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**ACLU**

**“YOU MISS SO MUCH  
WHEN YOU’RE GONE”**

The Lasting Harm of Jailing Mothers  
Before Trial in Oklahoma



**“You Miss So Much When You’re Gone”**  
The Lasting Harm of Jailing Mothers Before Trial in Oklahoma

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# Map

## Counties where Human Rights Watch and the American Civil Liberties Union conducted research







## Summary

Tanisha James (pseudonym), a 25-year-old mother of four, was arrested in January 2017 after her boyfriend called the police when they were fighting. Tanisha told us that this was her first arrest and she “fought back that once.” Her boyfriend was not arrested.

Three of her children (toddler son and infant twin babies) were present at her arrest and Oklahoma’s child welfare services agency (OKDHS) immediately became involved.

Tanisha needed around US\$6,000 to secure her release from jail on bond (bail was set at \$61,000) but she could not afford to pay. She spent nearly one month incarcerated at Oklahoma County Jail before she accepted a guilty plea offer to charges of domestic violence and obstructing an officer and received a five-year suspended sentence. She said she pleaded guilty because she wanted to get back to her children as soon as possible: “I was sick of being away from my kids. I was crying every day. ... All I wanted to do was be around them.”

OKDHS initially allowed Tanisha’s children to stay with their paternal grandmother while she was incarcerated. But after Tanisha’s release, her children were taken into foster care.

More than a year later, Tanisha is still fighting to regain custody of her children by meeting requirements in her child welfare reunification plan (which sets out conditions Tanisha must correct and services she must receive). If she does not satisfy the conditions of reunification, her parental rights can be terminated. But Tanisha told us that she cannot afford to meet some of these requirements. She cannot afford a required psychological evaluation, 52 required domestic violence classes (\$25 per class, \$1,300 total), and child support she is ordered to pay monthly to the state while her young children remain in foster care. In addition to these costs, Tanisha said that parenting classes were offered between 1-3p.m. and conflicted with her schedule. She had been working part-time, making only \$43 per day, but said she lost her job when she missed work to attend mandatory meetings with OKDHS. She is worried her children will ultimately be adopted: adoption is “my biggest concern. ... I’m not letting my kids go.”

Tanisha also told us that she is required to pay \$40 per month for probation supervision, which she has been unable to afford, and she owes the \$900 she was billed for each day she was jailed (more than \$30 per day for 30 days) as well as other fines, fees, and court costs. She told us, “They try to set it up so that I will fail.”

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Every day in Oklahoma, women are arrested and incarcerated in local jails waiting—sometimes for weeks, months, a year, or more—for the disposition of their cases. Most of these women are mothers with minor children.

Drawing from more than 160 interviews with jailed and formerly jailed mothers, substitute caregivers, children, attorneys, service providers, advocates, jail officials, and child welfare employees, this report shows how pretrial detention can snowball into never-ending family separation as mothers navigate court systems and insurmountable financial burdens assessed by courts, jails, and child welfare services—like in Tanisha’s case.

While most women admitted to jails are accused of minor crimes, the consequences of pretrial incarceration can be devastating. This report finds that jailed mothers often feel an added, and unique, pressure to plead guilty so that they can return home to parent their children and resume their lives. These mothers face difficulties keeping in touch with their children due to restrictive jail visitation policies and costly telephone and video calls. Some risk losing custody of their children because they are not informed of, or transported to, key custody proceedings. Once released from jail, they are met with extensive fines, fees, and costs that can impede getting back on their feet and regaining custody of their children.

Women are the fastest growing correctional population nationwide and since the 1990s, Oklahoma has incarcerated more women per capita than any other US state.

Local jails (which typically house people prior to conviction, sentenced to short periods of incarceration, or awaiting transfer to prisons for longer sentences) are a major driver of that growth. On a single day, the number of women in jails across the US has increased from approximately 8,000 in 1970 to nearly 110,000 in 2014, a 1,275 percent increase, with

rural counties accounting for the largest growth rate. Many times more are admitted to jail over the course of a year.

The growth in women's incarceration also means growth in the number of jailed mothers, which has doubled since 1991. Nationwide, more than 60 percent of women in prisons and nearly 80 percent of women in jails are mothers with minor children. A study conducted by the US Bureau of Justice Statistics reported that a majority of incarcerated mothers lived with and were the sole or primary caretaker of minor children prior to their incarceration. This means that when mothers go to jail or prison, their children are more likely not to have a parent left at home, and can either end up with other relatives or in foster care.

One in 14 children in the US, or nearly six million children, have had a parent behind bars, which researchers identify as an adverse childhood experience associated with negative health and development outcomes. Children of color are disproportionately impacted by parental incarceration, with one in 9 Black children having had an incarcerated parent compared to one in 17 white children.

Jailed mothers are often dealing with a myriad of issues prior to their incarceration, which is why comprehensive support is essential to keep families together, disrupt cycles of incarceration, and to preserve human rights to liberty, due process, equal protection, and family unity. Losing contact with and custody of their minor children should not be a consequence of arrest and criminal prosecution.

While nationally and in Oklahoma the rate of women's incarceration is garnering increasing attention, many barriers to achieving necessary reforms remain.

Human Rights Watch and the ACLU urge Oklahoma and other states to require the consideration of a defendant's caretaker status in bail and sentencing proceedings, expand alternatives to incarceration, facilitate the involvement of incarcerated parents in their children's lives and proceedings related to child custody, and substantially curb the imposition of fees and costs, which can impede reentry and parent-child reunification.

## **Money Bail, Pretrial Incarceration, and Added Pressure to Plead Guilty**

Money bail in Oklahoma is not tailored to a person's ability to pay and other individualized circumstances, including primary caretaker status, are not meaningfully considered. Public defenders told us that some judges in the state rely on preset bail schedules instead of conducting an individualized bail determination. If someone cannot afford to pay for their release, they are often stuck behind bars until case disposition. Being incarcerated in jail awaiting trial creates an enormous pressure to plead guilty and can result in worsened case outcomes. Nationally, it is generally true that prosecutors have overbearing influence over case outcomes and overcrowded and unsanitary jail conditions coupled with slow moving court systems can result in individuals accepting a guilty plea offer just so that they can get out of jail. Public defenders in Oklahoma also told us that their clients often wait 30 days before they can go before a judge with appointed counsel, including cases where the charges may only carry a maximum 30-day custodial sentence.

The pressure to accept a guilty plea is especially acute for jailed mothers who need to return home to parent their children. They also may reasonably fear the temporary or permanent loss of child custody. Several mothers we spoke with told us that they accepted guilty pleas, even when they would have otherwise wanted to fight their charges, because they needed to care for their children and they were afraid of losing child custody.

## **Parent-Child Communication While in Jail**

Jails are meant to house people short-term and are ill equipped to meet the needs of incarcerated mothers and their children, especially those waiting months in jails for their cases to be resolved.

Although studies have shown the importance of maintaining contact with family to reducing recidivism rates, jail visitation policies in Oklahoma often bar or limit parent-child visitation and many jails have eliminated in-person visitation altogether. When in-person visitation is permitted, it is almost always behind a glass partition and mothers cannot touch and console their children.

The costs of telephone calls and video visitation can also be prohibitive, resulting in lapses in communication between mother and child. Some mothers we interviewed told us

that they did not have any contact with their children and did not know where their children were located while they were in jail.

## **Child Custody and Parental Rights at Risk**

When mothers are jailed, children are often placed either in the custody of non-parent family members or the state. If the state is involved, federal and Oklahoma law impose reunification deadlines: child welfare services must move for termination of parental rights if children are in foster care for 15 of the preceding 22 months, with only a few exceptions. Some states, including Oklahoma, expedite this timeline when a child is under four years old.

Mothers also may be closed out of key child custody-related decisions while they are in jail. Oklahoma law and policy require notice prior to family and juvenile court hearings but are vague about the jails' responsibility to ensure jailed parents are transported to such proceedings. Law and policy are also vague about the required communication between jailed parents and child welfare caseworkers. Jail policies limiting visits and communication by telephone may exacerbate the difficulties mothers experience in staying informed about the custody and placement of their children. One mother told us that she did not discover she had lost child custody of one of her children until after her release from jail.

Additionally, lack of coordination with pregnant women and their families can result in a child, once born, being automatically placed in child welfare custody until a family member is approved as an appropriate guardian.

## **System Imposed Debt and Collateral Consequences**

When mothers are released from Oklahoma jails, often after accepting a guilty plea, their struggles do not end. Some leave Oklahoma's jails with a bill for the time they spent behind bars ("jail stay fees"), medical expenses they accrued during their jail stay, and fines, fees, and court costs that may be exorbitant. If they are on probation, supervision fees and onerous and costly conditions of probation can land them right back in jail. If their driver's license is suspended or revoked, many face high costs to reinstate it. Without reliable access to public transportation, they face difficulties getting to work, school,

doctor's appointments, parenting classes, or other important destinations. When attempting to regain custody of children in the state's care, costs can also accumulate for psychological evaluations, mandated drug testing, and child support.

These fines, fees, and costs can easily add up to thousands of dollars. Having a criminal record also results in formal and informal barriers to employment, housing, education, public benefits, and even child custody. In sum, these consequences of a criminal record exacerbate the instability facing mothers and their children.



## Recommendations

Human Rights Watch and the American Civil Liberties Union offer the following recommendations to improve outcomes for arrested mothers and their children. Other broader criminal justice reforms would help to address the problems identified in this report, including:

- More and better-resourced alternatives to arrest, prosecution, and incarceration.
- Wholesale reforms to eliminate reliance upon bond schedules, eliminate or substantially reduce the imposition of money bail, and the establishment of a strong presumption for nonmonetary release.
- Amendments to mandatory minimum sentencing laws, reductions to sentencing ranges and sentencing enhancements, and an end to hard-line restrictions on early release from prison.
- Wholesale reforms to substantially reduce criminal justice fines and eliminate fees and court costs.
- Decriminalization of drug possession for personal use and expanded access to evidence-based treatment and support, including harm reduction services.
- Retroactive criminal justice reforms to ensure fairness and proportionality.

### To Oklahoma Lawmakers

- Enact primary caretaker legislation that would require judges to consider a defendant's primary caretaker status: (1) when making bail determinations; (2) when deciding to revoke a suspended sentence or accelerate a deferred sentence; and (3) at sentencing. At sentencing, and where warranted, primary caretakers should receive a community-based alternative to incarceration in lieu of a custodial sentence.
- Enact legislation that would eliminate the use of bond schedules and require individualized bail determinations that take into account primary caretaker status, ability to pay, and other mitigating factors.
- Enact legislation that would mandate access to in-person physical contact visitation between incarcerated parents and their children of all ages, and permit incarcerated parents to visit with their minor children and

participate in reunification-related programming regardless of their security designation or disciplinary status.

- Enact legislation to provide mothers who give birth under the supervision of jails and prisons with substantial time to spend with their newborns, mandate full access to menstrual and other hygiene products at no cost, and require the provision of holistic prenatal, postpartum, and other healthcare at no cost.
- Appropriate funds to expand programs and services available to parents in jails and prisons, including programs and services that will satisfy conditions laid out in a child welfare reunification plan.
- Enact legislation that substantially reduces court fines and eliminates fees and court costs. In the alternative, require the consideration of primary caregiver status when decisions are made to reduce fines, fees, and court costs or to set up reasonable payment plans.
- Appropriate funding to OKDHS or external service providers to assist parents who are unable to afford the fees required to access services required under a child welfare reunification plan.
- Appropriate funds to expand programs and financial assistance for substitute caretakers of minor children.
- Enact legislation that creates a clear statutory obligation on courts to notify jailed parents of all family and juvenile court proceedings through personal service and to order the transport of incarcerated parents to all such proceedings.
- Enact legislation that requires OKDHS caseworkers to communicate directly with incarcerated parents as frequently as necessary to ensure parents are informed of their children's condition and whereabouts and informed of all custody-related meetings and proceedings.
- Enact legislation that requires an inquiry into a jailed parent's ability to access and pay for courses, drug testing, and related programs before such requirements are included in a child welfare reunification plan.
- Enact legislation that requires jail officials to inquire about and track the parenting status of newly admitted people.
- Enact legislation that would require the regular collection and publication of data that can be disaggregated (by gender, race, and ethnicity) about the

number of jailed people, their primary caretaker status, and their children's living arrangements.

## To Oklahoma Judges

To the extent permitted by law and by limits on the appropriate exercise of discretion:

- Consider primary caretaker status, ability to pay, and other mitigating factors: (1) when making pretrial release decisions by prioritizing nonmonetary pretrial release; (2) when making sentencing decisions by prioritizing alternatives to incarceration and restricting onerous conditions of a noncustodial sentence, including eliminating or reducing the imposition of financial contributions from a person sentenced; (3) when deciding to revoke a suspended sentence or accelerate a deferred sentence by prioritizing continued release; and (4) when imposing fines, fees, and court costs by opting to not impose such fees and costs.
- Order regular in-person physical contact visitation between a child and their incarcerated parent. Judges should also coordinate visits between jailed parents and their children before or after family or juvenile court hearings.
- Ensure sufficient notice and issue court orders to transport incarcerated parents from jails and prisons to custody or juvenile court hearings, including by writ if a parent is jailed in another county.

## To Oklahoma Prosecutors

To the extent permitted by law and by limits on the appropriate exercise of discretion:

- Consider an accused person's primary caregiver status: (1) before deciding to pursue charges; (2) before arguing against pretrial release by ensuring the least restrictive means of release; (3) when making plea offers and sentencing recommendations by prioritizing alternatives to incarceration and by not seeking onerous conditions of a noncustodial sentence, including financial contributions from a person sentenced; and (4) before filing applications to accelerate deferred sentences or to revoke suspended sentences.
- Consider barriers to reentry for formerly incarcerated parents and its effect on child welfare reunification plan compliance prior to moving to terminate parental rights (TPR) in juvenile court.

## To the Oklahoma Department of Human Services (OKDHS)

- Coordinate regular in-person physical contact visitation between parent and child while a parent is incarcerated in jails and prisons.
- Certify programs or develop evidence-based and culturally competent curricula to be used in jails and prisons that parents can enroll in to satisfy child welfare reunification plan requirements while incarcerated.
- Ensure regular communication between OKDHS caseworkers and parents about the status of children in the state's care, including the child's placement, reunification goals, and available services during incarceration and upon release.
- Implement or expand training for OKDHS staff on best practices in supporting incarcerated and formerly incarcerated parents and their minor children.
- Revise OKDHS policies to clarify communication requirements between caseworkers and jailed parents.
- Regularly collect and publish data that can be disaggregated (by gender, race, and ethnicity) on temporary removals, TPR, and the number of children in child welfare custody with an incarcerated or formerly incarcerated parent.

## To Oklahoma Jail Administrators

- Expand visitation policies to include regular in-person physical contact visits between jailed parents and their minor children and coordinate with OKDHS and courts to facilitate visitation.
- Provide access to free weekly telephone calls between indigent jailed parents and their children, child welfare caseworkers, and custody or juvenile court attorneys.
- Ensure that jail security levels do not prohibit access to parent-child visitation and enrollment in parenting courses or other courses or services available that satisfy child welfare reunification plan requirements.
- Ensure the distribution of adequate menstrual and other hygiene products at no cost.
- Ensure coordination with family and juvenile court to facilitate transportation of jailed parents to all court proceedings.
- Track the primary caretaker status of those admitted to jails.

## To the United States Government

### *To the Congress of the United States*

- Pass legislation to ensure access to adequate menstrual and other hygiene products and prenatal and postpartum care inside jails and prisons.
- Pass legislation to provide targeted support to children with incarcerated parents, reunification services for incarcerated parents, and financial assistance and other resources to family caregivers.

### *To the US Department of Justice, Bureau of Justice Statistics*

- Regularly collect and publish data that can be disaggregated (by gender, race, ethnicity, and caregiver status) on the jail population nationwide.
- Update and publish the “Parents in Prison and Their Minor Children” study, including the jail population.

### *To the US Department of Health and Human Services*

- Establish pilot programs designed specifically to ensure in-person physical contact between incarcerated parents and their children and to reunify formerly incarcerated parents with their children in foster care.
- Regularly collect and publish data that can be disaggregated (by gender, race, and ethnicity) on the number of children in child welfare custody with a current or formerly incarcerated parent.

## Methodology

This report is the product of a joint initiative—the Aryeh Neier fellowship—between Human Rights Watch and the American Civil Liberties Union to strengthen respect for human rights in the United States.

The report is based on 163 in-person and telephone interviews<sup>1</sup> conducted primarily between October 2017 and July 2018, as well as extensive desk research and analysis of publicly available information and data, policies, and procedures provided to Human Rights Watch in response to public information requests.

We conducted interviews with 35 women who had minor children while incarcerated pretrial in Oklahoma county-run jails. Human Rights Watch identified individuals through outreach to local service providers, defense attorneys, and advocacy organizations. Most of our interviews with incarcerated and formerly incarcerated mothers were conducted in Oklahoma at the site of diversion programs in Tulsa County and Oklahoma County or at Tulsa County Jail. Most interviews inside Tulsa County Jail were conducted individually, in a meeting room, and in the presence of a clinician.<sup>2</sup>

Nearly all of the mothers we interviewed for this report were current participants or alumni of diversion programs in Tulsa County and Oklahoma County, or current participants in the Parenting in Jail Program at Tulsa County Jail. Women in these programs are mostly mothers with histories of substance dependence. Most of the mothers we interviewed also had extensive criminal records that they often attributed to trauma, poverty, and substance dependence.

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<sup>1</sup> The total number of interviews also includes interviews with 10 formerly incarcerated mothers who were not incarcerated in Oklahoma. We do not rely on those interviews in this report.

<sup>2</sup> Two group interviews were conducted: one interview with two incarcerated mothers; another interview with six incarcerated mothers held by or in the custody of US Immigration and Customs Enforcement (ICE). The latter interview was conducted primarily in English with an incarcerated mother translating English to Spanish. One interview, with a mother housed in a segregated unit, was conducted through an opening in the cell door. Nancy Curry, the former coordinator and clinician with the Parenting in Jail Program, accompanied a Human Rights Watch researcher during all of the interviews inside of Tulsa County jail.

All individuals interviewed provided verbal informed consent and no incentive or remuneration was offered to interviewees. The researcher informed potential interviewees that they were under no obligation to speak with us and that they could decline to answer questions at any point or terminate the interview at any time. The researcher also informed interviewees of the purpose of our research and our intention to publish a report. We did not ask questions about disputed facts or issues related to their underlying criminal charges, especially in cases where charges were still pending.

Out of concern for the privacy of mothers and their families and given the sensitive nature of the information they provided, we have chosen to use pseudonyms in all cases, with the exception of two formerly jailed mothers with their permission. In one instance, we have not used the name of a non-profit attorney, at her request. In such cases, we have noted our use of pseudonyms or our decision to withhold a name in the relevant citations.

We conducted interviews with 118 caregivers, children, attorneys, service providers (including those working for non-profit organizations and diversion and reentry programs), government workers (including judges, pretrial services, jail staff, and child welfare (OKDHS) employees), as well as local and national advocates to understand the unique challenges facing incarcerated mothers and the effect of maternal incarceration on children and families.<sup>3</sup>

In some cases, we reviewed individual records of fines and fees imposed on convicted mothers, child support and reunification-related fee schedules, and, where available, relevant state court records on the cases we describe.

Human Rights Watch submitted data requests regarding the correctional population, personal demographics of incarcerated persons (including race, gender, and parental status), charges and sentences, bail status (including amount), entry and release dates, and primary caregiver, marital, and pregnancy status to jail public information officers and clerks of courts in Tulsa County and Oklahoma County, the two largest counties in the state. We also requested policies and procedures related to visitation and mother-child

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<sup>3</sup> Because women make up a smaller proportion of the total incarcerated population, most children with an incarcerated parent have a father behind bars. However, when mothers are incarcerated, the home lives of their children are more likely to shift dramatically, as described in the Background section of this report. While this report focuses on jailed and formerly jailed mothers, our recommendations are gender neutral.



separation for women giving birth while detained. We received responsive data from Tulsa County Jail.

Although most of the women we interviewed were incarcerated in jails in Tulsa County and Oklahoma County and data requests were submitted only to these counties, some had been incarcerated in other county jails, including jails in other urban and rural counties.

Human Rights Watch also surveyed jail visitation policies, incarceration-related costs, and programming availability in the 25 most populated counties in Oklahoma. We consulted jail websites, made several calls to jails directly, and attempted to gather information from private company websites (who contract with jails to provide medical care or video and telephone service). Some jail staff refused to provide information via telephone or did not know the answers to questions we asked, leading to gaps in the information collected. We also received conflicting information. In these cases, we relied on information provided during our most recent call to each jail.

The exact number of incarcerated parents nationally, and in Oklahoma, is not known. Nationwide jail data is limited, dated, and often not disaggregated by gender, parental status, and jurisdiction, making it impossible to obtain comprehensive figures or even reliable estimates of the parental status of women and girls admitted into local jails and prisons each year. Similarly, the Oklahoma data presented in this report is necessarily limited because parental status is not systematically tracked or published.

While this report focuses on Oklahoma, we draw extensively on publicly available national data from the US Department of Justice’s Bureau of Justice Statistics and Bureau of Justice Assistance, US Department of Health and Human Services’ Administration for Children and Families Children’s Bureau, and the Annie E. Casey Foundation’s Kids Count Data Center.

**A note on terminology:**

Throughout the report, we use phrases such as “jailed” or “formerly jailed” mother and “person living with substance dependence” to avoid stigmatizing language. Quotes from interviewees or other sources have not been altered to conform to the language choices elsewhere in this report.

The term “jail” refers to county-run facilities that typically incarcerate people who are awaiting trial, awaiting transfer to another jurisdiction, sentenced to shorter terms of incarceration (usually one year or less), or sentenced and awaiting transfer to prison.

In Oklahoma, Child Welfare Services, Child Protective Services, and Child Support Services are under the Oklahoma Department of Human Services (OKDHS). In this report we may use “child welfare services,” “child welfare system,” and “OKDHS” interchangeably to refer to these Oklahoma systems.

We also use the term “individualized service plan (ISP)” and “reunification plan” interchangeably to describe the requirements set forth by OKDHS and the juvenile court that a parent must satisfy in order to reunify with their children. A reference to the termination of parental rights is also abbreviated as TPR.

Lastly, the terms “caretaker” and “caregiver” may be used interchangeably to describe an individual’s role in providing care to minor children, adults with disabilities, and older persons. We also use the term “substitute caregiver” to describe non-parent caretakers of children with an incarcerated parent during the parent’s incarceration, primarily in reference to kinship caregivers.

