities

The BOP faces a serious challenge in the large and growing population of federal prisoners. For example, when responding to inquiries about the planned changes at Danbury, the BOP explained to a group of Senators that it needed to move female inmates out of the Northeast to address overcrowding in its facilities for both men and women.³⁸ Yet neither using funds to transfer inmates (and in some instances exacerbating the challenges of distance) nor constructing more prisons is as cost-effective as identifying appropriate individuals to transfer to less secure settings. Indeed, the BOP has recognized that “female offenders are less likely to be violent or attempt escape,”³⁹ which suggests that review of incarcerated women might identify many who could benefit from alternative placements. Thus, by exercising its authority under the Second Chance Act as well as other federal statutes and its own regulations, the BOP can reduce overcrowding, improve educational opportunities for inmates, and strengthen family relationships.⁴⁰

In 2007, Congress enacted the Second Chance Act to “assist offenders reentering the community from incarceration to establish a self-sustaining and law-abiding life” and to “rebuild ties between offenders and their families.”⁴¹ The concerns that animated this legislation support housing inmates as close as possible to sites of re-entry, which are often the districts in which they were sentenced. The BOP’s “Release Preparation Program”—which provides inmates who have 30 months or less left to serve on their sentences with classes designed “to prepare [them] to re-enter the community successfully”—expressly contemplates partnerships with local businesses and service providers.⁴² Obtaining knowledge of and access to regional resources is facilitated when BOP staff are proximate to the anticipated release areas, just as developing release plans that include assurances of housing, support, and employment is made more difficult by distance.

In addition, Congress requires the BOP to provide a residential drug abuse program (RDAP) for eligible inmates. This program can reduce inmates’ sentences by up to 12 months

after they successfully complete it.⁴³ However, most inmates do not get the full reduction because, due to long waiting lists for the programs, prisoners typically have less than 12 months to serve by the time they are able to complete the program.⁴⁴ A recent report estimates that, if eligible inmates received the full 12-month reduction in their sentences, the BOP would save over \$45 million each year in prison costs.⁴⁵ Opening up bed space would also enable some inmates who remain incarcerated to move closer to home. Moreover, RDAP is only available in half of the BOP's facilities,⁴⁶ yet the BOP estimates that as many as 40 percent of its inmates may qualify for the program.⁴⁷ Thus, one priority to achieve more effective cost-saving strategies should be to increase RDAP capacity.

Another priority ought to be for the BOP to use its authority, under the Second Chance Act, to pre-release eligible inmates into home detention and residential reentry centers (RRCs) for as much as the final 12 months of their sentences. As we understand it, the BOP generally does not use that full twelve months, but instead offers inmates community corrections six months before the end of their sentence. Given the logistics involved in effectuating plans and transfers, inmates serve an average of just four months of their sentences in these prison alternatives.⁴⁸ Again, a recent report estimates that, were the BOP to increase the months inmates spend in "home confinement" by three months, the BOP could save an additional \$111.4 million each year.⁴⁹

A third option for reducing the prison population is to revisit decisions made under the rubric of sentence reductions for good behavior, known as Good Conduct Time (GCT). The BOP has chosen a method of calculation, which was upheld by the Supreme Court, that does not give inmates the full amount of GCT authorized by statute.⁵⁰ By awarding the full credit when earned, a recent report estimates that the BOP would realize about \$40 million in savings each year.⁵¹

In sum, we have learned about the great distances from home at which inmates are routinely incarcerated and the particular challenges facing women in the federal prison system. We have identified several techniques currently available to reduce prison overcrowding, to bring some inmates closer to home, and to place others in drug treatment programs and residential reentry centers, thereby saving millions of taxpayer dollars. While the BOP cannot modify mandatory minimum sentencing laws for drug offenders, who make up more than half of its prison population,⁵² the BOP does possess broad discretionary authority about where to place prisons and whether to reduce the time that prisoners spend in its custody. These measures would also help to make prisons safer and to buffer against the risk of recidivism.

Thank you for consideration of this statement and the materials appended.