# I. Background

## A National Problem: Disproportionate Rise in Women’s Incarceration

Approximately 219,000 women and girls are incarcerated in the US.<sup>4</sup> While women account for just 14 to 15 percent of the US jail population<sup>5</sup> and 7 percent of the state and federal prison populations,<sup>6</sup> for nearly four decades, women have been America’s fastest growing correctional population.<sup>7</sup>

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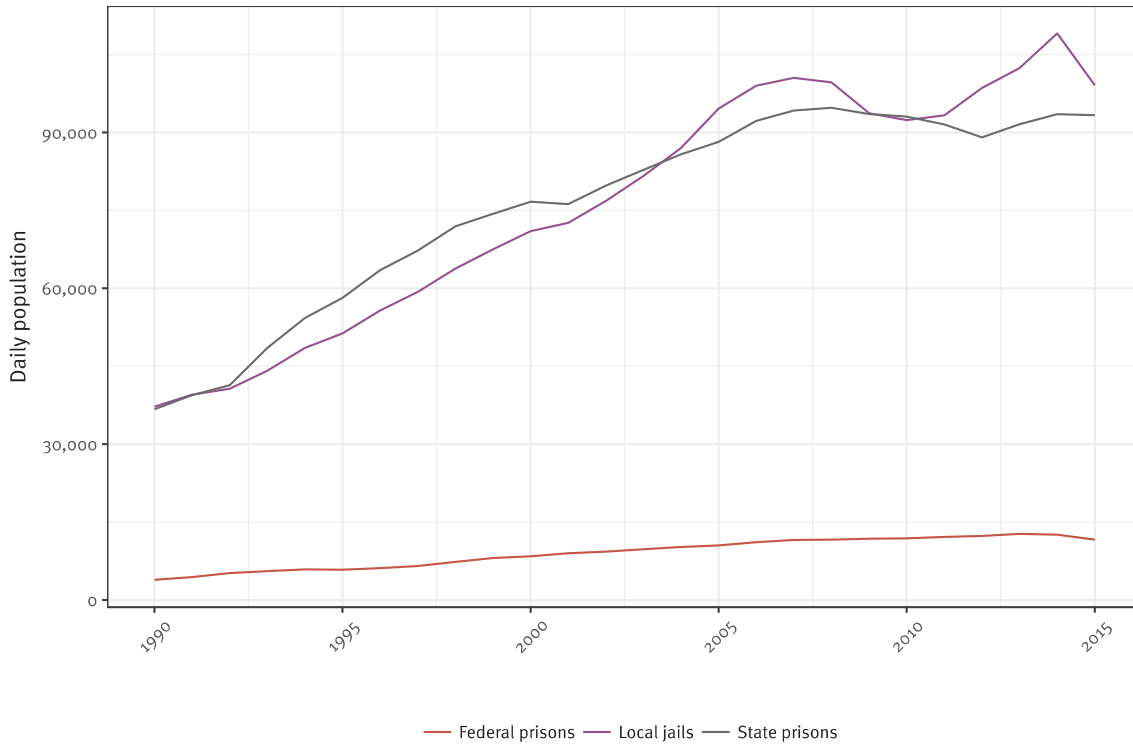
<sup>4</sup> Aleks Kajstura, “Women’s Mass Incarceration: the Whole Pie 2017,” *Prison Policy Initiative*, October 2017, <https://www.prisonpolicy.org/reports/pie2017women.html> (accessed July 16, 2018); While many countries may not collect or report reliable data on incarcerated persons and per capita rates, a recent analysis of existing data suggests that some 30 percent of the world’s incarcerated women are incarcerated in the US despite only four percent of the women’s population worldwide living in the US. Aleks Kajstura, “States of Women’s Incarceration: The Global Context 2018,” *Prison Policy Initiative*, June 2018, <https://www.prisonpolicy.org/global/women/2018.html> (accessed July 16, 2018).

<sup>5</sup> Todd D. Minton and Zhen Zeng, “Jail Inmates in 2015,” *Bureau of Justice Statistics*, December 2016, <https://www.bjs.gov/content/pub/pdf/ji15.pdf> (accessed August 25, 2018).

<sup>6</sup> Kajstura, “Women’s Mass Incarceration”; Peter Wagner and Bernadette Rabuy, “Mass Incarceration: The Whole Pie 2017,” *Prison Policy Initiative*, March 2017, <https://www.prisonpolicy.org/reports/pie2017.html> (accessed July 30, 2018).

<sup>7</sup> The Sentencing Project, “Incarcerated Women and Girls, 1980-2016,” May 2018, <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/> (accessed July 16, 2018), p. 1 (“Between 1980 and 2016, the number of incarcerated women increased by more than 700%, rising from a total of 26,378 in 1980 to 213,722 in 2016. ... Though many more men are in prison than women, the rate of growth for female imprisonment has been twice as high as that of men since 1980.”); Elizabeth Swavola, Kristine Riley, and Ram Subramanian, “Overlooked: Women and Jails in an Era of Reform,” Vera Institute of Justice, August 2016, <https://www.vera.org/publications/overlooked-women-and-jails-report> (accessed July 30, 2018), p. 6.

**Increased Incarceration of Women**  
 Estimated daily prison and jail population



Source: Prison Policy Initiative analysis of Bureau of Justice Statistics data.

Recent efforts to curb mass incarceration impact women and men differently. The Prison Policy Initiative has reported that in 35 states, women’s state prison incarceration has “fared worse” than men’s because the population of women in prisons has either (1) grown while the population of men in prison has declined, (2) outpaced growth in men’s prison population, or (3) declined at a lesser rate than the population of men in prison.<sup>8</sup>

Like men of color, women of color are overrepresented in US prisons and jails. The incarceration rate of Black women and Latinas is 2 times and 1.4 times, respectively, the incarceration rate of white women.<sup>9</sup> The race, ethnicity, and gender of the US jail population has not been tracked and published in nearly 20 years,<sup>10</sup> however, the most recent data available reported that women of color accounted for nearly two-thirds of the

<sup>8</sup> Wendy Sawyer, “The Gender Divide: Tracking Women’s State Prison Growth,” *Prison Policy Initiative*, January 2018, [https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html) (accessed July 30, 2018).

<sup>9</sup> The Sentencing Project, “Incarcerated Women and Girls,” p. 2.

<sup>10</sup> Lawrence A. Greenfeld and Tracy L. Snell, “Women Offenders,” *Bureau of Justice Statistics*, December 1999, <https://www.bjs.gov/content/pub/pdf/wo.pdf> (accessed July 30, 2018), p. 7.

women’s jail population—Black women accounted for 44 percent, Latinas accounted for 15 percent, and “other” women of color accounted for 5 percent.<sup>11</sup>

### *Drivers of Women’s Incarceration*

Women’s pathways into the criminal justice system are unique. Studies have found that a majority of incarcerated women have significant histories of substance dependence, physical ailments, mental illness, intimate partner violence, homelessness, and joblessness.<sup>12</sup>

US Bureau of Justice Statistics studies have found that, compared to jailed men, more women in jails reported having a medical problem (53 percent compared to 35 percent),<sup>13</sup> mental impairments (15 percent compared to 7 percent),<sup>14</sup> and mental health problems (75 percent compared to 63 percent).<sup>15</sup>

A multi-site study of rural and urban jails in the US also found that a majority of women had experienced violence:

- 86 percent had experienced sexual violence in their lifetime;
- 82 percent of jailed women met criteria for drug or alcohol dependence;
- 77 percent had survived intimate partner violence;
- 73 percent had witnessed violence;
- 63 percent had been subjected to non-familial violence; and
- 60 percent had experienced caregiver violence.<sup>16</sup>

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<sup>11</sup> Ibid.; see also Swavola, Riley, and Subramanian, “Overlooked,” p. 11.

<sup>12</sup> Laura M. Maruschak, “Medical Problems of Jail Inmates,” *Bureau of Justice Statistics*, November 2006, <https://www.bjs.gov/content/pub/pdf/mpji.pdf> (accessed July 30, 2018); Shannon M. Lynch, et al, “Women’s pathways to jail: The roles & intersections of serious mental illness and trauma,” *Bureau of Justice Assistance*, September 2012, [https://www.bja.gov/publications/women\\_pathways\\_to\\_jail.pdf](https://www.bja.gov/publications/women_pathways_to_jail.pdf) (accessed July 30, 2018); Doris J. James, “Profile of Jail Inmates, 2002,” *Bureau of Justice Statistics*, July 2004, <https://www.bjs.gov/content/pub/pdf/pjio2.pdf> (accessed July 30, 2018); Doris J. James and Lauren E. Glaze, “Mental Health Problems of Prison and Jail Inmates,” *Bureau of Justice Statistics*, September 2006, <https://www.bjs.gov/content/pub/pdf/mhppji.pdf> (accessed July 30, 2018).

<sup>13</sup> Jailed women reported higher rates of arthritis, asthma, cancer (including cervical, ovarian, and breast cancer), diabetes, heart problems, hypertension, kidney problems, liver problems, stroke, hepatitis, HIV, and sexually transmitted diseases. Maruschak, “Medical Problems of Jail Inmates,” p. 2.

<sup>14</sup> Ibid., p. 3.

<sup>15</sup> Mental health problems were most prevalent among the jail population (64 percent) than state (56 percent) or federal (45 percent) populations. Women, white people, and younger people were more likely to have mental health problems. James and Glaze, “Mental Health Problems of Prison and Jail Inmates,” p. 1, 4.

<sup>16</sup> Lynch, et al, “Women’s pathways to jail,” p. 14, 32.

Efforts to cope with trauma and defend<sup>17</sup> against violence can lead to incarceration, and incarceration is likely to worsen the psychological impact of pre-existing traumas.<sup>18</sup> The American Civil Liberties Union has also previously documented the ways in which women are funneled into jails and prisons for tangential involvement in crimes under conspiracy and accomplice liability theories.<sup>19</sup>

Moreover, women are more likely to be jailed (detained before trial or sentenced) for nonviolent offenses than men (82.9 percent compared to 73.5 percent),<sup>20</sup> are more likely to serve their first sentence (48.7 percent compared to 36.8 percent),<sup>21</sup> and are somewhat more likely to be “nonviolent recidivists” (35.3 percent compared to 33.3 percent), according to national data from 2002.<sup>22</sup>

Our analysis of national data on women’s arrests also show most women are charged with offenses that are likely misdemeanors:<sup>23</sup>

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<sup>17</sup> See US Department of Justice Office on Violence Against Women, “The Impact of Incarceration and Mandatory Minimums on Survivors: Exploring the Impact of Criminalizing Policies on African American Women and Girls,” January 2017 (accessed August 25, 2018); Survived and Punished, Survived and Punished, “S&P Analysis & Vision,” <https://survivedandpunished.org/analysis/> (accessed August 25, 2018); Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women, “The Sexual Abuse to Prison Pipeline: The Girls’ Story,” 2015, [https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](https://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf) (accessed August 25, 2018).

<sup>18</sup> See Mikail DeVeaux, “The Trauma of the Incarceration Experience,” *Harvard Civil Rights-Civil Liberties L. Rev.* (2013), [http://harvardcrcl.org/wp-content/uploads/2013/04/DeVeaux\\_257-277.pdf](http://harvardcrcl.org/wp-content/uploads/2013/04/DeVeaux_257-277.pdf) (accessed July 30, 2018); see also Holly M. Harner and Suzanne Riley, “The Impact of Incarceration on Women’s Mental Health,” October 2012, <http://journals.sagepub.com/doi/abs/10.1177/1049732312461452?journalCode=qhra> (accessed July 30, 2018).

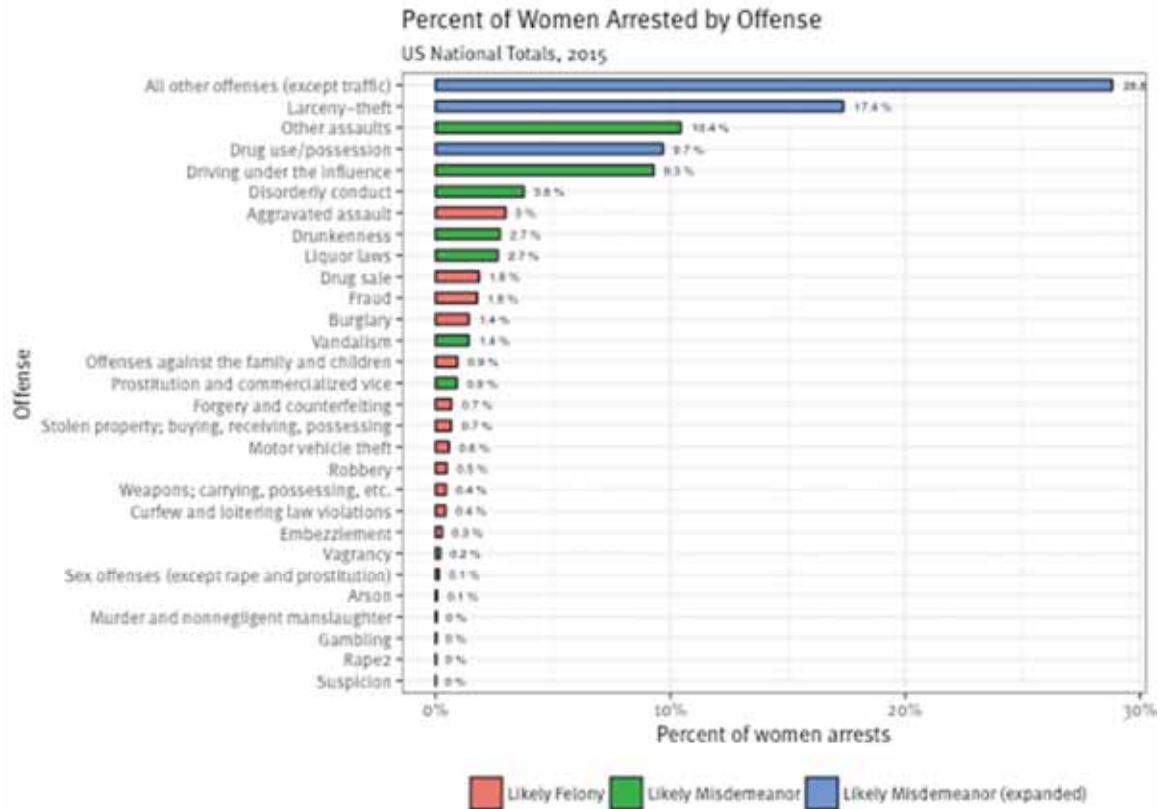
<sup>19</sup> Lenora Lapidus, et al, “Caught in the Net: The Impact of Drug Policies on Women and Families,” *American Civil Liberties Union*, 2005, [https://www.aclu.org/files/images/asset\\_upload\\_file431\\_23513.pdf](https://www.aclu.org/files/images/asset_upload_file431_23513.pdf) (accessed July 30, 2018).

<sup>20</sup> The most recent national data available on the jail population offense breakdown is from 2002. James, “Profile of Jail Inmates,” p. 4; Swavola, Riley, and Subramanian, “Overlooked,” p. 9; Data from 2016 shows that 62 percent of women incarcerated in state prisons have been convicted of nonviolent offenses. Carson, “Prisoners in 2016,” p. 18.

<sup>21</sup> James, “Profile of Jail Inmates,” p. 7.

<sup>22</sup> *Ibid.*; More recent data analysis by the Prison Policy Initiative shows that 75.9 percent of women in jail prior to conviction are charged with a nonviolent crime and 84.2 percent of sentenced women in jails were convicted of a nonviolent offense. Kajstura, “Women’s Mass Incarceration.”

<sup>23</sup> Human Rights Watch analysis of FBI Uniform Crime Reporting data. In the most recent year of gender-disaggregated national statistics, women represented about 27 percent of all arrests. The FBI does not disaggregate data by felony or misdemeanor arrests, yet the categories of offenses allow for researchers to label offense categories as proxy “likely misdemeanors,” “expanded likely misdemeanors” and “likely felonies.” In the US, approximately a third of arrests for both men and women are for the proxy misdemeanors. When the additional likely misdemeanor crimes of theft, drug possession, and “other offenses” are added, approximately 56 percent women’s arrests are likely misdemeanors compared with only 41 percent of men’s arrests. The graph below displays the offenses women are most arrested for in the US. The misdemeanor “proxy” is comprised only of those offenses which are generally classified as misdemeanors: prostitution, simple assault, driving under the influence (DUI), vagrancy, vandalism, gambling, drunkenness, liquor law violations, and disorderly conduct. The “expanded proxy” includes additional offenses more likely than not to be classified as misdemeanors: theft, drug possession, and “other offenses”; see also Megan T. Stevenson and Sandra G. Mayson, “The Scale of Misdemeanor Justice,”



Mirroring national data, most of the women we spoke with in Oklahoma had criminal records resulting from long-term substance dependence and poverty and were met with harsh punishment. As one mother told us:

Throughout the off and on almost 20 years of my addiction, most of my arrests were drug related. Some of them may have not been [a] drug charge. I may not have had drugs on me, but I was charged with petty larceny because I was stealing from stores. Some of the time it probably was to feed my addiction, but for the majority of them, I did whatever I needed to do to feed my children. To clothe my children. ... Diapers. ... To get money for items to be able to afford a hotel room for the night because we were living out of my van at some point. I always wanted to make sure that we

98 Boston University Law Review 731, 2018, <http://www.bu.edu/bulawreview/files/2018/06/STEVENSON-MAYSON.pdf> (accessed September 6, 2018).



had a hotel room to sleep in. The cycle would start all over again the next day.<sup>24</sup>

Another mother told us, “If you’re a single parent, sometimes you gotta do what you gotta do.”<sup>25</sup>

### *Growth in Women’s Jail Population*

Jails are a major driver of women’s incarceration in the US. Just 40 years ago, about three-fourths of county jails in the US did not house any women—now, nearly all jails house women.<sup>26</sup> The number of women in jails on a single day has increased from approximately 8,000 in 1970 to nearly 110,000 in 2014, a 1,275 percent increase.<sup>27</sup> The growth has been highest in rural counties, where the rate of women in jail has increased from 79 to 140 per 100,000 between 1970 and 2014.<sup>28</sup>

Yet the daily population count obscures the high number of jail admissions. Over the course of a year, approximately 1.5 million women are admitted to jail.<sup>29</sup> And over the past 15 years, 99 percent of jail growth has been a product of pretrial incarceration.<sup>30</sup> Sixty percent of women in jail have not been convicted of a crime and are awaiting trial.<sup>31</sup> Incarcerated women are also almost equally dispersed between local jails and state prisons, while twice as many incarcerated men are in state prisons than in local jails.<sup>32</sup>

### *Women Under Correctional Control*

3,673,100, or approximately one in 68 adults in the US, were on probation (period of supervision in the community, typically imposed as an alternative to incarceration) at the

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<sup>24</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, July 22, 2018.

<sup>25</sup> Human Rights Watch interview with Chloe Washington (pseudonym), Oklahoma City, January 20, 2018.

<sup>26</sup> Swavola, Riley, and Subramanian, “Overlooked,” p. 6.

<sup>27</sup> Ibid. While this percent change is large, men still accounted for 82 percent of the jail population in 2014 (down from 95 percent in 1970).

<sup>28</sup> Ibid. The 1970 to 2014 growth rate for women in jails was 80 to 88 per 100,000 in medium sized counties and shrunk from 76 to 71 per 100,000 women in metropolitan counties.

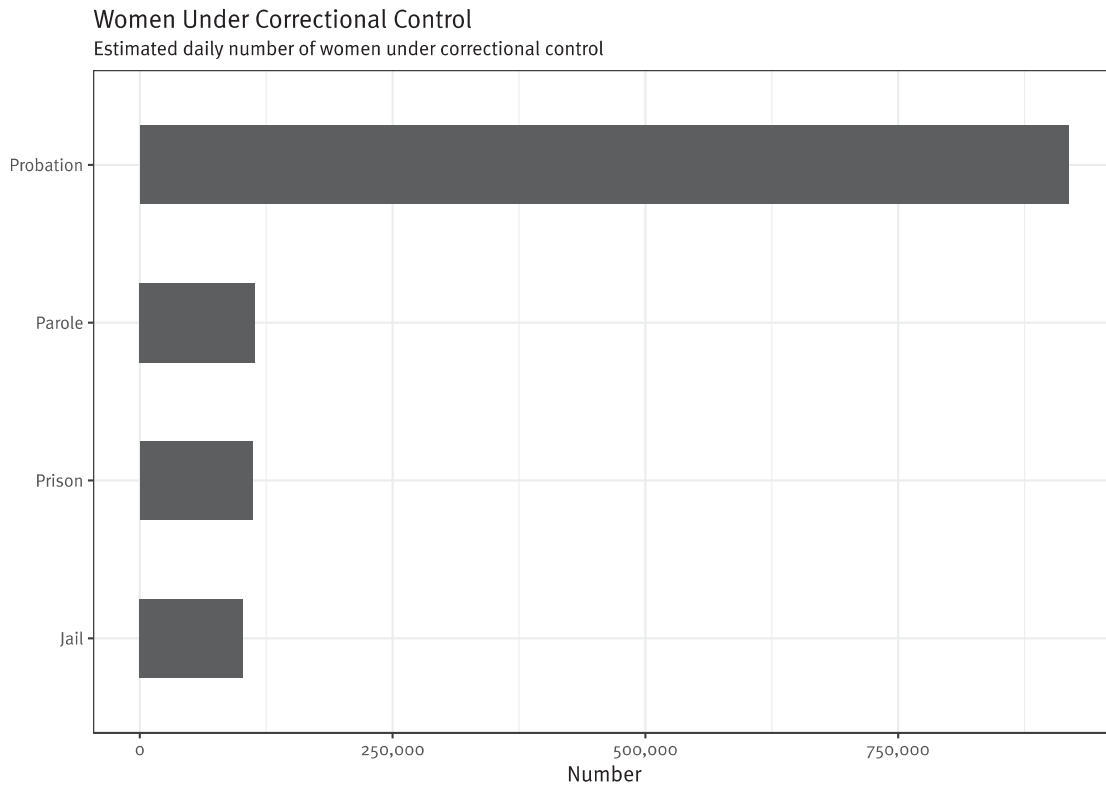
<sup>29</sup> Human Rights Watch analysis of Bureau of Justice Statistics data. See Zhen Zeng, “Jail Inmates in 2016,” *Bureau of Justice Statistics*, February 2018, <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6186> (accessed August 31, 2018).

<sup>30</sup> Peter Wagner, “Jails matter. But who is listening?,” *Prison Policy Initiative*, August 2015, <https://www.prisonpolicy.org/blog/2015/08/14/jailsmatter/> (accessed August 25, 2018).

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

end of 2016.<sup>33</sup> The majority (55 percent) of adults in contact with the criminal justice system are on probation—for women, nearly 75 percent are on probation.<sup>34</sup>



Source: Carson, E.A. (2018). Prisoners in 2016. Washington, DC: Bureau of Justice Statistics; Zeng, Z. (2018). Jail Inmates in 2016. Washington, DC: Bureau of Justice Statistics; Kaeble, D. (2018). Probation and Parole in the United States, 2016. Washington, DC: Bureau of Justice Statistics.

While probation is a less severe sentence than incarceration because it is served in the community, conditions to satisfy probation are often onerous, cost-prohibitive, and long lasting and failure to comply with those conditions can result in imprisonment.<sup>35</sup>

<sup>33</sup> Danielle Kaeble, “Probation and Parole in the United States,” *Bureau of Justice Statistics*, April 2018, <https://www.bjs.gov/content/pub/pdf/ppus16.pdf> (accessed August 25, 2018). Although there was an overall decline in the percentage of people on probation in the US in 2016, Oklahoma added nearly 2,300 people to its probation population between 2015 and 2016, which was the second highest increase in the probation population throughout the US.

<sup>34</sup> The Sentencing Project, “Incarcerated Women and Girls.”

<sup>35</sup> Swavola, Riley, and Subramanian, “Overlooked,” (“[A] considerable proportion of women are in jail not for committing a new criminal offense, but rather for breaking the rules of their supervision in the community.”), p. 9; Susan F. Sharp, Melissa S. Jones, and David Axlyn McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” *University of Oklahoma*, September 2014, <https://www.ok.gov/occy/documents/CIP%20incarcerated%20women%20study%20report%202014.pdf> (accessed July 30, 2018) (“Over 1000 women are admitted to the [Oklahoma] prison system each year, almost one in five for a technical violation of probation or parole.”), p. 2.

In addition to probation, diversion programs can be used as an alternative to a custodial sentence. In Oklahoma, diversion programs specifically for women are available in Tulsa County and Oklahoma County and these programs aim to provide holistic services and reunite women with their children.<sup>36</sup> However, some women wait months in jail before they are referred to a diversion program,<sup>37</sup> women in other counties do not have access to similar programs,<sup>38</sup> and failure to comply with the requirements of a diversion program can also result in imprisonment.

Some states in the US have introduced primary caretaker legislation that requires a defendant's primary caretaker status be taken into account at sentencing to divert convicted parents from prison to an alternative to incarceration.<sup>39</sup> Similar legislation should be introduced in Oklahoma to require the consideration of primary caretaker status<sup>40</sup> at every stage of the criminal justice system, including when conditions of pretrial release are set, when convicted individuals are sentenced, and when decisions are made to revoke probation or a suspended sentence<sup>41</sup> or to accelerate a deferred sentence.<sup>42</sup>

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<sup>36</sup> Women in Recovery is an outpatient alternative to incarceration designed for prison-bound women with histories of substance dependence and provides comprehensive services, including family reunification. "Women in Recovery," Family & Children's Services, <http://www.fcsok.org/services/wir> (accessed August 17, 2018); ReMerge is an outpatient alternative to incarceration designed specifically for mothers facing felony charges with histories of substance dependence and provides comprehensive services, including family reunification. "What We Do," ReMerge, <https://www.remergeok.org/what-we-do> (accessed August 17, 2018).

<sup>37</sup> Human Rights Watch interview with Kaitlin Black Salinas, ReMerge therapist, Oklahoma City, January 18, 2018 (noting that some clients are in jail for seven to nine months before starting ReMerge); see also Human Rights Watch interviews with Amber Cook (pseudonym), Oklahoma City, January 18, 2018 (was in jail for five months before she was released into ReMerge), Ashley Wilson (pseudonym), Oklahoma City, January 19, 2018 (was in jail for eight months before she was released into ReMerge), Mary White (pseudonym), Oklahoma City, January 19, 2018 (was in jail for ten months before she was released into ReMerge), Lisa Peterson (pseudonym), Oklahoma City, January 19, 2018 (was in jail for three months before she was released into ReMerge), Vanessa Evans (pseudonym), Tulsa, January 23, 2018 (was in jail for four months before she was released into Women in Recovery), and Sonya Pyles, January 23, 2018 (was in jail for eight months before she was released into Women in Recovery).

<sup>38</sup> Human Rights Watch telephone interview with Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, July 27, 2018.

<sup>39</sup> Legislation that would require judges to consider a defendant's primary caretaker or pregnancy status when making sentencing decisions has been introduced in Louisiana (LA), Tennessee (TN), Maryland (MD), and Pennsylvania (PA), and enacted in Massachusetts (MA) in 2018. See LA HB264, <https://www.legis.la.gov/legis/BillInfo.aspx?i=233561> (accessed July 17, 2018); TN HB0825, <https://legiscan.com/TN/bill/HBo825/2017> (accessed July 17, 2018); MD HB1166, <http://mgaleg.maryland.gov/webmga/frmMain.aspx?stab=01&pid=billpage&tab=subject3&ys=2018rs&id=HB1166> (accessed July 17, 2018); PA HB1690, <http://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2017&sind=0&body=H&type=B&bn=1690> (accessed July 17, 2018); Massachusetts passed a primary caretaker bill as part of an omnibus criminal justice reform act, <https://malegislature.gov/Bills/190/S2371> (accessed July 17, 2018).

<sup>40</sup> Legislation should define "primary caretaker" as a person providing sole or primary care to minor children, adults with disabilities, older persons, and other dependents. Primary caretakers with prior convictions should also be eligible for alternatives to incarceration.

<sup>41</sup> Typically a suspended sentence is a sentence that will be served in the community, unless the terms of the suspended sentence are violated. If a suspended sentence is revoked, the original sentence will be served in prison.

## Women’s Incarceration in Oklahoma

Oklahoma has the highest incarceration rate in the country (1,559 per 100,000 adult residents)<sup>43</sup> and for decades has incarcerated more women per capita than any other state (159 per 100,000 women in prison,<sup>44</sup> 151 per 100,000 women in jail<sup>45</sup>)—a rate that is more than double the national average.<sup>46</sup>

Research on women incarcerated in Oklahoma prisons has found that nearly two-thirds were first time offenders and most were in prison for nonviolent offenses, with more than half admitted into prison for a drug offense and nearly 20 percent for violations of probation or parole.<sup>47</sup>

A 2017 analysis of Oklahoma Department of Corrections data by Reveal found that Indigenous women are incarcerated at a rate three times higher than their proportion of the state’s total population.<sup>48</sup> For Black women, their rate of incarceration is twice as high as their proportion of the state’s total population.<sup>49</sup> Reveal also reported disparities in incarceration rates county-by-county, indicating that rural areas have higher incarceration rates.<sup>50</sup>

While new initiatives have and continue to be implemented in larger counties, these efforts must be extended to rural areas of the state. Without substantial and retroactive criminal justice reforms, the rate of people in prison in Oklahoma will only continue to

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<sup>42</sup> Typically with a deferred sentence, the case against a defendant will be dismissed upon successful completion of a set period of probation.

<sup>43</sup> “Oklahoma – Incarceration Trends, All,” *Vera Institute of Justice*, <http://trends.vera.org/rates/oklahoma?incarcerationData=all> (accessed August 25, 2018).

<sup>44</sup> Carson, “Prisoners in 2016,” p. 8.

<sup>45</sup> “Oklahoma – Incarceration Trends, Female,” *Vera Institute of Justice*, <http://trends.vera.org/rates/oklahoma?incarcerationData=all&incarcerationSource=female> (accessed September 16, 2018).

<sup>46</sup> The average US state incarcerates 64 per 100,000 women in prison. Carson, “Prisoners in 2016,” p. 9.

<sup>47</sup> Sharp, Jones, and McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” p. 2.

<sup>48</sup> Ziva Branstetter, et al, “Let down and locked up: Why Oklahoma’s female incarceration is so high,” Reveal, September 2017, <https://www.revealnews.org/article/let-down-and-locked-up-why-oklahomas-female-incarceration-is-so-high/> (accessed August 25, 2018).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*

grow. In 2017, it was estimated that by 2026, the number of women in prison would increase by 60 percent, compared to 30 percent overall in Oklahoma.<sup>51</sup>

### *Women Held in Oklahoma's Jails*

Oklahoma has 77 counties and each county has a county-run jail.<sup>52</sup> The Vera Incarceration Trends database reports that in 2015, 12,096 people were held in Oklahoma's jails on any given day and over 281,000 were admitted over the course of the year.<sup>53</sup> Oklahoma's jail incarceration rate is 46 percent higher than the average US state (478.3 per 100,000 compared to 327.2 per 100,000). The state's pretrial jail incarceration rate is about 54 percent higher than the average state (322.2 per 100,000 compared to 209.8 per 100,000).<sup>54</sup>

According to Vera, in 1970, the pretrial incarceration rate for women in Oklahoma was 11.8 per 100,000 (95 women)—this rate swelled to 151.4 per 100,000 in 2015 (1,905 women):<sup>55</sup>

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<sup>51</sup> "Oklahoma Justice Reform Task Force Final Report," February 2017, [https://s3.amazonaws.com/content.newsok.com/documents/OJRTFFinalReport%20\(1\).pdf](https://s3.amazonaws.com/content.newsok.com/documents/OJRTFFinalReport%20(1).pdf) (accessed July 30, 2018).

<sup>52</sup> Human Rights Watch telephone interview with Scott Chisholm, Jail Inspection Division program manager, July 30, 2018. The Jail Inspection Division of the Oklahoma State Department of Health monitors 152 jails total (county and city run jails).

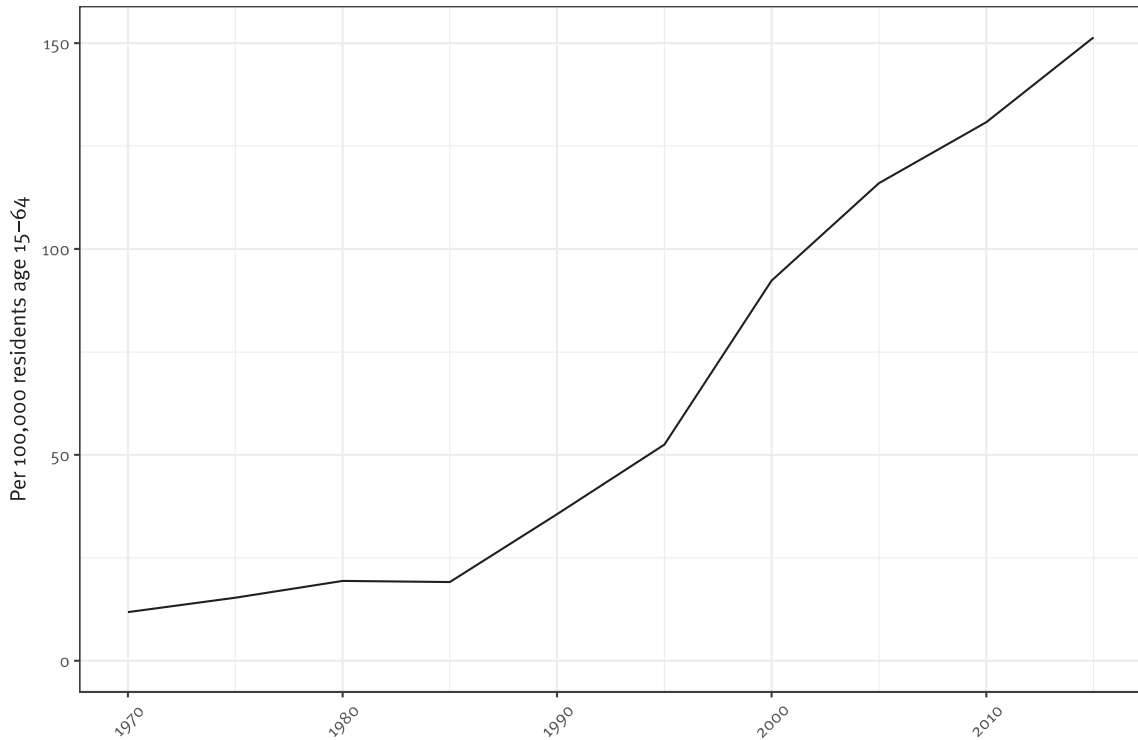
<sup>53</sup> "Oklahoma – Incarceration Trends, Female," *Vera Institute of Justice*, <http://trends.vera.org/rates/oklahoma?incarcerationData=all&incarcerationSource=female> (accessed September 16, 2018).

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*

## Increase in Women Incarcerated in Oklahoma Jails

Female rate per 100,000 residents age 15–64



Source: Vera Institute of Justice

In 2016 and 2017, Vera published reports analyzing Oklahoma County and Tulsa County jail admissions for the previous year. Vera reported that more than 28,000 people were booked into Oklahoma County Jail in 2015 and estimated that 80 percent of the jail population was held pretrial.<sup>56</sup> Women accounted for 27 percent of jail admissions.<sup>57</sup> Black people accounted for 40 percent of the jail population, while only accounting for 15 percent of the total county population.<sup>58</sup>

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<sup>56</sup> Nancy Fishman et al, “Report to the Greater Oklahoma City Chamber Criminal Justice Task Force,” *Vera Institute of Justice*, December 2016, <https://www.vera.org/publications/oklahoma-city-chamber-criminal-justice-task-force-report> (accessed July 30, 2018), p. 8.

<sup>57</sup> *Ibid.*, p. 56.

<sup>58</sup> *Ibid.*, p. 14.

In Tulsa County, Vera reported that more than 76 percent of the Tulsa County Jail population was held pretrial.<sup>59</sup> Vera also found that only 9 percent of people detained in Tulsa County Jail were convicted and serving their sentence in the jail.<sup>60</sup>

Human Rights Watch submitted requests to Tulsa County and Oklahoma County and we received responsive 2016-2017 jail admissions data from Tulsa County Jail.<sup>61</sup> Over the two-year period we analyzed, women accounted for about one-fourth (26.5 percent) of jail admissions—a total of 13,907 unique jail bookings and 9,013 women.<sup>62</sup> About 30 percent of women admitted in the jail were booked in more than once.<sup>63</sup>

Black women accounted for 25.3 percent of jail bookings,<sup>64</sup> which is more than double their population in the county.<sup>65</sup> White women accounted for 65.5 percent.<sup>66</sup>

Many women were booked into Tulsa County Jail for low-level offenses. The most common offenses women were charged with were:<sup>67</sup>

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<sup>59</sup> Nancy Fishman et al, “Report to Tulsa County Stakeholders on Jail Reduction Strategies,” *Vera Institute of Justice*, August 2017, <https://www.vera.org/publications/report-to-tulsa-county-stakeholders-jail-reduction-strategies> (accessed July 30, 2018), p. 32.

<sup>60</sup> *Ibid.*

<sup>61</sup> Human Rights Watch sent Open Record Act requests to Tulsa County Jail, Oklahoma County Jail, and the Clerk’s offices in both counties on January 16, 2018. We received responsive data from Tulsa County Jail. No data was received from Clerk of Courts in either county. Oklahoma County Jail data was received but not in a machine-readable format. All requests are on file with researcher.

<sup>62</sup> Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Black people account for 10.8 percent of the total population in Tulsa County. United States Census Bureau, “Quick Facts – Tulsa County, Oklahoma,” <https://www.census.gov/quickfacts/fact/table/tulsacountyoklahoma/PST045217> (accessed August 25, 2018).

<sup>66</sup> White people account for 72.8 percent of the total population in Tulsa County. *Ibid.*; Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>67</sup> *Ibid.*

### Top Charges for Women Booked into Tulsa County Jail

Charge	# of women booked in with charged offense	Percentage of women booked in with charged offense
No Proof of Liability Insurance	1,604	12%
Possession of Drug Paraphernalia	1,480	11%
Possession of Controlled Dangerous Substances	1,434	11%
Driving Under the Influence	1,156	9%
Failure to Pay Court Cost	1,124	9%
Application To Accelerate a Deferred Sentence	1,097	8%
Larceny - Merchandise - Retailer	1,037	8%
Application To Revoke a Suspended Sentence	952	7%
Suspended Or Revoked Driver's License	952	7%
No Drivers License	934	7%
Improper License Plate Display/Expired Tag	902	7%
Drive Under Suspension	753	6%

Vera's data analysis of Tulsa County Jail admissions found that Black women were admitted on municipal charges (typically jailed on warrants for traffic-related violations) at a rate 3.8 times higher than that of white women.<sup>68</sup>

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<sup>68</sup> Nancy Fishman et al, "Report to Tulsa County Stakeholders on Jail Reduction Strategies," p. 18.



## Incarceration’s Impact on Children, Other Dependents, and Substitute Caregivers

### *Mothers in Jails and Prisons*

Nationwide, more than 60 percent of women in prisons<sup>69</sup> and nearly 80 percent of women in jails are mothers with minor children.<sup>70</sup> Five percent of women admitted into jails are pregnant.<sup>71</sup>

One in 14 children in the US, or nearly six million children, have had a parent behind bars<sup>72</sup> and the number of children with an incarcerated mother has more than doubled since 1991.<sup>73</sup> Almost half of children with incarcerated parents are under 10 years of age.<sup>74</sup>

In Oklahoma, the percentage of children impacted by parental incarceration is greater than the national average.<sup>75</sup> According to the Annie E. Casey Foundation’s Kids Count Data Center, 12 percent of children in Oklahoma (108,000 children) have a parent or guardian who has served time in jail, which is greater than many of its neighboring states including Texas (9 percent), Missouri (9 percent), Colorado (8 percent), and Kansas (9 percent).<sup>76</sup>

A Bureau of Justice Statistics study has shown that a majority of incarcerated mothers lived with and were the sole or primary caretaker to their minor children prior to their

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<sup>69</sup> Lauren E. Glaze and Laura M. Maruschak, “Parents in Prison and Their Minor Children,” *Bureau of Justice Statistics*, August 2008, <https://www.bjs.gov/content/pub/pdf/pptmc.pdf> (accessed July 30, 2018), p. 3.

<sup>70</sup> Susan W. McCampbell, “The Gender-Responsive Strategies Project: Jail Applications,” *National Institute of Corrections*, April 2005, <https://www.prearesourcecenter.org/sites/default/files/library/16genderresponsivestrategiesjail.pdf> (accessed August 25, 2018), p. 4 (“Seventy-nine percent of women in jail are mothers of young children. Most often, they are single mothers.”); Swavola, Riley, and Subramanian, “Overlooked,” p. 7.

<sup>71</sup> Slightly more women incarcerated in jails are pregnant (5 percent) compared to women in state (4 percent) and federal (3 percent) prisons. Laura M. Maruschak, “Medical Problems of Jail Inmates,” *Bureau of Justice Statistics*, November 2006, <https://www.bjs.gov/content/pub/pdf/mpji.pdf> (accessed July 30, 2018), p. 1; Laura M. Maruschak, “Medical Problems of Prisoners,” *Bureau of Justice Statistics*, November 2006, <https://www.bjs.gov/content/pub/pdf/mpp.pdf> (accessed July 30, 2018).

<sup>72</sup> David Murphey and P. Mae Cooper, “Parents Behind Bars: What Happens to Their Children?,” *Child Trends*, October 2015, <https://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf> (accessed July 30, 2018), p. 3.

<sup>73</sup> Glaze and Maruschak, “Parents in Prison and Their Minor Children,” p. 2.

<sup>74</sup> *Ibid.*

<sup>75</sup> “Children who had a parent who was ever incarcerated 2015-2016,” *Kids Count Data Center*, <https://datacenter.kidscount.org/data/tables/9688-children-who-had-a-parent-who-was-ever-incarcerated?loc=38&loct=2#ranking/2/any/true/1539/any/18928> (accessed August 25, 2018).

<sup>76</sup> *Ibid.*

incarceration.<sup>77</sup> This means that when mothers go to jail or prison, their children are more likely to not have a parent left at home and are more likely to end up in foster care.<sup>78</sup>

### Incarcerated Parents in State Prison and Their Minor Children

Child/Children’s Living Arrangements Prior to and During Parent’s Incarceration	Incarcerated Mothers	Incarcerated Fathers
Lived with child/children in the month prior to arrest	55.3%	35.5%
Single parent household	41.7%	17.2%
Provided daily care to child/children	77%	26%
Child/children living with non-parent relatives during incarceration	67.7%	21.3%
Child/children living with other parent during incarceration	37%	88.4%
Child/children in foster care	10.9%	2.2%

A 2014 study of women in Oklahoma prisons found that:

- 68 percent of women in prison had a minor child;
- The average woman had 2.4 minor children;
- The median child’s age was 7.6 years old;
- Two-thirds of mothers in prison were living with their minor children at the time of their arrest;
- Almost half of women living with their minor children were not living with a partner;
- Nearly 58 percent of minor children were now living with family or friends;
- 26 percent of minor children were now living with the other parent;
- Nearly 10 percent were living in foster homes or agencies;
- The average age of minor children in foster care was only 4.2 years old; and
- Nearly 12 percent of incarcerated mothers reported that they did not know where their children were located.<sup>79</sup>

A 2015 study found that children living in rural areas and children of color in the US are disproportionately impacted by parental incarceration, with one in 9 Black children having

<sup>77</sup> Glaze and Maruschak, “Parents in Prison and Their Minor Children,” p. 4-6.

<sup>78</sup> Ibid., p. 5.

<sup>79</sup> Sharp, Jones, and McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” p. 16-19.

had an incarcerated parent compared to one in 16 Latino children, one in 14 children from other races, and one in 17 white children.<sup>80</sup>

Indigenous and Black children are also overrepresented in the foster care system.<sup>81</sup> Indigenous children make up 1 percent of the US population under 18<sup>82</sup> but accounted for 2 percent of children in foster care in 2016.<sup>83</sup> The foster care system's proportion of Black children has radically declined in the past two decades, from 43 percent in 1998<sup>84</sup> to 23 percent in 2016,<sup>85</sup> but remains disproportionate, as Black children are just 14 percent of the US population under 18.<sup>86</sup> Data also shows that 8 percent of children in foster care in 2016 (20,939 children) were placed in state custody because of parental incarceration.<sup>87</sup>

### *Impact on Children*

Parental incarceration can take a toll on the health and development of children and is identified by researchers as an adverse childhood experience.<sup>88</sup> Incarcerated mothers who have infants shortly before they are jailed or who give birth behind bars, are not given

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<sup>80</sup> David Murphey and P. Mae Cooper, "Parents Behind Bars: What Happens to Their Children?," *Child Trends*, October 2015, <https://www.childtrends.org/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf> (accessed July 30, 2018), p. 4, 17.

<sup>81</sup> There is a long history of children of color, particularly Indigenous and Black children being funneled into the child welfare system, and the placement of these children into homes with white families. In 1978, the Indian Child Welfare Act was passed to address the removals of indigenous children from their homes. National Indian Child Welfare Association, "Time for Reform: A Matter of Justice for American Indian and Alaskan Native Children," November 2007, *Pew Charitable Trusts*, [http://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster\\_care\\_reform/nicwareportpdf.pdf](http://www.pewtrusts.org/-/media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/nicwareportpdf.pdf) (accessed August 25, 2018); For more information how the child welfare and prison systems intersect to overpolice Black mothers, see Dorothy E. Roberts, "Prison, Foster Care, and the Systemic Punishment of Black Mothers," 59 *UCLA L. Rev.* 1474 (2012), <https://www.uclalawreview.org/pdf/59-6-2.pdf> (accessed August 25, 2018).