Respectfully submitted,

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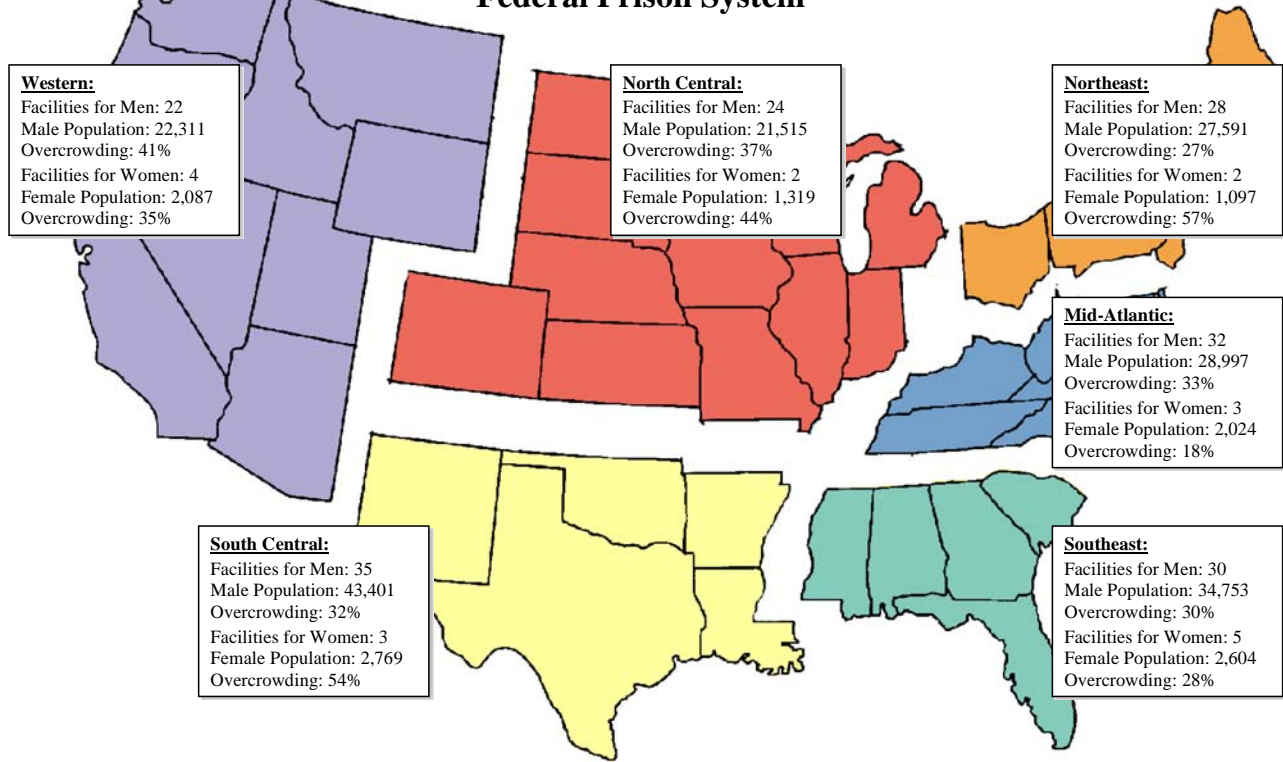
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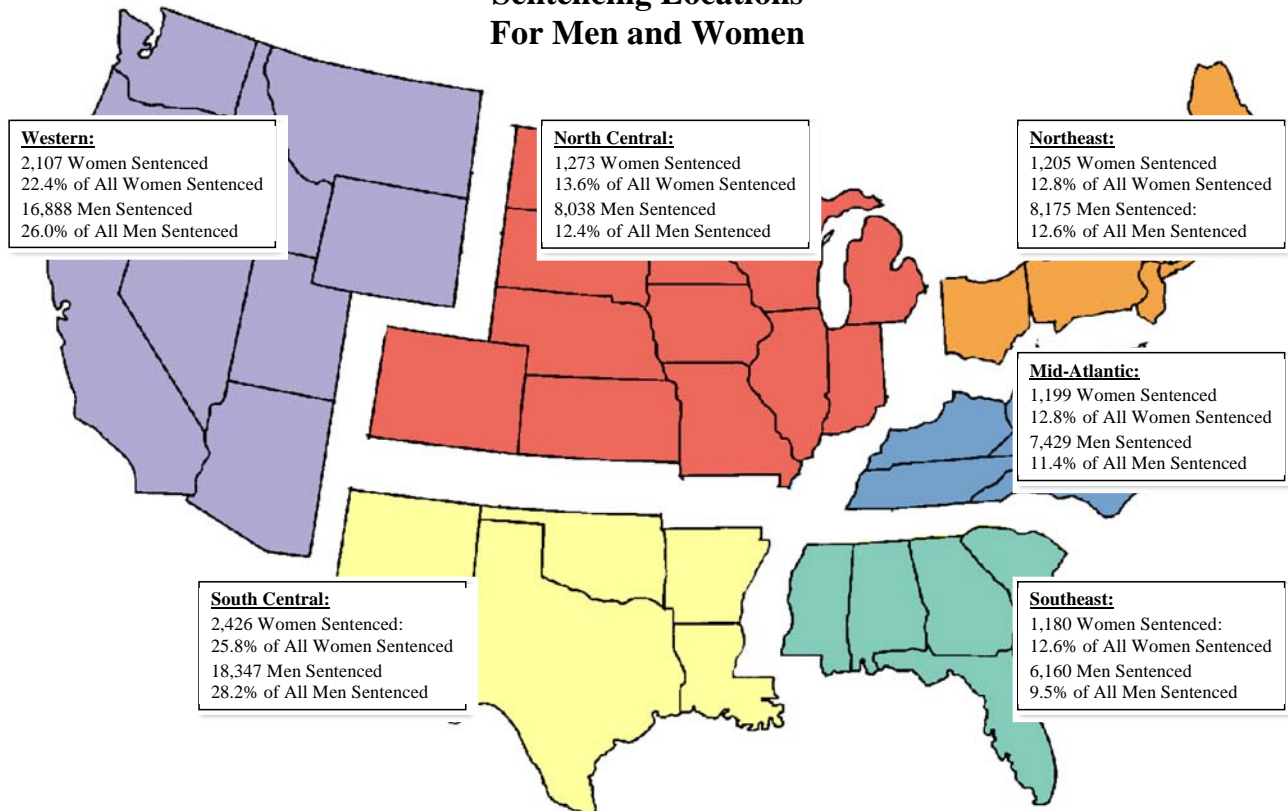
Locating Men and Women in the Federal Prison System¹



¹ Alaska (Western), Hawaii (Western), and Puerto Rico (Southeast) are not shown. There are no B.O.P. facilities in Alaska or Hawaii, and no post-conviction facilities in Puerto Rico.

Updated October 2013

Sentencing Locations For Men and Women



This map shows the total number of sentences – prison, jail, and non-incarcerative – aggregated up from judicial districts to BOP regions. Note that Alaska, Hawaii, and Puerto Rico are not shown, but the sentences of individuals from each district are reflected in the totals. U.S. Sentencing Commission, 2012 Sourcebook of Federal Sentencing Statistics.

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