<sup>82</sup> "The AFCARS Report – Preliminary FY 2016 Estimates as of October 20, 2017," Children's Bureau, October 2017, <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf> (accessed August 25, 2018), p. 2.

<sup>83</sup> *Ibid.*

<sup>84</sup> "The AFCARS Report – Final Estimates for FY 1998 through FY 2002," *Children's Bureau*, October 2006, <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport12.pdf> (accessed August 25, 2018).

<sup>85</sup> "The AFCARS Report – Preliminary FY 2016 Estimates as of October 20, 2017," Children's Bureau, p. 2.

<sup>86</sup> "Child population by race," Kids Count Data Center, <https://datacenter.kidscount.org/data/tables/103-child-population-by-race#detailed/1/any/false/871,870,573,869,36,868,867,133,38,35/68,69,67,12,70,66,71,72/423,424> (accessed August 25, 2018).

<sup>87</sup> "The AFCARS Report – Preliminary FY 2016 Estimates as of October 20, 2017," Children's Bureau, p. 2. The majority of children removed from their home were removed for allegations of neglect (61 percent), parental drug abuse (34 percent), "caretaker inability to cope" (14 percent), physical abuse (12 percent), child behavior problem (11 percent), and housing (10 percent).

<sup>88</sup> Rosalyn D. Lee, Xiangming Fang, and Feijun Luo, "The Impact of Parental Incarceration on the Physical and Mental Health of Young Adults," April 2013, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3608482/pdf/peds.2012-0627.pdf> (accessed August 25, 2018); Annie Gjelsvik, "Adverse childhood events: incarceration of household members and health-related quality of life in adulthood," August 2014, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4897769/pdf/nihms-790324.pdf> (accessed August 25, 2018).

opportunities to bond with their babies.<sup>89</sup> This can cause attachment and development issues.<sup>90</sup>

National studies show that children with incarcerated parents are more likely than children without incarcerated parents to have poor peer relationships and exhibit emotional and psychological problems, as well as internalized and externalized behaviors (including aggression, hostility, eating disorders, and self-harm) later in life.<sup>91</sup> Studies also show that school-aged children with incarcerated parents often have diminished educational outcomes, such as poor grades and higher suspension and dropout rates.<sup>92</sup>

In the 2014 study of women in Oklahoma’s prisons, mentioned above, incarcerated mothers reported that their children experienced higher incidents of poor grades, problems with friends and guardians, expulsions from school, running away, depression, and suicidal ideation since their mother’s incarceration.<sup>93</sup>

The manager of a re-entry program that unites children with parents after they are released from Oklahoma’s prisons estimated that 80 percent of the kids she sees have abandonment, behavioral, or mental health issues, including several children who have experienced suicidal ideation.<sup>94</sup>

Two social workers in Oklahoma described the devastating impact of having an incarcerated parent on children. One said, “A lot of shame ... gets transferred to the kids” and the children often do not know why their parent is away.<sup>95</sup> The other told us:

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<sup>89</sup> BA Hotelling, “Perinatal Needs of Pregnant, Incarcerated Women,” *The Journal of Perinatal Education*, vol. 17(2) (2008), accessed July 30, 2018, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2409166/>, p. 37-44.

<sup>90</sup> Ibid.

<sup>91</sup> Ross D. Parke and K. Alison Clarke-Stewart, “From Prison to Home: The Effect of Incarceration and Reentry on Children, Families, and Communities,” December 2001, <https://aspe.hhs.gov/basic-report/effects-parental-incarceration-young-children> (accessed July 30, 2018).

<sup>92</sup> Ibid.

<sup>93</sup> Sharp, Jones, and McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” p. 20-24. However, the mothers in this study also reported these incidents occurring prior to their incarceration as well. As the researcher noted, “these children are often at risk before the mother went to prison as well as during and after incarceration. Unstable living situations, absent fathers, mental health problems in mothers, substance abuse in the home and family histories of violence are considered risk factors for problems for children which ultimately translate into problems in adulthood.” Ibid., 24.

<sup>94</sup> Human Rights Watch interview with Robyn Wertz, Exodus House OKC site director, Oklahoma City, January 20, 2018.

<sup>95</sup> Human Rights Watch interview with Milagros, social worker and therapist, Oklahoma City, Oklahoma, January 19, 2018. See also Creasie Finney Hairston, “Focus on Children with Incarcerated Parents: An Overview of the Research Literature,”

Instability at home creates a domino effect at school. ... They feel like their parents don't love them and are unable to focus. ... They are bullied and because they are worried about keeping their heads above water, they can't think about school. ... It hurts when you have a loved one who is here one day and gone the next.<sup>96</sup>

One jailed mother of four told us that the father of her two oldest children (ages 18 and 14) died just one year before she was arrested.<sup>97</sup> She said that being incarcerated makes her children “feel like they lost both [of] their parents.”<sup>98</sup> Her younger children (6 and 4) have also been impacted—she told us that her 6 year old is not communicating and is overeating and her 4 year old “tells me all the time that he dreams about me being home.”<sup>99</sup>

When mothers are jailed, the home lives of their children are more likely to be disrupted. Jailed and formerly jailed mothers told us that their children changed homes and schools since their mother's incarceration.<sup>100</sup> Some children were shuffled from one home to another, in foster care or with relatives, and sometimes they were separated from their siblings.<sup>101</sup> Some mothers also may not know where their children are located.<sup>102</sup>

April Weiss, a 30-year-old mother of three, told us, “I didn't want my kids to be separated. When I was a kid, I was in foster care. It was the first traumatic experience of my life being

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*Annie E. Casey Foundation*, October 2007, [https://www.aecf.org/m/resourcedoc/aecf-FocusonChildrenwith\\_ncarceratedParentsOverviewofLiterature-2007.pdf](https://www.aecf.org/m/resourcedoc/aecf-FocusonChildrenwith_ncarceratedParentsOverviewofLiterature-2007.pdf) (accessed August 25, 2018).

<sup>96</sup> Human Rights Watch interview with Mary Margaret McMiller, social worker and therapist, Oklahoma City, January 19, 2018.

<sup>97</sup> Human Rights Watch interview with Brooke Torres (pseudonym), Tulsa, January 25, 2018.

<sup>98</sup> *Ibid.*

<sup>99</sup> *Ibid.*

<sup>100</sup> Human Rights Watch interviews with Rachel Hall (pseudonym), Oklahoma City, January 18, 2018, and Alyssa Barnes (pseudonym), Tulsa, January 25, 2018; Human Rights Watch has also previously conducted data analysis and documented the disruption that parental incarceration can cause to children. Human Rights Watch, *Collateral Casualties: Children of Incarcerated Drug Offenders in New York*, (New York: Human Rights Watch, June 2002), <https://www.hrw.org/reports/2002/usany/USA0602.pdf>.

<sup>101</sup> Human Rights Watch interviews with Rachel Hall (pseudonym), Oklahoma City, January 18, 2018, Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018, and Chloe Washington (pseudonym), Oklahoma City, January 20, 2018; Human Rights Watch telephone interviews with Cherri Fuller, OK Messages Project, February 14, 2018, Lori Smith (pseudonym), grandmother, April 5, 2018, and Donna Simmons (pseudonym), foster parent, April 5, 2018.

<sup>102</sup> Human Rights Watch interview with Alicia Bryant (pseudonym), Oklahoma City, January 20, 2018.

separated from my younger siblings. Now my daughter only gets to see her sisters eight hours each month.”<sup>103</sup>

Intergenerational incarceration is also a major concern. About 26 percent of women responding to an Oklahoma prisons study reported growing up with a parent behind bars.<sup>104</sup> We also spoke with a few mothers who told us their parents, their children, or the fathers of their children had been incarcerated, and some expressed a strong desire to break the “vicious cycle.”<sup>105</sup>

### *Impact on Other Dependents*

Women are also more likely to be caregivers to young people, older people, and people with disabilities.<sup>106</sup> Therefore, when women are incarcerated, they are likely to leave behind dependents other than their minor children who may not have other resources for care. While national and local data does not track the caregiver status of incarcerated people, a few mothers we spoke with told us that they were providing primary care to family members in addition to their children.

One mother told us that prior to being jailed at Tulsa County Jail for more than seven months, she was raising her then 2-year-old granddaughter and her three minor children (ages 17, 14, and 5).<sup>107</sup> Another mother said she was caring for her 2-year-old son, 82-year-old grandmother, and younger siblings before she was jailed at Tulsa County Jail for 10 months. She told us, “Everything I have done in my life revolves around [my son], other

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<sup>103</sup> Human Rights Watch interview with April Weiss, Oklahoma City, January 20, 2018.

<sup>104</sup> Sharp, Jones, and McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” *University of Oklahoma*, September 2014, p. 10.

<sup>105</sup> Human Rights Watch interviews with Rachel Hall (pseudonym), Oklahoma City, January 18, 2018, Nicole Allen (pseudonym), Oklahoma City, January 18, 2018, Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018, Chloe Washington (pseudonym), Oklahoma City, January 20, 2018, Vanessa Evans (pseudonym), Tulsa, January 23, 2018, Sonya Pyles, Tulsa, January 23, 2018, Candace Smith (pseudonym), Tulsa, January 25, 2018, and Alyssa Barnes (pseudonym), Tulsa, January 25, 2018.

<sup>106</sup> While we were unable to find data that accounts for the scope of caregiving provided by women prior to their incarceration, research has shown that a majority of caretakers are women, and women with an incarcerated loved one bear the emotional and financial burden of familial incarceration. See Gina Clayton, et al, “Because She’s Powerful: The Political Isolation and Resistance of Women with Incarcerated Loved One,” *Essie Justice Group*, May 2018, [https://www.becauseshespowerful.org/wp-content/uploads/2018/05/Essie-Justice-Group\\_Because-Shes-Powerful-Report.pdf](https://www.becauseshespowerful.org/wp-content/uploads/2018/05/Essie-Justice-Group_Because-Shes-Powerful-Report.pdf) (accessed July 30, 2018); Saneta deVuono-powell, et al, “Who Pays? The True Cost of Incarceration on Families,” *Ella Baker Center, Forward Together*, and *Research Action Design*, 2015, <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf> (accessed July 30, 2018); National Alliance for Caregiving and AARP, “Caring in the US,” June 2015, <https://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf> (accessed July 30, 2018).

<sup>107</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, January 23, 2018.

kids, and older folks. ... Me being here hurts my family a lot because they don't have me."<sup>108</sup>

### *Impact on Substitute Caregivers*

As noted above, children with incarcerated mothers are more likely than children with an incarcerated father to live with a grandparent or another relative while their mother is away.<sup>109</sup> The quality of caretaker relationships and meaningful contact with incarcerated parents make a significant difference in how well children weather the traumatic experience of being separated from their incarcerated parent.<sup>110</sup> However, substitute caretakers often struggle for lack of the financial and emotional support they need.<sup>111</sup> One mother told us that the guardian of her 2-year-old daughter “makes too much money” and has to pay US\$900 per month for childcare out of pocket.<sup>112</sup>

We spoke with a jailed mother who told us, while in tears, that her cousin is taking care of her 2-year-old son. She said she does not want to burden her family and tells her 26-year-old cousin, “You have your own life.”<sup>113</sup>

For older persons, who may be unemployed, retired, and/or living on a fixed income, taking on the primary caretaker role of a minor child can cause physical, financial, and emotional strain.<sup>114</sup> Several mothers we interviewed told us that their mothers stepped up to care for their grandchildren and were struggling with the financial and emotional stress of child rearing while older.

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<sup>108</sup> Human Rights Watch interview with Tiana Henderson (pseudonym), Tulsa, January 25, 2018.

<sup>109</sup> Lauren E. Glaze and Laura M. Maruschak, “Parents in Prison and Their Minor Children,” *Bureau of Justice Statistics*, August 2008, <https://www.bjs.gov/content/pub/pdf/pptmc.pdf> (accessed July 30, 2018).

<sup>110</sup> Lindsey Cramer, et al., “Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice,” *Urban Institute*, April 2017, [https://www.urban.org/sites/default/files/publication/89601/parent-child\\_visiting\\_practices\\_in\\_prisons\\_and\\_jails.pdf](https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf) (accessed July 30, 2018), p. 27.

<sup>111</sup> See, e.g. “Oklahoma Children of Incarcerated Parents Toolkit,” Oklahoma Department of Human Services, the Oklahoma Commission on Children and Youth, and the Oklahoma Children of Incarcerated Parents Advisory Committee, December 2014, (noting that caregivers for children of incarcerated parents often need “[h]elp with managing the needs and services that are all too often fragmented, unavailable or costly”), <http://www.okdhs.org/OKDHS%20Publication%20Library/14-63.pdf> (accessed September 17, 2018).

<sup>112</sup> Human Rights Watch interview with Heather Morris (pseudonym), Oklahoma City, January 18, 2018.

<sup>113</sup> Human Rights Watch interview with Destiny Brown (pseudonym), Tulsa, January 25, 2018.

<sup>114</sup> Ande Nesmith and Ebony Ruhland, “Caregivers of Children with Incarcerated Parents,” May 15 2011, <https://benthamopen.com/contents/pdf/TOFAMSJ/TOFAMSJ-4-105.pdf> (accessed July 30, 2018).

One mother told us that while she was in jail her 62-year-old mother took care of her two minor grandchildren and great-granddaughter: “[it] aged her, stressed her ... [it was] hard on her, hard on her marriage, [she] nearly divorced because of it. ... [She] was in fear of being homeless.”<sup>115</sup> Another mother told us that her incarceration put a strain on her 54-year-old mother’s marriage and is hard on her 73-year-old grandmother who now has to “run around with my 4-year-old.”<sup>116</sup>

A 48-year-old grandmother, who is taking care of three of her grandchildren (ages 11, 3, and newborn), said, “It’s a struggle for me. I don’t have [money] taking care of all the kids and I don’t get assistance. ... It takes a lot of money to survive out here.”<sup>117</sup>

Karen Turner, a 65-year-old grandmother, has been struggling to take care of her 10-year-old granddaughter, whom she has raised since birth because of her daughter’s frequent incarceration. She lives on a fixed income, relying on social security and veteran’s benefits. Karen told us that her “budget is thin to nothing.” Since raising her granddaughter, Karen’s lifestyle has changed a lot. She has not been able to afford a haircut or manicure in 10 years and sometimes skips eating a full meal, instead subsisting on “toast,” so that she can feed her granddaughter. Although Karen’s daughter is now receiving treatment, as part of a diversion program, Karen estimates it will take “several years” before her daughter gets on her feet. Karen told us she hopes that by then “I’ll be Mimi. ... I haven’t really been able to be grandma to her. I’ve been mom, dad, and grandma.”<sup>118</sup>

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<sup>115</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, January 23, 2018.

<sup>116</sup> Human Rights Watch interview with Brooke Torres (pseudonym), Tulsa, January 25, 2018.

<sup>117</sup> Human Rights Watch telephone interview with Lori Smith (pseudonym), April 5, 2018.

<sup>118</sup> Human Rights Watch interview with Karen Turner (pseudonym), Tulsa, January 22, 2018, and telephone interview, March 13, 2018.



## II. Barriers to Pretrial Release

Despite the presumption of innocence, nearly 11 million people accused of crimes in the US are admitted to local jails each year.<sup>119</sup> Many are incarcerated pretrial for days, weeks, months, or longer because they cannot afford to pay even small amounts of money bail.<sup>120</sup> Women, who generally have fewer financial resources than men, may be even less likely to afford bail or bond.<sup>121</sup>

People locked up in jails face significant pressure to plead guilty to the charges against them in order to get out of jail more quickly and to resume their lives. For mothers, the need to get out of jail to care for their children, especially if they are single mothers, makes the pressure to accept a guilty plea offer especially acute. Several mothers we interviewed in Oklahoma said they were willing to give up their constitutional right to trial in order to get home to their children more quickly.<sup>122</sup>

### Money Bail

Pretrial incarceration is supposed to be a means of last resort,<sup>123</sup> but the imprisonment of individuals before they have been charged, convicted, and sentenced is a widespread practice throughout the US and in Oklahoma.

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<sup>119</sup> Zhen Zeng, "Jail Inmates in 2016," *Bureau of Justice Statistics*, February 2018, <https://www.bjs.gov/content/pub/pdf/ji16.pdf> (accessed September 16, 2018), p. 1.

<sup>120</sup> Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, (New York: Human Rights Watch, December 2010), [https://www.hrw.org/sites/default/files/reports/us1210webwcover\\_o.pdf](https://www.hrw.org/sites/default/files/reports/us1210webwcover_o.pdf); Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, (New York: Human Rights Watch, April 2017), [https://www.hrw.org/sites/default/files/report\\_pdf/usbailo417\\_web\\_o.pdf](https://www.hrw.org/sites/default/files/report_pdf/usbailo417_web_o.pdf).

<sup>121</sup> Bernadette Rabuy and Daniel Kopf, "Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time," *Prison Policy Initiative*, May 2016, <https://www.prisonpolicy.org/reports/incomejails.html> (accessed July 17, 2018).

<sup>122</sup> Human Rights Watch interviews with Nicole Allen (pseudonym), Oklahoma City, January 18, 2018, Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018 ("One hundred percent I would have pleaded to whatever they wanted to get back to my kid because I could have helped place him. I would have agreed to a hundred year suspended sentence I couldn't do just to make sure he is placed in a good home. ... I guarantee I would take any crazy offer to get out for the baby."), April Weiss, Oklahoma City, January 20, 2018, Chloe Washington (pseudonym), Oklahoma City, January 20, 2018, Tanisha James (pseudonym), Oklahoma City, January 20, 2018, Vanessa Evans (pseudonym), Tulsa, January 23, 2018; Cases outside of Oklahoma have also been documented. See Zave Martohardjono, "Lavette's Choice," *ACLU*, February 2018, <https://www.aclu.org/blog/smart-justice/lavettes-choice> (accessed September 16, 2018).

<sup>123</sup> Article 9(3), International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976,

International human rights law and US law both permit pretrial incarceration and the use of pretrial release with conditions, including money bail. However, any pretrial restrictions must be consistent with the right to liberty, the presumption of innocence, and the right to equality under the law.<sup>124</sup> Additionally, pretrial restrictions must not be discriminatory.<sup>125</sup>

On its face, the amount of bail associated with any particular offense may not be discriminatory, but as a practical matter, many people in the US cannot afford even a US\$400 emergency expense<sup>126</sup> and women are more likely to have trouble affording bail than men because of higher poverty levels and the gender pay gap, resulting in discriminatory outcomes.

A 2002 survey of jailed people conducted by the US Bureau of Justice Statistics found that jailed men were more likely (60 percent) to be employed during the month before their arrest than jailed women (40 percent).<sup>127</sup> Only a quarter of jailed women reported having an income from wages or salary, compared to two-thirds of jailed men.<sup>128</sup>

A 2016 report by the Prison Policy Initiative found that “[p]eople in jail are even poorer than people in prison and are drastically poorer than their non-incarcerated counterparts.”<sup>129</sup> Prior to detention, jailed women who were unable to post bail earned an average of \$11,071, compared to \$15,598 for jailed men.<sup>130</sup> Non-incarcerated men earned an average of \$39,600 compared to \$22,704 for non-incarcerated women.<sup>131</sup> The income disparities are starker for women of color. Incarcerated Black women earned \$9,083 prior to arrest and incarcerated Latinas earned \$12,178, compared to incarcerated white women who earned \$12,954.<sup>132</sup> About half of Black women and Latinas who are single have zero or

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ratified by the United States on June 8, 1992 (Article 9(3) of the ICCPR explicitly addresses pretrial detention, saying: “It shall not be the general rule.”).

<sup>124</sup> Ibid.

<sup>125</sup> Article 26 of the ICCPR, ICCPR article 2(1).

<sup>126</sup> Board of Governors of the Federal Reserve, “Report on the Economic Well-Being of U.S. Households in 2017,” May 2018, <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf> (accessed September 5, 2018), p. 2.

<sup>127</sup> Doris J. James, “Profile of Jail Inmates, 2002,” *Bureau of Justice Statistics*, July 2004, <https://www.bjs.gov/content/pub/pdf/pjio2.pdf> (accessed July 30, 2018), p. 9.

<sup>128</sup> Ibid.

<sup>129</sup> Rabuy and Kopf, “Detaining the Poor.”

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

negative net wealth.<sup>133</sup> And compared to white women, Black women are five times more likely to live in poverty and receive public assistance and are three times more likely to be unemployed.<sup>134</sup> Most of the mothers Human Rights Watch interviewed in Oklahoma experienced substance dependence, homelessness, and/or joblessness.

While nearly all offenses are bail eligible,<sup>135</sup> defendants can be subject to pretrial incarceration not because they are a flight risk or pose a danger to society,<sup>136</sup> but because they cannot afford money bail.

Case law in Oklahoma sets out several key factors courts need to consider when setting bail:

- (1) the seriousness of the crime defendant was charged with;
- (2) defendant's criminal record;
- (3) reputation and mental condition;
- (4) the length of residence in the community;
- (5) family ties and relationships;
- (6) employment history;
- (7) members of the community who could vouch for his reliability; and
- (8) other factors relating to his life, ties to the community or risk of flight.<sup>137</sup>

However, several public defenders told us that, in practice, many judges in Oklahoma set bail according to a district court bail schedule, which provides presumptive amounts of bail based on the charges against the accused in lieu of making an individualized bail determination.<sup>138</sup>

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<sup>133</sup> Elizabeth Swavola et al, "Overlooked: Women and Jails in an Era of Reform," *Vera Institute of Justice*, August 2018, <https://www.vera.org/publications/overlooked-women-and-jails-report> (accessed July 17, 2018), p. 19-20.

<sup>134</sup> *Ibid.*

<sup>135</sup> National Conference of State Legislatures, "Pretrial Release Eligibility," March 2013, <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-release-eligibility.aspx#50%20state%20chart> (accessed July 30, 2018). In Oklahoma, "all persons shall be bailable by sufficient sureties," but bail may be denied for several offense types, including capital offenses and violent offenses. 22 OK Stat § 22-1101.

<sup>136</sup> These are legitimate reasons the court may consider to permit pretrial incarceration.

<sup>137</sup> *Brill v. Gurich*, Court of Criminal Appeals of Oklahoma, 965 P.2d 404 (December 3, 1998).

<sup>138</sup> Human Rights Watch telephone interviews with Glen Blake and Stuart Southerland, Tulsa County public defenders, September 12, 2018,

Public defenders also told us that the burden is on them to file a motion to set reasonable bail and to make arguments before a judge consistent with the factors listed above, often weeks after the accused has been in jail.<sup>139</sup> Another public defender told us that counties with larger populations are more likely to use bail schedules to deal with higher case volumes.<sup>140</sup>

Human Rights Watch reviewed bail schedules in Tulsa County and Canadian County.<sup>141</sup>

In Tulsa County, for possession of a controlled drug (felony), the presumptive bail amount is \$5,000; for robbery (felony), it is \$25,000; and for trafficking marijuana (felony), it is \$25,000.<sup>142</sup> If multiple violations are alleged, the presumptive bail amount is the highest listed for any of the violations.<sup>143</sup>

In Canadian County, for any non-violent felony, the presumptive bail amount is \$5,000 for Oklahoma residents and \$10,000 for non-residents.<sup>144</sup> Violent felonies carry a presumptive \$25,000 bail for Oklahoma residents and \$50,000 for non-residents.<sup>145</sup> If multiple violations are alleged, the bail amount is combined.<sup>146</sup>

Defendants with higher incomes and more financial resources are likely to secure their release pretrial. Defendants who cannot afford the full amount of bail and cannot obtain a loan by any other means would generally have no choice but to resort to private bail bond companies that will guarantee bail, typically in exchange for payment of a nonrefundable fee—often around 10 percent<sup>147</sup> of the total bail amount (which would be \$500 to \$5,000 for the examples above).

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<sup>139</sup> Human Rights Watch telephone interview with Glen Blake and Stuart Southerland, Tulsa County public defenders, Tulsa, September 12, 2018.

<sup>140</sup> Human Rights Watch telephone interview with Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, September 12, 2018.

<sup>141</sup> AO-2017-6. Tulsa County District Court Administrative Order Amending Preset Bond Schedule, Revoking Prior Schedules; AO-2018-1. Canadian County District Court Administrative Order Re: Amended Bail Schedule.

<sup>142</sup> AO-2017-6.

<sup>143</sup> Ibid.

<sup>144</sup> AO-2018-1.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Public defenders in Oklahoma told us that paying a 10 percent portion of the bail amount set by the court has typically been the standard amount paid to a bail bond company, but this percentage can vary widely depending on the local circumstances. Public defenders in Tulsa said they sometimes see bond percentages as low as 5 to 8 percent. Human Rights

Obtaining a bail bond may be beyond reach for many or is a strain on families pooling together already limited financial resources. Those who are able to make bond also remain at risk of incarceration if they are unable to afford payments to the bond company.<sup>148</sup>

As one former Oklahoma state court judge told us, “Nobody has that kind of money waiting around. For a lot of folks [bail] might as well be a million. ... They will sit in jail until hell freezes over or they plead guilty.”<sup>149</sup>

Whether or not money bail or a nonmonetary form of release is set in a case can also vary depending on the bail practices of the county of arrest.<sup>150</sup> A public defender told us about a client who is a mother of four and has previous credit card fraud convictions. He said that she has pending charges in two neighboring counties (within the same judicial district)—in one county she was released without conditions, in the other county bail was set at \$200,000,<sup>151</sup> which demonstrates the “pretty stark difference” in pretrial release outcomes from county to county.<sup>152</sup>

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Watch telephone interview with Glen Blake and Stuart Southerland, Tulsa County public defenders, Tulsa, September 12, 2018. A public defender working in rural counties told us the bond can vary between 10 and 20 percent. Human Rights Watch telephone interview with Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, September 12, 2018.

<sup>148</sup> One mother we spoke with told us she attempted to make a late payment while her children waited in the car. The bondsperson called the police and she was arrested in front of her children after being searched by law enforcement. A year later, she again attempted to make a partial payment to the bondsperson and she was arrested and spent more than two months in jail. Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018. Vera has reported that bond surrender (when someone is returned back to jail by a bail bonds person) was one of the top arrests for people booked into Oklahoma County Jail in 2015. Nancy Fishman et al, “Report to Tulsa County Stakeholders on Jail Reduction Strategies,” *Vera Institute of Justice*, August 2017, <https://www.vera.org/publications/report-to-tulsa-county-stakeholders-jail-reduction-strategies> (accessed July 30, 2018), p. 15. We also spoke with a former judge and a public defender who both raised bond surrender as a major issue. Human Rights Watch telephone interviews with Dynda Post, former Oklahoma state district court judge, May 10, 2018 (“bondsmen would try to surrender bond for some of the most flimsy reasons.”), and Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, September 12, 2018 (“sometimes [bondmen] bring people back to court because someone hasn’t been making payments.”).

<sup>149</sup> Human Rights Watch telephone interviews with Dynda Post, former Oklahoma state district court judge, April 17, 2018 and May 10, 2018.

<sup>150</sup> Ben Botkin, “How Long a Jail Stay Lasts for Low-Level Charges Depends on the County,” *Oklahoma Watch*, May 2018, <http://oklahomawatch.org/2018/05/31/how-long-a-jail-stay-lasts-on-low-level-charge-depends-on-the-county/> (accessed August 25, 2018).

<sup>151</sup> Human Rights Watch telephone interview with Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, September 12, 2018.

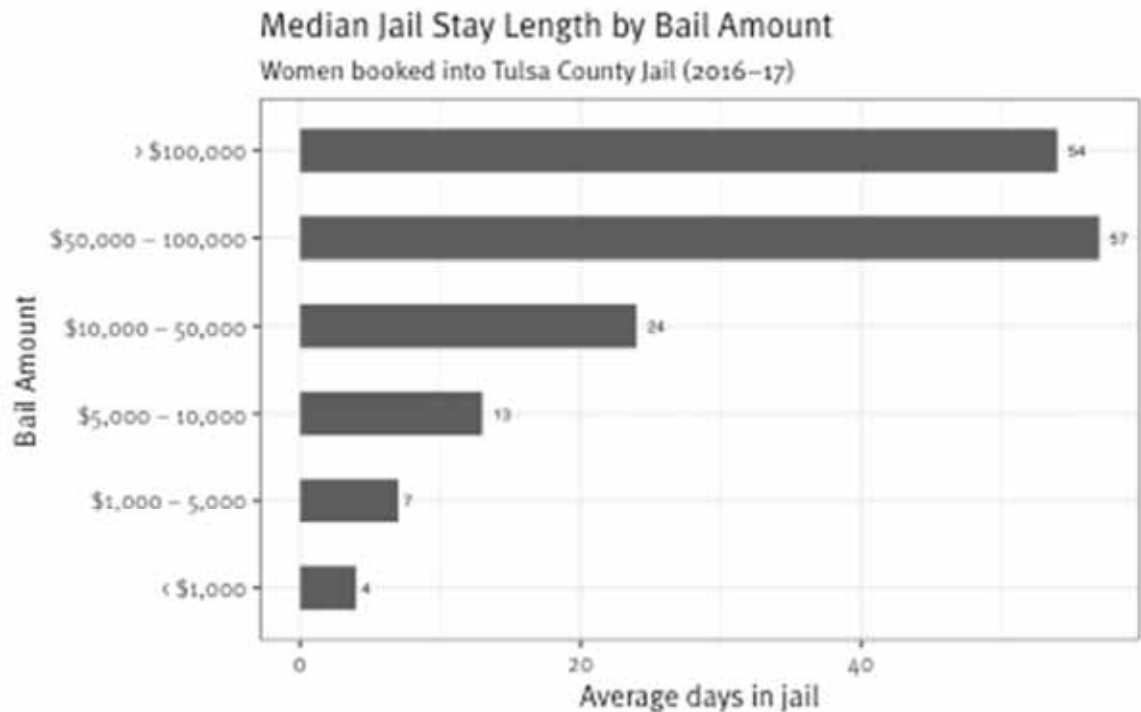
<sup>152</sup> *Ibid.*

## Lengthy Pretrial Incarceration

Even just a few days of pretrial incarceration can have a long lasting impact on jailed parents—they can lose their job, lose their housing, lose their belongings, and lose contact with their children.

Our analysis of Tulsa County Jail admissions data from 2016 and 2017 found that women, on average, spent 18 days in jail (median = 5) before bailing out.<sup>153</sup> Indigenous women and Latinas stayed in jail longer than Black and white women, on average.<sup>154</sup>

Length of stay is directly connected to the amount of bail set:<sup>155</sup>



Source: Human Rights Watch analysis of Tulsa County Sheriff's Department data

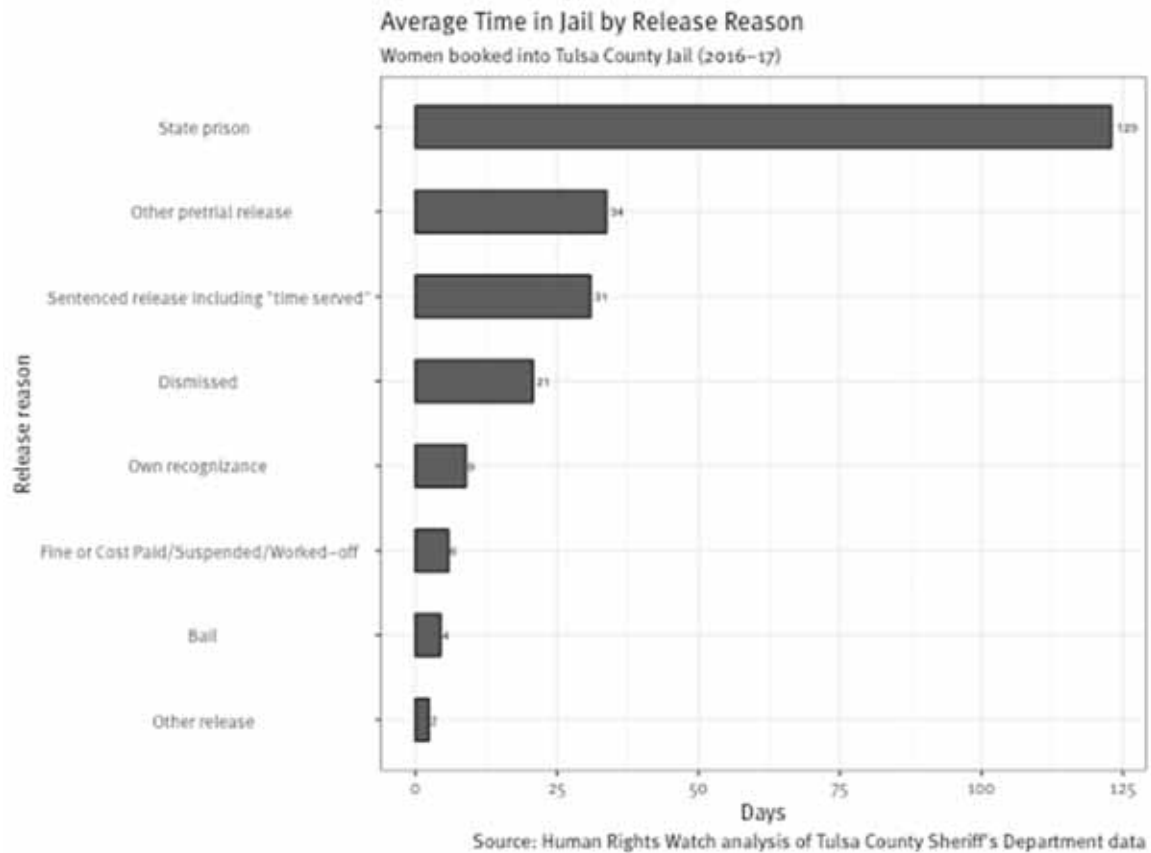
The average bail amount for women jailed in Tulsa County was \$13,675 (median = \$2,092).<sup>156</sup> There was little variation in these averages between women of different races.<sup>157</sup> The higher the bail, the longer women stayed in jail on average.<sup>158</sup>

<sup>153</sup> Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

Over 400 women were booked into jail only to have their cases dismissed.<sup>159</sup> Women who had their cases dismissed were held for 21 days on average (median = 9).<sup>160</sup> About 13 percent of women were released pretrial on their own recognizance after staying an average of 9 days in jail (median = 3) and approximately 5 percent are released pretrial in another manner.<sup>161</sup>



Public defenders in Oklahoma told us that it can take one to three weeks before they are brought in on a case.<sup>162</sup> Some of their clients spend 30 days in jail before they are assigned

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid. Dismissals accounted for 3.5 percent of women jailed in 2016 and 2017.

<sup>161</sup> Ibid.

<sup>162</sup> Human Rights Watch interviews with Glen Blake and Stuart Southerland, Tulsa County public defenders, Tulsa, January 24, 2018; Human Rights Watch telephone interviews with Patrice James, Still She Rises director of external relations, October 10, 2017, and Madison Melon, Oklahoma County public defender, July 19, 2018.

counsel and brought before a judge to move their case forward, even in cases where the charges against them only carry a maximum sentence of 30 days.<sup>163</sup> One said, “It just doesn’t make any sense how people whose charges carry a 30-day sentence ... have to wait the same amount of time to go to court as people whose charges carry longer sentences.”<sup>164</sup>

Our data analysis shows that 17 percent of women stayed in jail until they were sentenced, including “time served” sentences.<sup>165</sup> About one in three of this 17 percent pleaded guilty within the first 10 days of their jail stay, with the highest numbers coming on days four and five.<sup>166</sup> Another large proportion of women are released around the 30 day mark, reflecting what public defenders told us about the timeframe between arrest and when a meaningful hearing is held.<sup>167</sup>

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<sup>163</sup> Human Rights Watch telephone interviews with Travis Smith, Tulsa County public defender, May 17, 2018, and Glen Blake, Tulsa County public defender, May 16, 2018.

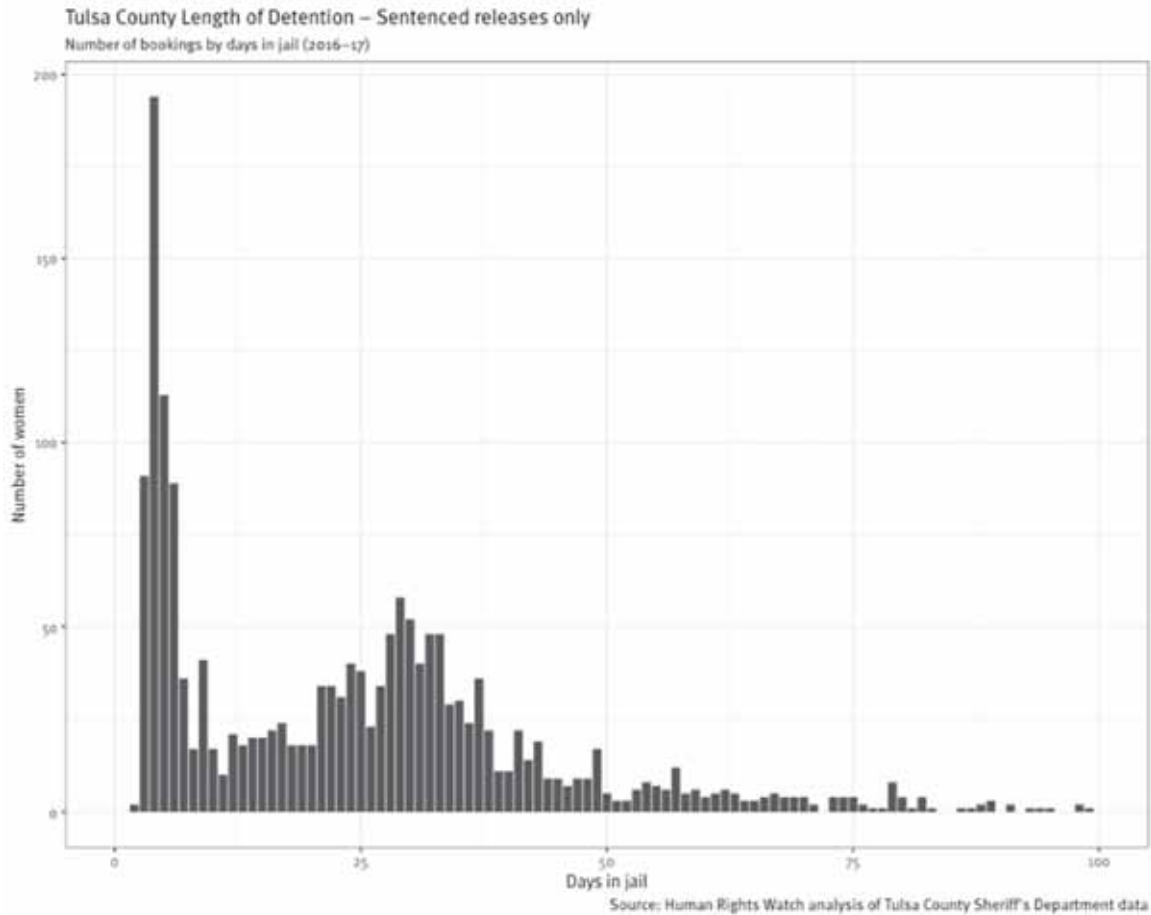
<sup>164</sup> Human Rights Watch telephone interview with Glen Blake, Tulsa County public defender, May 16, 2018.

<sup>165</sup> Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>166</sup> Ibid.

<sup>167</sup> Human Rights Watch interview with Glen Blake and Stuart Southerland, Tulsa County public defenders, Tulsa, January 24, 2018.





While most women left Tulsa County Jail within 30 days, 781 women were incarcerated between 30 and 60 days, 200 between 60 and 90 days, 185 between 90 and 180 days, 61 between 180 and 365 days, and 10 for more than 365 days.<sup>168</sup>

Many of the mothers we interviewed were in jail for several months and some told us that their scheduled dates to appear in court were repeatedly postponed, or in other words, they were “passed” over:

- Candace Smith, a 26-year-old mother of five incarcerated at Tulsa County Jail, recalled a conversation with her mother: “[I told her] ‘Mom, I think I’m lost in the system for real.’ I have been passed seven times in a row and nine times total since

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<sup>168</sup> Ibid.

I have been here. ... I haven't seen an attorney, haven't seen a courtroom or a judge [in four months].”<sup>169</sup>

- Alyssa Barnes, a 38-year-old mother of three incarcerated at Tulsa County Jail, told us that she had been “passed” six times in three months. She told us she did not have a public defender until recently and the private attorney she had hired to represent her had failed to show up to court on several occasions.<sup>170</sup>
- Mary White, a 34-year-old mother of one, was incarcerated at Oklahoma County Jail in 2014. She told us that she had no court date for three months and was told that her paperwork “fell through the cracks.” She was in jail for 10 months before she eventually was accepted into a diversion program.<sup>171</sup>
- Sonya Pyles, a 42-year-old mother of three and custodial grandmother, told us that her court dates were 30, 60, and sometimes 90 days apart when she was incarcerated at Tulsa County Jail in 2014.<sup>172</sup>

A Tulsa County public defender told us that when a defendant is “passed,” they “[do] not know what’s happening with their case. ... There’s a lot of sitting in the dark.”<sup>173</sup>

## Unique Pressure on Mothers to Plead Guilty

Nationwide, nearly all cases in state and federal courts are either dismissed or resolved via guilty pleas.<sup>174</sup> Negotiated plea agreements can be beneficial to the accused, however,

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<sup>169</sup> Human Rights Watch interview with Candace Smith (pseudonym), Tulsa, January 25, 2018.

<sup>170</sup> Human Rights Watch interview with Alyssa Barnes (pseudonym), Tulsa, January 25, 2018.

<sup>171</sup> Human Rights Watch interview with Mary White (pseudonym), Oklahoma City, January 19, 2018.

<sup>172</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, July 22, 2018.

<sup>173</sup> Human Rights Watch telephone interview with Travis Smith, Tulsa County public defender, May 17, 2018.

<sup>174</sup> Research conducted by the Bureau of Justice Statistics on case outcomes of felony defendants in a sampling of the 75 largest counties in the United States found that one-fourth of all cases were dismissed. Of cases that weren't dismissed, only 2 percent of felony cases went to trial and less than 1 percent of misdemeanor cases went to trial. The rest were resolved via guilty pleas. Brian A. Reaves, “Felony Defendants in Large Urban Counties, 2009 – Statistical Tables,” *Bureau of Justice Statistics*, December 2010, <https://www.bjs.gov/content/pub/pdf/fdluco9.pdf> (accessed July 30, 2018). Other Bureau of Justice Statistics reports estimated that 95 percent of federal cases were resolved via guilty pleas in 2009, and cited research estimating guilty pleas in state and federal courts between 90 and 95 percent. Lindsey Devers, “Plea and Charge Bargaining: Research Summary,” *Bureau of Justice Statistics*, January 2011, <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf> (accessed July 30, 2018). The United States Sentencing Commission reports that 97 percent of federal cases were resolved via guilty pleas. The statistics are the same in Oklahoma federal courts. United States Sentencing Commission, “Statistical Information Packet,” 2016, <https://www.usc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2016/ok16.pdf> (accessed July 30, 2018). Human Rights Watch was unable to locate comparable data on state level rates of case disposition, including rates of guilty pleas. We did submit an Open

prosecutors have most of the power in shaping a case's outcome, pretrial incarceration itself negatively impacts case outcomes,<sup>175</sup> and it can take months and even longer than a year to have a trial.<sup>176</sup>

The lengthy wait to go to trial coupled with the jail environment can coerce a defendant to accept a guilty plea that, in the long run, may not be in their best interest.<sup>177</sup> Several mothers told us that the conditions in jails were unbearable—from sleeping on concrete without mattresses and blankets<sup>178</sup> to the lack of feminine hygiene products.<sup>179</sup> Mothers also told us that three or four women were placed in a two-person cell in Oklahoma County Jail, though there is some evidence that this may no longer be the case.<sup>180</sup> One mother said that her anxiety attacks were worsened while in jail because of the conditions.<sup>181</sup>

In addition to the already overwhelming pressure to plead guilty, some mothers told us that they accepted a guilty plea offer to a noncustodial sentence because they needed to return home quickly to care for their children:

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Records Act request to the Clerk of Court in Tulsa County and Oklahoma County, requesting plea information for cases in 2016 and 2017 but we did not receive responsive documents.

<sup>175</sup> Pretrial incarceration is also shown to have long-term impacts on employment and public assistance post-release. Will Dobbie, Jacob Goldin, and Crystal S. Yang, “The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” September 2017, <https://www.princeton.edu/~wdobbie/files/bail.pdf> (accessed July 17, 2018).

<sup>176</sup> One mother we spoke with at Tulsa County Jail had been detained for 16 months awaiting trial. Human Rights Watch interview with Brianna Williams (pseudonym), Tulsa, January 25, 2018.

<sup>177</sup> Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, (New York: Human Rights Watch, October 2016), [https://www.hrw.org/sites/default/files/report\\_pdf/usdrug1016\\_web\\_o.pdf](https://www.hrw.org/sites/default/files/report_pdf/usdrug1016_web_o.pdf).

<sup>178</sup> Human Rights Watch interview with Ashley Wilson (pseudonym), Oklahoma City, January 19, 2018.

<sup>179</sup> Human Rights Watch interview with Brandy Martinez (pseudonym), Tulsa, January 25, 2018 (when she would ask for sanitary napkins, she told us that staff at Tulsa County Jail would tell her that they “don’t have it.” She had to ask other jailed women but she said, women held onto sanitary napkins “like a treasure.”). Nancy Curry, a clinician with the Parenting in Jail program also told us that men and women are given the same amount of toilet paper, even though women typically use toilet paper when they urinate and men do not, and women often use toilet paper as a substitute for sanitary pads. Human Rights Watch interview with Nancy Curry, Parenting in Jail program clinician and coordinator, Tulsa, January 25, 2018. Nationally, advocates and lawmakers are advocating for the needs of incarcerated women, including access to sufficient menstrual hygiene products. Dignity for Incarcerated Women Act of 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1524/text> (accessed July 30, 2018).

<sup>180</sup> Human Rights Watch interviews with Ashley Wilson (pseudonym), Oklahoma City, January 19, 2018, and Tanisha James (pseudonym), Oklahoma City, January 20, 2018. Oklahoma County Jail has recently experienced considerable reductions in its jail population over the past two years. Human Rights Watch interview with Mark Opgrande, Oklahoma County Sheriff's Office public information officer, July 24, 2014 (noting that the jail population at Oklahoma County Jail reduced from 2,700 in 2017 to 1,800 in 2018); The Oklahoman Editorial Board, “Smaller population a bright spot for OK County jail,” *NewsOK*, January 2018, <https://newsok.com/article/5577944/smaller-population-a-bright-spot-for-ok-county-jail> (accessed August 25, 2018).

<sup>181</sup> Human Rights Watch interview with Tanisha James (pseudonym), Oklahoma City, January 20, 2018.

- April Weiss, a 30-year-old mother of three, was charged with robbery and detained in Oklahoma County Jail in 2012. She said that she pleaded guilty and received a 10-year suspended sentence, against the advice of counsel. April said she could have fought the charge but she decided she had to get back to her children: “I wasn’t thinking ‘Oh I am going to be a felon [for] the rest of my life,’ I was just thinking I have to take care of my kids.”<sup>182</sup>
- Tanisha James, a 25-year-old mother of four, believed that the domestic violence charges against her were likely to be dismissed but after being detained in Oklahoma County Jail for nearly a month, she pleaded guilty in exchange for five years probation. She told us “I was away from my kids and all I wanted to do was be around them.”<sup>183</sup>

When Vanessa Evans, a 21-year-old mother of one, was arrested, her two-month-old daughter was in the car. She said that the bail amount was too high for her to pay. After four months at Tulsa County Jail, Vanessa said she chose to participate in a diversion program instead of fighting her charges because “I didn’t want to miss out on my baby anymore.”<sup>184</sup>

Mothers who spent time incarcerated pretrial in Oklahoma jails also told us that they were concerned about losing custody of, or contact with, their children.

Chloe Washington, a 47-year-old mother of six, was arrested for possession of a firearm and attempted armed robbery. Bail was set at \$48,000, which she could not afford to pay. She told us that she was incarcerated at Oklahoma County Jail for nine months, and only saw her children twice via video, before she accepted a guilty plea. She said, “I’m thinking I got to get out of here, I got to get these kids or they’ll be adopted out.” As part of her sentence, Chloe was required to complete a rehabilitative program in prison in addition to receiving an eight-year suspended sentence.<sup>185</sup>

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<sup>182</sup> Human Rights Watch interview with April Weiss, Oklahoma City, January 20, 2018.

<sup>183</sup> Human Rights Watch interview with Tanisha James (pseudonym), Oklahoma City, January 20, 2018.

<sup>184</sup> Human Rights Watch interview with Vanessa Evans (pseudonym), Tulsa, January 23, 2018.

<sup>185</sup> Human Rights Watch interview with Chloe Washington (pseudonym), Oklahoma City, January 20, 2018.

### III. Barriers to Parent-Child Contact

Incarceration should not deprive parents of their right to remain in contact with their children. Family visitation and communication in jails and prisons has been shown to produce multiple benefits: stronger bonds between incarcerated people and their families, improved post-release outcomes such as lower recidivism rates, greater parent-child attachment, and decreased misconduct while behind bars.<sup>186</sup> Research conducted in Minnesota found that a single visit between a parent and child could reduce recidivism rates.<sup>187</sup>

Regular contact between parents and children is necessary to ensure stability for both parent and child.<sup>188</sup> And if a jailed mother has children in foster care, having a substantial relationship with her children is essential for reunification after release. As one non-profit lawyer explained, “you can’t have a substantial relationship with kids if there is no visitation.”<sup>189</sup>

Despite all the benefits of facilitating family relationships during incarceration, the visitation and communication policies and practices in Oklahoma’s jails create almost insurmountable roadblocks to meaningful parent-child interactions.

Visitation and communication may be severely limited in jails because jails are meant to house people for shorter periods of time—but the reality is that many people spend substantial periods of time incarcerated in jails. Some jailed mothers we spoke with did not see their children at all or only spoke with them once or twice over the telephone during long periods of pretrial incarceration.<sup>190</sup> Even if jailed mothers manage to have regular contact with their children, it is not a replacement for being physically present. One

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<sup>186</sup> Lindsey Cramer, et al., “Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of Research and Practice,” *Urban Institute*, April 2017, [https://www.urban.org/sites/default/files/publication/89601/parent-child\\_visiting\\_practices\\_in\\_prisons\\_and\\_jails.pdf](https://www.urban.org/sites/default/files/publication/89601/parent-child_visiting_practices_in_prisons_and_jails.pdf) (accessed July 30, 2018), p. 8.

<sup>187</sup> Minnesota Department of Corrections, “The Effects of Prison Visitation on Offender Recidivism,” November 2011, [https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy\\_tcm1089-272781.pdf](https://mn.gov/doc/assets/11-11MNPrisonVisitationStudy_tcm1089-272781.pdf) (accessed July 30, 2018), p. 18.

<sup>188</sup> *Ibid.*

<sup>189</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018.

<sup>190</sup> Human Rights Watch interviews with April Weiss, Oklahoma City, January 20, 2018, Jennifer Scott (pseudonym), Oklahoma City, January 19, 2018, Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018, and Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018.

jailed mother of five, who had been incarcerated for 16 months awaiting trial, said of her absence: “you miss so much when you’re gone, ... from first teeth to first words.”<sup>191</sup>

## Policies and Practices that Limit or Bar Family Contact

Oklahoma is comprised of 77 counties and each county has their own jail.<sup>192</sup> Because many Oklahoma county jails provide no information on visitation and communication policies online, Human Rights Watch undertook a 25-county survey by calling county jails and sheriffs’ offices. The information we gathered is set forth below, and in the appendices of this report, and confirms what several public defenders we interviewed told us: jails “treat visitation as a perk”<sup>193</sup> and the “rules [are] in [a] constant state of flux.”<sup>194</sup> Indeed, during the course of our survey, a few jails discontinued in-person visitation, opting for video visitation as a substitute.<sup>195</sup> As Mark Opgrande, the public information officer for the Oklahoma County Sheriff’s Office told us: “jail isn’t conducive to bring people in for visits. [It’s a] packed house, it takes up time and energy, and the jail is understaffed.”<sup>196</sup>

### *In-Person Visitation*

Only six out of 25 county jails surveyed told us that regularly scheduled in-person visitation is available.<sup>197</sup> The form and quantity of visitation varies. In Comanche County, Stephens County, and Wagoner County, in-person visitation is the only form of visitation available.<sup>198</sup> Visits are offered one to two times per week and the length of visits range between 15 and 30 minutes.<sup>199</sup> Stephens County Jail<sup>200</sup> does not permit children to visit and

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<sup>191</sup> Human Rights Watch interview with Brianna Williams (pseudonym), Tulsa, January 25, 2018.

<sup>192</sup> Human Rights Watch phone telephone interview with Scott Chisholm, Jail Inspection Division program manager, July 30, 2018. The Jail Inspection Division of the Oklahoma State Department of Health monitors 152 jails total (county and city run jails).

<sup>193</sup> Human Rights Watch interview with Glen Blake, Tulsa County public defender, Tulsa, January 24, 2018.

<sup>194</sup> Human Rights Watch interview with Stuart Southerland, Tulsa County public defender, Tulsa, January 24, 2018.

<sup>195</sup> Human Rights Watch began surveying county jails in April 2018. Originally, we were told by Carter County Jail, Cherokee County Jail, Creek County Jail, and Canadian County Jail that they offered in-person visitation. During follow-up calls in September 2018, we were told that in-person visitation had been discontinued. We updated our findings to reflect this change. Human Rights Watch survey of Oklahoma jails, Appendix I (call log and notes are with researcher).

<sup>196</sup> Human Rights Watch phone telephone interview with Mark Opgrande, Oklahoma County Sheriff’s Office public information officer, April 16, 2018.

<sup>197</sup> County jails permitting in-person visitation include Comanche County Jail, Delaware County Jail, Le Flore County Jail, Stephens County Jail, Tulsa County Jail, and Wagoner County Jail. Human Rights Watch survey of Oklahoma jails, Appendix I (call log and notes are with researcher).

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

Tulsa County Jail does not permit children under 14 to visit, unless special procedures are followed or the jailed mother is participating in the Parenting in Jail program.<sup>201</sup> Le Flore County Jail allows a maximum of three child visitors each visit.<sup>202</sup> Jailed people must wait between one to 10 business days before they can begin to receive visits, depending on the jail's policy.<sup>203</sup> Comanche County Jail only permits jailed people to visit with their biological children.<sup>204</sup>

All in-person visits are held behind a glass barrier, with the exception of visits between mothers and their children as part of the Parenting in Jail Program at Tulsa County Jail.<sup>205</sup>

Contact visits are especially important for incarcerated mothers with young children because young children need physical contact for bonding and attachment<sup>206</sup> and young children cannot understand why their mother cannot hold, touch, or play with them.

The only mother-child visitation program<sup>207</sup> in Oklahoma jails is located at Tulsa County Jail, which permits full contact visits between eligible jailed mothers and their children once per week.

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<sup>200</sup> When Human Rights Watch asked why children were not permitted to visit, staff at Stephens County Jail told us “that’s just the jail rules.” Human Rights Watch telephone interview with Stephens County jail staff, September 12, 2018.

<sup>201</sup> Human Rights Watch survey of Oklahoma jails, Appendix I.

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> *Ibid.* Limiting visits to biological children only can be problematic, especially when the jailed person was the primary caretaker of a minor child that is not their biological child prior to their incarceration.

<sup>205</sup> *Ibid.*

<sup>206</sup> See Cramer et al, “Parent-Child Visiting Practices in Prisons and Jails,” (“[M]any experts believe that contact visits conducted in supportive, safe, and child-friendly environments are likely the best option to help most families mitigate the harmful effects of parental incarceration. Further, a growing body of research supports the use of contact visits, which allow children to see that parents are safe and healthy while in prison or jail. Spending time together as a family through play, conversation, or sharing a meal can also help mitigate children’s feelings of abandonment and anxiety. Parents and children can use these activities to work on existing relationships, establish new bonds, or repair strained relationships. This type of relationship building can help children feel more attached to their parents and benefit their well-being, emotional adjustment, self-esteem, and school behavior.”) (internal citations omitted), p. 3.

<sup>207</sup> Nationwide, mother-child visitation programs are few and far between, have extensive waiting lists, restrictive eligibility requirements, and are typically offered in prisons only. In Oklahoma, programs such as Girl Scouts Beyond Bars help to coordinate visits inside of prisons between parents and children. These programs are shown to benefit children. For example, 680 children participated in the Girl Scouts of Eastern Oklahoma Beyond Bars Program in 2014. 475 out of 522 children with negative school behavior showed improvement in school. The Girl Scouts Beyond Bars program out of Girl Scouts of Eastern Oklahoma has worked with 194 mothers by providing Nurturing Parenting classes and facilitating visits in prison and has served more than 680 children. Their program has also improved family reunification. “Girl Scouts Beyond Bars,” Girl Scouts of Eastern Oklahoma, <https://www.gseok.org/en/outreach/girl-scouts-beyond-bars.html> (accessed July 25, 2018). Eleven states in the US also have “prison nurseries,” where eligible mothers are allowed to keep their newborn babies in custody with them for a set period of time. These states are California, Illinois, Indiana, Nebraska, New York, Ohio, South Dakota,

### Parenting in Jail Program<sup>208</sup>

The Parenting in Jail program at the Tulsa County Jail was established with a private grant in September 2014. The program works with approximately 20 women at a time and has 15 new clients every seven weeks. More than 250 women have participated since its inception.

Since 2015, the program has provided women with mental health and substance use assessments, treatment plans, and advocacy, in addition to the Parenting Inside Out curriculum. The program works collaboratively with incarcerated mothers to meet their goals, which include drug and alcohol recovery, relationship-building with children and families, and coping with trauma. Most treatment plans include individual counseling. The program also provides support to caregivers, coordinates with child welfare services to secure visitation, and works with reentry specialists that support mothers while incarcerated and when they return to their communities.

The Parenting Inside Out curriculum is a six-week course (two hours per day, five days per week) run in the county jail. Mothers who complete six classes can begin to have visits with their children. Visits take place every Thursday for one hour. Mothers spend time with their children in a designated visiting area where mothers are allowed to change out of the jail-issued orange shirt. The visiting room is in a library-like setting with colorful placemats and toys. About 34 percent of program participants have weekly visits.

Mothers housed in restrictive housing (segregation) or who are classified at higher security levels are not eligible to participate and priority is given to mothers with children ages eight or younger. Mothers are required to have a child under 14 to participate. Fifty percent complete the parenting course and the program has a 20-25 percent graduation rate. Because the program is housed inside a jail, most women are released prior to completion.

The majority of program participants have been women of color, with 45 percent identifying as white, 27 percent African American, 15.9 percent Native American, 10.6 percent Latina, and 1.6 percent Native Hawaiian/Pacific Islander.

Human Rights Watch observed a scheduled visitation day at Tulsa County Jail during which four mothers were reunited with their children for one hour. For example, Candace Smith, a 26-year-old mother of five, gave birth to her youngest child while detained for more than

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Texas, Washington, West Virginia, and Wyoming. See Women's Prison Association, "Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives," May 2009, [http://www.wpaonline.org/wpaassets/Mothers\\_Infants\\_and\\_Imprisonment\\_2009.pdf](http://www.wpaonline.org/wpaassets/Mothers_Infants_and_Imprisonment_2009.pdf) (accessed July 30, 2018). However, similar programs are even more rare for jails, which are intended for shorter stays. We know of only two jail nurseries in the US: one in New York at Riker's Island and one in Illinois in Cook County. Women's Prison Association, "Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives," May 2009, [http://www.wpaonline.org/wpaassets/Mothers\\_Infants\\_and\\_Imprisonment\\_2009.pdf](http://www.wpaonline.org/wpaassets/Mothers_Infants_and_Imprisonment_2009.pdf) (accessed July 30, 2018); Elizabeth Swavola, Kristine Riley, and Ram Subramanian, "Overlooked: Women and Jails in an Era of Reform," *Vera Institute of Justice*, August 2016, <https://www.vera.org/publications/overlooked-women-and-jails-report> (accessed July 30, 2018), p. 17.

<sup>208</sup> Human Rights Watch telephone interview with Nancy Curry, Parenting in Jail program clinician, May 25, 2018.



eight months at Tulsa County jail.<sup>209</sup> As part of the program, she was able to visit with three of her children, including her seven-week-old newborn. During the visit we observed, Candace held her infant while simultaneously playing and talking with her 11 and 3-year-old daughters. Lori Smith, Candace's mother, told us that the parenting program has given Candace the opportunity to bond and develop a close relationship with her newborn, despite their separation.<sup>210</sup>

Vanessa Evans, a 21-year-old mother of one, told us that she was concerned that being in jail would impact her relationship with her 1-year-old daughter. "I just didn't think my baby would know me, ... we wouldn't have a connection. ... [Because of the Parenting in Jail program] I got to bond with my baby. ... I believe that has created the bond my daughter and me have now. ... It was the first time I got to hold her since I was arrested."<sup>211</sup>

However, a few mothers we spoke with told us they were in jail for two to seven months before they could get into the program and begin visits.<sup>212</sup>

Jailed mothers may also face difficulty receiving visits if their children are in the custody of Oklahoma's child welfare system (OKDHS). Some children may have been placed in OKDHS custody prior to their mother's arrest, while others may have been placed in OKDHS custody as a result of their mother's arrest. While parents have a right to regular visitation and communication with their children,<sup>213</sup> OKDHS policies provide a great deal of latitude to OKDHS caseworkers to decide whether and how to provide for child visitation depending on the OKDHS "case plan goal" for the child.<sup>214</sup> Jailed mothers are thus reliant on the juvenile court system, OKDHS, and jail staff to facilitate visitation between them and their children.

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<sup>209</sup> Human Rights Watch interview with Candace Smith (pseudonym), Tulsa, January 25, 2018.

<sup>210</sup> Human Rights Watch telephone interview with Lori Smith (pseudonym), April 5, 2018.

<sup>211</sup> Human Rights Watch interview with Vanessa Evans (pseudonym), Tulsa, January 23, 2018.

<sup>212</sup> Human Rights Watch interviews with Vanessa Evans (pseudonym), Tulsa, January 23, 2018, Tiana Henderson (pseudonym), Tulsa, January 25, 2018, and Brianna Williams (pseudonym), Tulsa, January 25, 2018.

<sup>213</sup> Oklahoma Department of Human Services, "Case Planning for Incarcerated Parents," 340:77-6-30, Child's visitation with parents and siblings, <http://www.okdhs.org/library/policy/Pages/oac340075060030000.aspx> (accessed August 25, 2018).

<sup>214</sup> Oklahoma Department of Human Services, "Case Planning for Incarcerated Parents," policy 340:75-6-45, ("Ongoing visitation with the incarcerated parent depends on the case plan goal."), <http://www.okdhs.org/library/policy/Pages/oac340075060045000.aspx#1> (accessed September 6, 2018).

Even in cases in which OKDHS caseworkers may decide to arrange for visitation, OKDHS policy offers contradictory standards for the frequency of contact between caseworkers and parents. One policy requires face-to-face contact between jailed parents and caseworkers 14 days after a child is removed from the home and every 30 days thereafter;<sup>215</sup> another policy provides 30 days to make contact with parents and requires that communication be arranged via jail (correctional) case managers.<sup>216</sup>

Staff at the Parenting in Jail program told us that arranging visitation between mothers and their children is easier when OKDHS is not involved.<sup>217</sup> Nancy, a clinician, said that some OKDHS workers are supportive and help facilitate visits but others see their job as “needing to protect the children by keeping them away from their mother.”<sup>218</sup> Noting that OKDHS caseworkers sometimes argue that visits are inappropriate because the child is experiencing trauma, Nancy emphasized: “Don’t you think being separated from [their] parents is part of that? Including biological parents and caregivers can be healing. ... [Visits] might be upsetting [for children] but that doesn’t mean [they are upset] from seeing their parents.”<sup>219</sup>

Judges in juvenile court (overseeing OKDHS cases) can order visitation but several attorneys and service providers told us that key decision makers in OKDHS cases believe that jail is an inappropriate and traumatizing environment for children thus leading to no visitation.

An assistant district attorney in Oklahoma County who handles juvenile court cases said:

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<sup>215</sup> Oklahoma Department of Human Services, “Oklahoma Department of Human Services (OKDHS) contacts with child, placement providers, parents, and service providers,” policy 340:75-6-48 (“[T]he CW specialist has face-to-face contact with the child’s parent within the first 14-calendar days of the child’s removal and a minimum of once every calendar month thereafter, with no more than 31-calendar days between contacts. . . .Phone contact with the child’s parent is allowed in place of face-to-face contact when the parent is incarcerated in a facility *other than a local jail* or lives out-of-state.”)(emphasis added), <http://www.okdhs.org/library/policy/Pages/oac340075060048000.aspx> (accessed September 6, 2018).

<sup>216</sup> Oklahoma Department of Human Services, “Case Planning for Incarcerated Parents,” policy 340:75-6-45, (“Ongoing visitation with the incarcerated ... is coordinated with the correctional case manager. The CW specialist: (1) determines whether visitation with the incarcerated parent occurred prior to the child’s placement in OKDHS custody, the frequency of visitation, and the child’s preference to establish an appropriate visitation schedule. (2) is encouraged to use relatives to assist in facilitating visitation between the child and the incarcerated parent.”).

<sup>217</sup> Human Rights Watch interview with Nancy Curry, Parenting in Jail Program clinician, Tulsa, January 25, 2018.

<sup>218</sup> Human Rights Watch telephone interview with Nancy Curry, Parenting in Jail program clinician, May 25, 2018.

<sup>219</sup> Ibid.

For incarcerated parents, pretty much no judges order visitation. ... A lot of judges worry about the potential trauma of the child going in and out of those facilities. ... Even more so for jails than it is for prisons because of the environment of the jail. ... It's traumatizing in the judge's eyes.<sup>220</sup>

An attorney representing children in juvenile court also told us that visitation in jail “just doesn't seem to happen ... and I just don't see how it would happen” given the conditions of jails.<sup>221</sup>

If parent-child visits in jail are ordered and facilitated, OKDHS policies allowing 30 days between communications, and requiring arrangements be made with jail case managers, can slow things down.<sup>222</sup> Interviewees explained that it could take months before visitation starts. Travis Smith, a public defender in Tulsa County, said, “[Clients] don't have meaningful communication with their children. ... We don't see [OK]DHS bringing children to visit in the jails until around three months [have passed]. ... They try really hard to avoid [setting up visits].”<sup>223</sup>

While some judges may arrange for visitation corresponding with court proceedings,<sup>224</sup> there appears to be limited access to visitation within the jail and very few opportunities for regular visitation outside of the jail setting.

Without court orders, OKDHS facilitation, and cooperation from jails, many jailed mothers are separated from their children and unable to see them face-to-face for the duration of their pretrial incarceration. This outcome has negative repercussions beyond the immediate harms because parents are expected to see and communicate with their children regularly to successfully reunify with them post-release.

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<sup>220</sup> Human Rights Watch telephone interview with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

<sup>221</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018; see also Human Rights Watch email correspondence with OKDHS, September 21, 2018 (“The visits could occur at the jail, if permitted and if they have child-friendly visitation accommodations.”). Outside of the Parenting in Jail program, no jails in Oklahoma have “child-friendly” visitation accommodations.

<sup>222</sup> For example, in a case involving a father who was “in the custody of the Department of Corrections (DOC)” in Tulsa County Jail the court noted a breakdown in communication between OKDHS and the case manager. *In the Matter of Minor Child G.V.*, 2016 Oklahoma Court of Civil Appeals, Division IV, Case Number 113934, January 27, 2016 (“The DHS caseworker attempted to contact Father's DOC case manager but had received no return call.”).

<sup>223</sup> Human Rights Watch telephone interview with Travis Smith, Tulsa County public defender, May 17, 2018.

<sup>224</sup> Human Rights Watch telephone interviews with Michelle Huffman, Tulsa County public defender, July 30, 2018 and Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

Four of the six jails permitting in-person visitation told us that people in segregation for disciplinary reasons are not able to receive visits.<sup>225</sup> This can affect parent-child visitation:

- Tiana Henderson, a 21-year-old mother of one, said that she was placed in segregated housing at Tulsa County Jail following an allegation of misconduct. Tiana told us “[the investigation is] preventing me from seeing my baby.”<sup>226</sup>
- Brianna Williams, a 28-year-old mother of five, described a similar experience. She said she spent eight days in segregation pending a misconduct investigation, during which time she was unable to see visitors. She said that her mother called the jail administrator several times before she learned where Brianna was located.<sup>227</sup>

Restrictions on the form of visitation and the inhospitable environment available for visits also led some mothers to conclude that those visits would not be beneficial to them and their children.<sup>228</sup>

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<sup>225</sup> Out of the six jails permitting in-person visitation, staff at four jails told us that visitation is restricted if someone is in segregation for disciplinary reasons. Staff at the other two jails did not provide us with this information. Human Rights Watch survey of Oklahoma jails, Appendix I.

<sup>226</sup> Human Rights Watch interview with Tiana Henderson (pseudonym), Tulsa, Oklahoma, January 25, 2018.

<sup>227</sup> Human Rights Watch interview with Brianna Williams (pseudonym), Tulsa, Oklahoma, January 25, 2018.

<sup>228</sup> Human Rights Watch interviews with Jennifer Scott (pseudonym), and Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.



In-person visitation area inside Tulsa County Jail, where families can visit once per week for 30 minutes behind a glass barrier.

### *Video Visitation*

Video visitation is the primary form of visitation available in the Oklahoma county jails we surveyed, mostly as a substitute for in-person visits.<sup>229</sup>

A majority (21 out of 25) told us that in-facility video visitation is available (where families travel to the jail for visits on a video screen).<sup>230</sup> In-facility video visitation is generally available at no cost, but a few jails charge for each visit, only provide one free visit per

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<sup>229</sup> National research has found that 74 percent of jails with video visitation programs have completely eliminated in-person visitation and unlike prisons, jails regularly prohibit in-person visitation throughout the US. See Bernadette Rabuy and Peter Wagner, "Screening Out Family Time: The for-profit video visitation industry in prisons and jails," *Prison Policy Initiative*, January 2015, <https://www.prisonpolicy.org/visitation/report.html> (accessed July 30, 2018), p. 11.

<sup>230</sup> Human Rights Watch survey of Oklahoma jails, Appendix I.

month, or charge to extend the length of a visit.<sup>231</sup> Length and quantity also varies, from one to seven visits per week for 10 to 30 minutes each visit.<sup>232</sup>

Children are not permitted to visit, even via video, inside of three county jails (Carter, Cherokee, and Pittsburg).<sup>233</sup> Six jails limit the number of children who can visit at the jail, ranging from one to three children per visit.<sup>234</sup> Video visits with children may also be limited to biological children of the jailed person.<sup>235</sup>

In 16 county jails, remote video visitation is available (where families can see their jailed loved one without traveling to the jail) but it is not a free service and can cost between 25 to 67 cents per minute.<sup>236</sup> Remote visits typically are not limited in length and quantity—as long as families can afford the expense.<sup>237</sup> At a 50 cent per-minute rate, a 15-minute video call each day for one month costs more than US\$200, which is likely cost-prohibitive for struggling families.

Children may also be barred from remote video visitation as well. Cherokee County Jail staff told us that they also bar children from visiting remotely.<sup>238</sup> Additionally, 11 jails also prevent people in segregation for disciplinary reasons from receiving video visits.<sup>239</sup>

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<sup>231</sup> Ibid.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid. When Human Rights Watch asked why children were not permitted to visit, staff at Carter County Jail staff told us it has “been this way ever since I’ve been here [6 years]” and flagged potential liability issues. Human Rights Watch telephone interviews with Stephens County jail staff, September 10 and September 12, 2018. Cherokee County Jail staff said it is “just the policy.” Human Rights Watch telephone interview with Cherokee County Jail staff, September 10, 2018. Pittsburg County Jail staff said it is “just our rule, we don’t allow it.” Human Rights Watch telephone interview with Pittsburg County Jail staff, September 17, 2018.

<sup>234</sup> Grady County Jail permits only two children to visit (one child per adult visitor), Le Flore County Jail permits only three children to visit, Oklahoma County Jail only permit two children to visit, Pottawatomie County Jail only permits two children to visit, Rogers County Jail only permits three children to visit, and Sequoyah County Jail only permits one child to visit. Human Rights Watch survey of Oklahoma jails, Appendix I.

<sup>235</sup> Cleveland County Jail told us that only biological children can visit. Human Rights Watch telephone interviews with Cleveland County Jail staff, September 12, 2018. A few other jails did not know whether or not a direct biological relationship is required between a jailed person and the minor child visitor.

<sup>236</sup> Human Rights Watch survey of Oklahoma jails, Appendix I.

<sup>237</sup> Ibid.

<sup>238</sup> When Human Rights Watch asked why children were not permitted to visit remotely, Cherokee County Jail staff said it is “just the facility rule, [I] don’t know actual reason.” Human Rights Watch telephone interview with Cherokee County jail staff, September 12, 2018.

<sup>239</sup> These counties include Carter, Cherokee, Cleveland, Garfield, Grady, Le Flore, Oklahoma, Osage, Pottawatomie, Tulsa, and Washington. Human Rights Watch survey of Oklahoma jails, Appendix I.

While video visitation has possible benefits,<sup>240</sup> and is better than no visitation at all, it can be a poor form of communication for incarcerated mothers and their children, especially when video visitation is used to replace, rather than to supplement, in-person visitation. For instance, younger children have less developed verbal communication skills and can be easily distracted, video visitation is subject to technology failures (especially for people without access to high speed internet),<sup>241</sup> and video visitation may be inaccessible to older people. One jailed mother told us that her 60-year-old mother, who is taking care of her children while she is in jail, struggled with using the video visitation system.<sup>242</sup>



Kiosk visiting room in Oklahoma County Jail, where families can visit once per week for 15 minutes at no cost.

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<sup>240</sup> Cramer et al, “Parent-Child Visiting Practices in Prisons and Jails,” p. 12.

<sup>241</sup> Ibid. During a call to Oklahoma County Jail, staff told us that families would need access to high speed internet in order to connect successfully and without technology glitches. Human Rights Watch telephone interview with Oklahoma County Jail staff, September 20, 2018.

<sup>242</sup> Human Rights Watch interview with Brianna Williams (pseudonym), Tulsa, January 25, 2018.





Video visitation in Tulsa County Jail, where families can visit once per week for 30 minutes at no cost. Tulsa County offers in-person visitation as well as in-facility and remote video visitation. Families may choose to visit via video in-facility video in lieu of in-person to avoid long wait times for in-person visits.<sup>243</sup>

### *Communication by Telephone and Mail*

Mail and telephone calls can be a lifeline between jailed mothers and their children, especially when in-person or video visits are not possible. However, access to calls and mail may be limited, costly, and also have inherent shortcomings that make them wholly inadequate substitutes for in-person visitation.

Twenty-one county jails told us that they offer a limited number of free telephone calls, but those telephone calls are typically limited to when a person is first booked in jail.<sup>244</sup> The cost of telephone calls range between 19 and 56 cents per minute.<sup>245</sup> Seventeen jails permit jailed people to place collect calls.<sup>246</sup>

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<sup>243</sup> Human Rights Watch email correspondence with Deputy Justin Green, Tulsa County Sheriff's Office public information officer, August 8 and August 9, 2018.

<sup>244</sup> Human Rights Watch survey of Oklahoma jails, Appendix II.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.



The cost of placing a telephone call can be exorbitant.<sup>247</sup> Based on the 19 cent per minute rate, a 15-minute telephone call would cost almost \$3. One 15-minute telephone call per day for one month would cost nearly \$100. This calculation does not include additional fees that may be assessed per call.<sup>248</sup> Many jailed mothers and their families could not afford this expense and as with video visitation, very young children and babies are incapable of meaningful communication over the telephone.<sup>249</sup>

Jailed mothers without money on their jail accounts or without family members purchasing prepaid telephone minutes from a private vendor are not able to contact their children and families or place regular calls to courts, their attorneys, or child welfare caseworkers. OKDHS does not accept collect calls<sup>250</sup> and telephone service providers may not allow receipt of collect calls or may charge an additional fee to permit receipt of collect calls.<sup>251</sup> Karen, a 65-year-old caretaker for her 10-year-old granddaughter, told us that her cellular service does not permit her to receive collect calls. When Karen's daughter was incarcerated, Karen and her granddaughter had no means to communicate with the child's mother.<sup>252</sup>

Communication via mail is also not always an effective means of communication, especially for young children who are not able to read or write.

While nineteen jails told us that they offer a limited number of free letter writing materials and/or stamps to indigent people, the amount of free supplies and when a jailed person can begin to access those supplies vary.<sup>253</sup> Therefore, mothers without money on their jail

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<sup>247</sup> See Drew Kukorowski, Peter Wagner, and Leah Sakala, "Please Deposit All of Your Money: Kickbacks, Rates, and Hidden fees in the Jail telephone Industry," *Prison Policy Initiative*, May 2013, <https://www.prisonpolicy.org/phones/pleasedeposit.html> (accessed July 30, 2018).

<sup>248</sup> *Ibid.*

<sup>249</sup> Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.

<sup>250</sup> Human Rights Watch telephone interview with Oklahoma Department of Human Services staff (refused to give their name), August 31, 2018.

<sup>251</sup> See T-Mobile, "Calling cards & collect calls," <https://support.t-mobile.com/docs/DOC-36128> (accessed September 17, 2018); "Verizon Discontinuing Collect Call Services," United States Federal Bureau of Prisons, April 14, 2017, [https://www.boj.gov/resources/news/20170414\\_verizon\\_collect\\_call\\_termination.jsp](https://www.boj.gov/resources/news/20170414_verizon_collect_call_termination.jsp) (accessed September 17, 2018).

<sup>252</sup> Human Rights Watch interview with Karen Turner (pseudonym), Tulsa, January 22, 2018.

<sup>253</sup> Human Rights Watch survey of Oklahoma jails, Appendix II.

accounts may have no means of sending letters to their children, attorneys, child welfare caseworkers, and judges on a regular basis.<sup>254</sup>

Four jails also told us that they do not permit receipt of any photos (Pittsburg, Pottawatomie, Stephens, and Washington).<sup>255</sup> Twelve counties restrict the number of photos a detained person can receive or keep.<sup>256</sup> Five county jails (Cleveland, Garfield, Grady, Oklahoma, and Tulsa) do not permit mail that contains crayon, thereby prohibiting crayon drawings from children.<sup>257</sup> Canadian County only permits the receipt of electronic mail.<sup>258</sup>

One mother told us that when she was jailed at Oklahoma County Jail, officers would not allow her to keep a photo of her newborn baby that her OKDHS caseworker brought during a meeting at the jail because the photo was not mailed in. She said she only got a glimpse of the photo before it was taken away.<sup>259</sup>

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<sup>254</sup> Human Rights Watch interviews with Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018 and April Weiss, Oklahoma City, January 20, 2018.

<sup>255</sup> Human Rights Watch survey of Oklahoma jails, Appendix II.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> Human Rights Watch interview with Tiffany Stewart (pseudonym), Oklahoma City, January 18 and July 23, 2018.



Telephone inside of a housing area at Oklahoma County Jail, where incarcerated people can place calls.

## IV. Barriers to Parental Rights

Jailed mothers in Oklahoma may be unable to actively participate in or even be informed of custody decisions regarding their children. Once released from jail, they face significant barriers to reuniting with their children and risk having their custodial rights altered or their parental rights terminated.

### Risk of Losing Custody and Parental Rights

Congress passed the Adoption and Safe Families Act in 1997 to create incentives for states to prioritize the placement of children in the foster care system into permanent homes.<sup>260</sup> The goal of the Act was to reduce long-term stays in foster care and facilitate speedier adoptions.<sup>261</sup> The Act requires states to move for the termination of parental rights (TPR) when a child has been in foster care for 15 out of the prior 22 months, with few exceptions.<sup>262</sup> Exceptions include:

- (1) if the child is placed with relatives, at the option of the state;
- (2) if there is a compelling reason that termination is not in the best interest of the child; and
- (3) if the state has not provided the family with services necessary to safely return the child to the child's home, if required.<sup>263</sup>

Jailed mothers with younger children are at risk of even earlier termination timeframes. In Oklahoma, the state must move for TPR if a child under four years old has been in foster care for six out of the previous 12 months.<sup>264</sup> A few other states have similar statutes.<sup>265</sup>

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<sup>260</sup> Adoption and Safe Families Act (ASFA) of 1997, PL 105-89, <https://www.congress.gov/105/plaws/publ89/PLAW-105publ89.pdf> (accessed August 25, 2018).

<sup>261</sup> Elizabeth Swavola, Kristine Riley, and Ram Subramanian, "Overlooked: Women and Jails in an Era of Reform," *Vera Institute of Justice*, August 2016, <https://www.vera.org/publications/overlooked-women-and-jails-report> (accessed July 30, 2018), p. 18.

<sup>262</sup> AFSA § 103(a)(3)(E).

<sup>263</sup> *Ibid.*, (i)-(iii).

<sup>264</sup> 10A OK Stat. § 10A-1-4-904.

<sup>265</sup> Other states include Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Montana, New Hampshire, New York, North Dakota, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, and Wyoming. Child Welfare Information Gateway, "Grounds for Involuntary Termination of Parental Rights," *Children's Bureau*, December 2016, <https://www.childwelfare.gov/pubPDFs/groundtermin.pdf> (accessed August 25, 2018), p. 2.

This means that mothers with young children at the time of their arrest, or pregnant women who give birth behind bars, are at greater risk of losing custody and parental rights.

When mothers give birth in Oklahoma jails, OKDHS is likely to become involved. An OKDHS worker told us that after a mom gives birth “it’s automatic that [the case] will be assigned to an investigator” and “kids are going to come into custody more often” because OKDHS will need to complete an investigation and background and child welfare history checks before the baby can be placed with family—a process which she said can take weeks.<sup>266</sup> She added, “It’s not a huge streamlined process. ... We don’t even keep track of when [jailed mothers] are going to be in labor.”<sup>267</sup>

### Candace’s Story<sup>268</sup>

At 25 years old, Candace Smith was eight weeks pregnant with her fifth child when she was booked in at Tulsa County Jail in 2016. Candace and her mother, Lori Smith, told us that they were worried that when Candace carried her pregnancy to term and gave birth, the baby would be taken into OKDHS custody.

Lori made the long trip to Tulsa from a neighboring state five times because she thought Candace was in labor and did not hear from her. Lori told us that each time she showed up, hospital staff turned her away. She said she was told that the hospital would call to notify her once her granddaughter was born.

Lori told us she was thinking, “I’m not going to be not be there when the baby is born because they would take it.”

The last time Lori arrived to the hospital, Candace was actually in labor and was only permitted to call Lori after giving birth. Lori said she told hospital staff, “I’m not leaving until I have the baby in my hands.”

Lori told us, “[They] made me go into a room and shut the doors and pushed her [Candace] down the hallway. ... I just want to see her and make sure she’s OK.” Lori also said that Candace spent

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<sup>266</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

<sup>267</sup> Ibid.

<sup>268</sup> Human Rights Watch interview with Candace Smith (pseudonym), Tulsa, January 25, 2018; Human Rights Watch telephone interview with Lori Smith (pseudonym), April 5, 2018.

just two days with her newborn and was able to sign over temporary custody to Lori.

More than a year after Candace’s baby was born, Oklahoma enacted a law in 2018 to improve the delivery process for incarcerated mothers. It prohibits the use of restraints during labor and delivery and permits incarcerated women to have a family member, friend, clergy member, or doula present at their child’s birth, but at the parent’s expense.<sup>269</sup>

Some states, including Oklahoma, list incarceration as one of several grounds for TPR, considering several factors, including length of incarceration.<sup>270</sup> According to national statistics, 8 percent of children in foster care are placed in the custody of the state because of parental incarceration.<sup>271</sup>

The complicated life histories of the mothers we interviewed—and incarcerated women generally—indicate a strong likelihood that child welfare services may be involved in their lives prior to arrest. Mothers living with substance dependence, poverty, mental illness, medical conditions, and unaddressed trauma, may be viewed as unfit to parent even without a criminal history. When child welfare services is involved prior to arrest, pretrial incarceration can halt or imperil efforts to regain custody.

## Poor OKDHS and Court Communication with Parents

Jailed mothers in Oklahoma face an uphill battle when trying to communicate directly with OKDHS caseworkers. Jailed mothers are often left to contact their OKDHS caseworker via telephone at their own expense or try to place a collect call (at the called party’s expense), which OKDHS does not accept.<sup>272</sup> If they cannot afford telephone calls, they are often left with little to no information about where their children are located and how their children are doing.

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<sup>269</sup> 57 OK Stat. §57-4.2.

<sup>270</sup> Okla. Stat. Tit. 10, §7006-1.1.

<sup>271</sup> “The AFCARS Report – Preliminary FY 2016 Estimates as of October 20, 2017,” Children’s Bureau, October 2017, <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf> (accessed August 25, 2018).

<sup>272</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018; Human Rights Watch telephone interview with OKDHS staff (refused to give their name), August 31, 2018.

As discussed earlier, OKDHS policy offers contradictory standards for the frequency of contact between caseworkers and parents<sup>273</sup> and Oklahoma courts have accepted very limited communications with jailed parents as sufficient.<sup>274</sup>

While infrequent communication may be partially explained by the fact that caseworkers are required to be in more frequent contact with children and with their custodial caretakers, it nevertheless makes it very difficult for jailed mothers to remain informed about their children's custody situation.

Nancy Curry, a clinician with the Parenting in Jail program, told us "The mom often has no idea what's going on with child welfare."<sup>275</sup> She said that in Tulsa County, OKDHS often relies on program staff to relay critical information to jailed mothers instead of communicating directly:

[OKDHS has a] tough job and [they] have a lot of responsibilities but they need to work with those moms. Because of the workload, there is a tendency to say, "Hey, Family & Children Services [the entity that oversees the Parenting in Jail program], can you send this letter?" ... "Oh hey, we are looking at termination." Whatever that update is, it needs to come from [OK]DHS. ... [If moms] have follow up questions, they have a right to ask those questions.<sup>276</sup>

Under Oklahoma law, written notice of proceedings for the termination of parental rights proceedings is required. Notice includes information about what is required under the reunification plan to restore parental rights, and if notice is improper, the termination may

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<sup>273</sup> Oklahoma Department of Human Services, "Oklahoma Department of Human Services (OKDHS) contacts with child, placement providers, parents, and service providers," policy 340:75-6-48, <http://www.okdhs.org/library/policy/Pages/oac340075060048000.aspx> (accessed September 6, 2018); Oklahoma Department of Human Services, "Case Planning for Incarcerated Parents," policy 340:75-6-45, <http://www.okdhs.org/library/policy/Pages/oac340075060045000.aspx#1> (accessed September 6, 2018).

<sup>274</sup> See, e.g. *In the Matter of Minor Child G. V.*, 2016 Oklahoma Court of Civil Appeals, Division IV, Case Number 113934, January 27, 2016. ("The DHS caseworker attempted to contact Father's DOC case manager but had received no return call."); *Lane v. State*, Court of Civil Appeals of Oklahoma, 265 P.3d 764 (September 14, 2011) ("Goff testified Father has not corrected the conditions that led to the deprived adjudication because he has not made any significant progress on his treatment plan. Goff stated, "There was nothing I could provide him while he was in jail." Goff did visit Father at least once a month while he was in jail.").

<sup>275</sup> Human Rights Watch telephone interview with Nancy Curry, Parenting in Jail program clinician, May 25, 2018.

<sup>276</sup> *Ibid.*

be overturned.<sup>277</sup> The process of being notified via mail or through a third party that the state is moving to TPR may undermine a jailed mother's ability to fully understand the process that is unfolding and to ask follow up questions, especially those with literacy issues and who may struggle to get in touch with their court appointed attorney.<sup>278</sup>

Nancy further noted that, "These women are finding this information [TPR] out in a letter. ... They have just melted [and] had a panic attack. It's trauma."<sup>279</sup> Alicia Craig, a parent child educator and case manager with the Parenting in Jail program agreed: "There needs to be communication even if they're in jail. They still want to know how their kids are doing no matter what they have done."<sup>280</sup> A review of Oklahoma case law revealed several cases of parents whose parental rights were terminated, often for failure to follow a reunification plan while they were in jail or prison.<sup>281</sup>

The lack of communication between OKDHS and jailed mothers may compound feelings of hopelessness and lead to backsliding with recovery.<sup>282</sup> In contrast, the hope of regaining child custody can be a powerful motivator to get back on their feet. Staff at a recovery program said, "The mothers love their children so much. So many people tell us I don't want treatment but I want to get my kids back and this is the only way."<sup>283</sup>

Getting in contact with caseworkers is also important because of the immense weight given to their recommendations. One attorney told us that "what makes or breaks a case is the temperament of the caseworker,"<sup>284</sup> in addition to the judges and district attorneys.<sup>285</sup>

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<sup>277</sup> See, e.g. *In the Matter of T.J.*, Oklahoma Court of Civil Appeals (September 21, 2012) ("Termination of parental rights in the absence of adequate notice violated Mother's due process rights.").

<sup>278</sup> Human Rights Watch interview with Nancy Curry, Parenting in Jail program clinician, Tulsa, July 21, 2018.

<sup>279</sup> Human Rights Watch telephone interview with Nancy Curry, Parenting in Jail program clinician, May 25, 2018.

<sup>280</sup> Human Rights Watch telephone interview with Alicia Craig, Parenting in Jail program case manager, May 20, 2018.

<sup>281</sup> See, e.g. *G.V. v. State*, Court of Civil Appeals of Oklahoma, 365 P.3d 89 (December 16, 2015); *In the Matter of T.J.*, Oklahoma Court of Civil Appeals (September 21, 2012); *Lane v. State*, Court of Civil Appeals of Oklahoma, 265 P.3d 764 (September 14, 2011).

<sup>282</sup> Human Rights Watch interviews with Heather Morris (pseudonym) and Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018.

<sup>283</sup> Human Rights Watch interview with Kaitlin Black Salinas, ReMerge therapist, Oklahoma City, January 18, 2018.

<sup>284</sup> Human Rights Watch interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018.

<sup>285</sup> Human Rights Watch telephone interviews with Tasha Granillo, OKDHS worker, August 17, 2018, Michelle Huffman, Tulsa County public defender, May 22, 2018, and Amy Pepper, University of Oklahoma College of Law professor, July 27, 2018.



## Mothers Left Out of Child Placement Decisions

Being in contact with caseworkers also facilitates child placement. According to OKDHS policy, when a child cannot be placed with their parents, preference “is given to relatives and persons who have a kinship relationship with the child, who are determined suitable, capable, and willing to serve as caretakers for the child.”<sup>286</sup> OKDHS is required to make diligent efforts to secure placement with relatives within 30-calendar days of a child’s removal from their home.<sup>287</sup> To assist with placement, caseworkers are instructed to “obtain[] ... a list of all relatives or kin known to the parent” and “solicit[] information from each parent regarding the parent’s placement preferences ... but no assurances are made regarding the placement determination.”<sup>288</sup>

In order to identify potential caregivers and obtain their placement preferences, jailed mothers need to be able to weigh in. However, the lack of access to OKDHS caseworkers inside jails limits the ability of jailed mothers to take part in the placement decisions for their children. OKDHS is required to case plan with incarcerated parents through coordination with correctional staff,<sup>289</sup> but as indicated above, jailed mothers may not receive updates and thus are being cut off from child placement decisions.

### Tiffany’s Story<sup>290</sup>

Tiffany Stewart had been living with substance dependence for a number of years and her two children were living with her mother. When Tiffany became pregnant a third time, her mother told Tiffany that she would not take custody of the new baby in an effort to force Tiffany to stop using drugs. After Tiffany gave birth in early 2015, her newborn son was taken into child welfare custody. Upset that she had lost her child, Tiffany coped by turning to drugs. Just 11 days postpartum, she was arrested for drug possession. She told us she could not afford to pay bail.

She said, the hardest part of being in jail “is not knowing anything, not being able to find out anything [about my baby].” At the time of her arrest, Tiffany had been trying to find a family member with whom to place the baby. Once in jail, Tiffany told us, “I had no money for calls [to OKDHS] and [had] extra stress worrying that the baby was going to a bad place.”

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<sup>286</sup> Oklahoma Department of Human Services, “Diligent search for relatives and kin,” policy 340:75-6-85.2, <http://www.okdhs.org/library/policy/Pages/oac340075060085002.aspx> (accessed August 25, 2018).

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid.*; see also Human Rights Watch email correspondence with OKDHS, September 21, 2018.

<sup>289</sup> Oklahoma Department of Human Services, “Case planning for incarcerated parents,” policy 340:75-6-45.

<sup>290</sup> Human Rights Watch interview with Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018.

Once Tiffany finally reached her OKDHS caseworker, the caseworker asked her if a person the baby's father had recommended was an uncle. Tiffany believed the potential caretaker was not a relative and likely another substance user. Before she could respond, the telephone conversation was cut off and Tiffany was unable to get through again. Eventually, family members living an hour away were located and agreed to take custody.

Tiffany said that during her five-month incarceration, she met with her OKDHS caseworker once to sign guardianship paperwork.

## Barriers to Kinship Placement

As noted, family placements are given preference but prior criminal records can result in OKDHS finding a relative to be unsuitable for child placement. Based on federal law, Oklahoma law prohibits OKDHS from approving potential caregivers if they or someone residing in the potential caregiver's home has a conviction record for select offenses, including drug-related offenses from five years prior.<sup>291</sup> An exception for drug-related convictions, however, can be made.<sup>292</sup>

Oklahoma's policy also permits kinship placement denials on the basis of felony and certain misdemeanor arrests, charges, or convictions on a "case-by-case basis."<sup>293</sup> The same case-by-case determination is also required when there is a history of child abuse and neglect investigations.<sup>294</sup> An assistant district attorney told us "some of your lazier workers will say 'You have a history and you're done,'"<sup>295</sup> but OKDHS is supposed to do a deeper review.<sup>296</sup>

Our interviews suggest that even very old convictions can lead to placement denials. Adam Barnett, a Tulsa County public defender in the juvenile division, told us, "it's very difficult if [family members] have felony convictions. ... [OK]DHS is very uncooperative ... in placing

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<sup>291</sup> Oklahoma Department of Human Services, "Background information search," 340:75-15-84.1, <http://www.okdhs.org/library/policy/Pages/oac340075150084001.aspx> (accessed August 25, 2018) (statutorily prohibited felony offenses include physical assault, battery, or a drug-related offenses (five years prior), child abuse and neglect, domestic abuse, a crime against a child, a crime involving violence (excluding assault or battery).

<sup>292</sup> *Ibid.*

<sup>293</sup> Oklahoma Department of Human Services, "Background investigation and assessment of results," policy 340:75-7-15, <http://www.okdhs.org/library/policy/pages/oac340075070015000.aspx> (accessed August 25, 2018).

<sup>294</sup> *Ibid.*

<sup>295</sup> Human Rights Watch telephone interview with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

<sup>296</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

a child with another relative. ... [The criminal record] can be five, six, seven, eight years ago and [it] is still an issue.”<sup>297</sup>

OKDHS is required to notify the court in writing the reasons a relative was denied placement and that notice becomes a part of the court record.<sup>298</sup>

Ryan Hauser, an Oklahoma County public defender representing children in juvenile court, told us that, in his experience, OKDHS rarely presents their reasons for denying kinship placement and the denial is “not litigated.”<sup>299</sup> He said “We may not be privy to why [OKDHS] denied placement, [and we] don’t get [a] full home study. ... All we get is a thumbs up or thumbs down.”<sup>300</sup> He further noted that decisions to deny or approve placement “depends on who the foster care worker is ... [and] sometimes they make decisions that make you want to slap your forehead.”<sup>301</sup>

Socioeconomic status can also serve as a basis for not placing a child with relatives, especially relatives seeking to become formal kinship caregivers to receive services and financial assistance provided to foster care placements.

An OKDHS worker said, “we preference kinship ... but it is still that strict [foster care] approval process, ... [including] basic income guidelines, transportation, and [we] still have to go by all those rules,” including passing an initial home inspection, having an extra room for the child to sleep in, passing a background check, and going through foster care training to receive a financial stipend.<sup>302</sup>

Attorneys can advocate for services to be provided to families so that they can come into compliance but that is challenging when their needs are high, despite that fact that some

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<sup>297</sup> Human Rights Watch telephone interview with Adam Barnett, Tulsa County public defender, May 17, 2018.

<sup>298</sup> Oklahoma Department of Human Services, “Placement considerations for the child in Oklahoma Department of Human Services (DHS) custody,” 340:75-6-85, <http://www.okdhs.org/library/policy/Pages/oac340075060085000.aspx> (accessed August 25, 2018).

<sup>299</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid.

<sup>302</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

children “would rather sleep on [the] couch in grandma’s house.”<sup>303</sup> As one former judge told us, “to me the real bias is [against] poverty.”<sup>304</sup>

If a juvenile court judge ultimately decides to remove the child from OKDHS care<sup>305</sup> in order to place the child with a family member that OKDHS does not approve, the relative will not receive financial assistance provided to OKDHS-authorized foster care placements.<sup>306</sup>

As a result, family members may not receive the resources and support they need or children may end up living with people they do not know. Some mothers expressed concern about their children’s safety in foster care,<sup>307</sup> which is not unwarranted, given that Oklahoma led the nation in the rate of children abused and neglected while in foster care in 2015<sup>308</sup> and had the third highest number of children abused by foster parents in 2016, trailing New York and California (states with much larger populations).<sup>309</sup>

## Lack of Notice and Transportation to Custody Proceedings

Jailed mothers may face obstacles in attending hearings where vital decisions are made that impact their parental rights and the well-being of their children, including foster care placement and custody determinations. In Oklahoma, child custody cases are held in family court and OKDHS cases are held in juvenile court.

When Human Rights Watch asked how Oklahoma courts send notice of custody proceedings to a parent in jail, we were told that “usually the court will have the party served with written notice by the sheriff [and] most judges won’t accept certified mail

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<sup>303</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.

<sup>304</sup> Human Rights Watch telephone interview with Dynda Post, former state district court judge, May 10, 2018.

<sup>305</sup> Ibid.

<sup>306</sup> Human Rights Watch telephone interview with Dynda Post, former state district court judge, May 10, 2018.

<sup>307</sup> Human Rights Watch interviews with Tanisha James (pseudonym), Oklahoma City, January 20, 2018, and Chloe Washington (pseudonym), Oklahoma City, January 20, 2018.

<sup>308</sup> US Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children’s Bureau, “Child Maltreatment 2015,” 2017, <https://www.acf.hhs.gov/sites/default/files/cb/cm2015.pdf> (accessed September 16, 2018), p. 74.

<sup>309</sup> US Department of Health & Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children’s Bureau, “Child Maltreatment 2016,” 2018, (the most recent available data), <https://www.acf.hhs.gov/sites/default/files/cb/cm2016.pdf> (accessed September 16, 2018), p. 75.

notice because it tends to get lost or go through two or three people’s hands.”<sup>310</sup> When we inquired about transport to court for custody proceedings, we were told in Tulsa County that, “transport to court is the parent’s responsibility. The court won’t order transport for the parent.”<sup>311</sup> In Oklahoma County, we were told that transport “would be something for the attorneys to arrange with the court.”<sup>312</sup>

A non-profit lawyer told us, “I never see people in orange in family court and I have been here 17 years.”<sup>313</sup> A few mothers we spoke with told us that they were not transported to family court hearings and had no information about the placement of their children:

- Courtney Nelson, a mother of three, told us that she received same-day notice of a custody hearing for her youngest son while she was jailed. Jail staff told her that they were “not obligated to take [her because it’s] not a criminal matter.”<sup>314</sup> She told us that no one appeared on her behalf at the hearing. She said that she lost custody and was ordered to pay US\$210 per month in child support, which has accrued over time.
- April Weiss, a 30-year-old mother of three, told us that while she was incarcerated at Oklahoma County Jail in 2014, the paternal grandparents of her eldest child filed for custody. April told us that she did not receive notice from court and was not provided the opportunity to participate in the custody hearing. Only after being released from jail did April find out she had lost custody. Upon release, she went to her aunt’s house, who had

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<sup>310</sup> Human Rights Watch telephone interviews with Jason Jones, Supervisor, Family Relations Division, Tulsa County District Court, September 10, 2018, and Renee Gunn, Deputy Sheriff, Oklahoma County Jail, September 10, 2018 (“Notice is written and sent over to Sheriffs’ office by the court. It gets put in a box for the Sheriff’s office and we check the box twice a day.”).

<sup>311</sup> Human Rights Watch telephone interview with Jason Jones, Supervisor, Family Relations Division, Tulsa County District Court, September 10, 2018.

<sup>312</sup> Human Rights Watch telephone interview with Renee Gunn, Deputy Sheriff, Oklahoma County Jail, September 10, 2018 (“For transport, that would be something for the attorneys to arrange with the court. They just need to put the name of the jailed parent on the docket pool and then we’ll transport them, but we don’t handle putting their names on the list – it’s for the attorneys or the court to handle. If it’s something strange, like transport to another county, we need a writ from that other county letting us know they’re going to come and get the parent out of our jail.”); see also Human Rights Watch email correspondence with OKDHS, September 21, 2018 (“There is a right to be brought over for Juvenile court proceedings. This is something arranged by Court Order or request of the inmate/parent through their attorney. Transportation from the local jail is arranged by the Sheriff’s Office. Similarly, arrangements can be made to transport a parent from prison to the court hearing pursuant to a Writ. This is not something that can be arranged by DHS or within DHS policy.”).

<sup>313</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018.

<sup>314</sup> Human Rights Watch interview with Courtney Nelson (pseudonym), Oklahoma City, January 20, 2018.

temporary guardianship of April’s three children when April was arrested, and saw only two backpacks instead of three. “That was how I learned she [her oldest daughter] was gone.”<sup>315</sup>

An attorney representing parents in juvenile court in Tulsa County<sup>316</sup> told us that jailed parents are not produced for all juvenile court hearings and OKDHS meetings, which she described as “anxiety inducing” for parents “desperate for information.”<sup>317</sup>

Logistical issues may also result in the failure to transport jailed parents to court—a clinician with the Parenting in Jail program at Tulsa County Jail told us that “jails are not getting orders” mandating transport.<sup>318</sup> The resources and staffing of jails and the court system may also play a role. An assistant district attorney in Oklahoma County told us “the bigger counties usually have manpower to [transport to court]. ... The rural ones are probably harder [] to get cooperation because they don’t have the manpower.”<sup>319</sup>

When jailed mothers are not transported to court, they are unable to speak on their own behalf and express their opinion about potential child placement, explain their interest in maintaining their custodial rights, make a request for a child support modification, describe their efforts to maintain contact with their children, argue for visitation while incarcerated, or otherwise advocate for themselves or their children and plan for reunification.

## Obstacles to Regaining Custody

The goal of OKDHS is to both reunite a child with their family, when safe, and achieve permanency for the child, but these goals can be at odds. As one OKDHS worker noted, “If [a] child [is] removed in Oklahoma, it’s about a 50/50 chance you get your kids back.”<sup>320</sup>

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<sup>315</sup> Human Rights Watch interview with April Weiss, Oklahoma City, January 20, 2018.

<sup>316</sup> Unlike in family court, parents with an open juvenile court case are entitled to a court-appointed attorney (typically an attorney from the private bar who has a contract with the court system).

<sup>317</sup> Human Rights Watch interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018.

<sup>318</sup> Human Rights Watch telephone interview with Nancy Curry, Parenting in Jail program clinician, May 25, 2018.

<sup>319</sup> Human Rights Watch telephone interview with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

<sup>320</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

OKDHS proceedings and records are also not open to the public,<sup>321</sup> and, according to attorneys we spoke with, are sometimes “not on the record.”<sup>322</sup>

It can be an “overwhelming process”<sup>323</sup> for parents navigating their child welfare case and even more so for parents dealing with a criminal case at the same time. An attorney said, “trying to figure out the criminal case and protecting your right to parent ... [is] too much for one person to navigate simultaneously,”<sup>324</sup> even though the same office (the district attorney’s office) is prosecuting parents in their criminal case and in juvenile court. But as one OKDHS worker noted, the systems are not collaborating in a way that effectively takes into account the needs of children trapped in the middle.<sup>325</sup>

To begin the reunification process, parents may stipulate to follow an individualized service plan (ISP), which is a reunification plan that lays out the conditions parents must correct and the services they must access in order to regain custody of their child.<sup>326</sup> The reunification plan can include requirements such as maintaining regular contact with their children, attending parenting classes, undergoing a mental health assessment or psychological evaluation, enrolling in substance abuse treatment, and ensuring a “safe” home.<sup>327</sup> And once a reunification plan is in place, the parent has 90 days to correct the conditions outlined within it.<sup>328</sup>

But when a mother is jailed, she faces numerous barriers to complying with reunification plans.<sup>329</sup> As noted above, access to visitation in jail is limited. Additionally, when Human Rights Watch asked jails about programming and drug treatment options available inside

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<sup>321</sup> 10A OK Stat. § 10A-1-6-102; Tulsa County District Court Juvenile Division, <http://www.tulsacountydistrictcourt.org/juvenile.html> (“Juvenile deprived matters are confidential and proceedings are not open to the public. These juvenile records are confidential and can only be released to officers of the court, specific agencies, or by order of the Chief Judge of the Juvenile Court.”).

<sup>322</sup> Human Rights Watch interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018.

<sup>323</sup> Human Rights Watch interview with Milagros, social worker and therapist, Oklahoma City, January 19, 2018.

<sup>324</sup> Human Rights Watch interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018.

<sup>325</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

<sup>326</sup> Oklahoma Department of Human Services, “Individualized Service Plan (ISP),” 340:75-6-40.4, <http://www.okdhs.org/library/policy/Pages/oac340075060040004.aspx> (accessed August 25, 2018).

<sup>327</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.

<sup>328</sup> 10A OK Stat. § 10A-1-4-904.

<sup>329</sup> See also *Lane v. State*, Court of Civil Appeals of Oklahoma, 265 P.3d 764 (September 14, 2011) (“[caseworker] Goff testified Father has not corrected the conditions that led to the deprived adjudication because he has not made any significant progress on his treatment plan. Goff stated, “*There was nothing I could provide him while he was in jail.*”) (emphasis added).

the jails, a total of six jails told us that they offer parenting classes,<sup>330</sup> 15 jails told us that they have drug treatment or recovery support groups,<sup>331</sup> and 17 jails told us that they have other types of programming (which is often limited to religious services).<sup>332</sup> Staff at four jails told us that nothing is offered.<sup>333</sup>

An attorney representing children in juvenile court told us:

A parent being in jail and having charges delays a case and isn't good for anybody. ... A parent can sit there for a year waiting for trial and it's like what do you do in the meantime? ... The kid is in foster care ... or with family ... [and] if they are in foster care ... [the child is] more and more integrated where they are placed. ... Really there's no services in the jail, I mean none. ... We are wasting the child's time and the parent's time ... [and parents are] starting from ground zero when they get out.<sup>334</sup>

An assistant district attorney told us, “[Parents] lose all that time while [parents] are in county jail. ... [Parents are] at the whim of the system ... [and] got to wait until [they] are released into prison for services or released in the community for services.”<sup>335</sup>

Even if certain courses are provided in the jails, they may not be recognized by OKDHS to satisfy a reunification plan requirement<sup>336</sup> and once released, parents are expected to hit the ground running but they are saddled with criminal justice fines and fees and costs associated with accessing necessary reunification services, and extensive collateral consequences that impede their ability to get housing and employment—putting their parental rights at risk.

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<sup>330</sup> Human Rights Watch survey of Oklahoma jails, Appendix IV.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid. Canadian County Jail, Grady County Jail, Le Flore County Jail, and Logan County Jail.

<sup>334</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018; see also Human Rights Watch email correspondence with OKDHS, September 21, 2018 (“If specific services are identified to address safety threats or underlying causes, but are not available to the parent while incarcerated in a jail, the parent would access these services upon their release from jail.”).

<sup>335</sup> Human Rights Watch telephone interview with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

<sup>336</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.



The process to regain custody can also take “however long.”<sup>337</sup> The court system moves very slowly with hearings every 90 to 180 days,<sup>338</sup> so even if a mother is arrested and released quickly she can wait months if not a year or more to begin and successfully complete the reunification process. With longer periods of incarceration in jails and prisons, the timeframe of separation and risk of losing parental rights is even greater.

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<sup>337</sup> Human Rights Watch telephone interview with Patrice James, Still She Rises director of external relations, October 10, 2017.

<sup>338</sup> Human Rights Watch telephone interviews with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018, Alexis Gardner, Tulsa contract attorney, May 16, 2018, and Dynda Post, former state district court judge, May 10, 2018.

## V. Barriers to Stability

The challenges formerly jailed mothers face when they return to their communities are often made far worse by fines<sup>339</sup> and fees<sup>340</sup> (which can lead to arrest and incarceration for nonpayment) and the informal and formal barriers to employment, housing, education, and social services (collateral consequences) of having a criminal history.

Mothers, of course, are not the only ones carrying the burden of massive fines and fees—80 percent of criminal defendants are legally indigent (cannot afford to pay for a lawyer for their defense).<sup>341</sup> However, jailed women earn less than jailed men prior to arrest<sup>342</sup> and are more likely to provide primary or sole care to their minor children.<sup>343</sup> Financial burdens also pose additional obstacles to regaining child custody after release from jail.

### Fines and Fees

Throughout the United States, budgetary shortfalls and an effort to raise general government revenue have prompted states and municipalities to increase the amount of fines and fees (also referred to as court costs) imposed on people who come into contact with the criminal justice system.<sup>344</sup>

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<sup>339</sup> Fines are financial sanctions imposed as punishment for an offense at any level—whether it is a civil infraction, misdemeanor, or felony.

<sup>340</sup> Fees are costs that seek to raise revenue or recoup government costs from people sentenced for civil infractions or criminal offenses. Fees also include “surcharges” in certain jurisdictions, which are financial obligations, either a flat fee or percentage added to a fine, imposed to fund a particular government function or general fund.

<sup>341</sup> Ryan Gentzler, “Issue Brief: The Cost Trap: How Excessive Fees Lock Oklahomans Into the Criminal Justice System without Boosting State Revenue.” *Oklahoma Policy Institute*, February 2017, <https://okpolicy.org/wp-content/uploads/The-Cost-Trap-How-Excessive-Fees-Lock-Oklahomans-Into-the-Criminal-Justice-System-without-Boosting-State-Revenue-updated.pdf?x43134> (accessed July 30, 2018), p. 1.

<sup>342</sup> Bernadette Rabuy and Daniel Kopf, “Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time,” *Prison Policy Initiative*, May 2016, <https://www.prisonpolicy.org/reports/incomejails.html> (accessed July 17, 2018).

<sup>343</sup> Lauren E. Glaze and Laura M. Maruschak, “Parents in Prison and Their Minor Children,” Bureau of Justice Statistics, August 2008, <https://www.bjs.gov/content/pub/pdf/pptmc.pdf> (accessed July 30, 2018), p. 5.

<sup>344</sup> See Harvard Law School Criminal Justice Policy Program, “Confronting Criminal Justice Deb: A Guide for Policy Reform,” September 2016, <http://cjpp.law.harvard.edu/publications/confrontingcjdebt> (accessed August 25, 2018); Matt Ford, “The Problem with Funding Government through Fines and Fees,” *The Atlantic*, April 2015, <https://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387> (accessed August 25, 2018).

Oklahoma’s criminal justice fees have grown significantly over the past several decades<sup>345</sup>—with more than 103 statutory fines and fees at the state level and additional fines and fees at the municipal level, according to Vera.<sup>346</sup>

The Oklahoma Policy Institute also reported on the considerable expansion in court fees and noted “fines and fees are assessed separately on each charge,” which multiplies the fees and makes the total owed “much more significant.”<sup>347</sup>

The fees assessed on a case can also be wholly unrelated to the offense someone is charged and convicted of. For example, a fee for the “Child Abuse Multidisciplinary Account” and the “Attorney General Victims Services Unit” can be added to the fees someone with a drug paraphernalia conviction will be required to pay.<sup>348</sup>

Despite significant growth in fees and growing caseloads, criminal justice debt collections have remained essentially unchanged between 2003 and 2015 in Oklahoma,<sup>349</sup> indicating that “the state is near its limit in raising revenue through criminal fines and fees” and “criminal court assessments are at best very inefficient in achieving” the purpose of raising revenue.<sup>350</sup>

Several mothers we spoke with told us that fines and fees were well beyond their means and can serve as a barrier to successful reentry:

- Sonya Pyles, a 42-year-old mother of three and custodial grandmother, said “I think I’m going to go to the grave paying fines. ... You can’t get ahead.” She told us, “Having this monkey on your back will lead you right back to a cycle of addiction or right back in the cycle of offending. ... [It’s a] vicious cycle.”<sup>351</sup>
- Erin Jones, a 44-year-old mother of three, told us that she is legally blind and subsists on disability benefits, which does not provide enough money to both meet

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<sup>345</sup> Gentzler, “Issue Brief: The Cost Trap,” p. 2.

<sup>346</sup> Nancy Fishman et al, “Report to the Greater Oklahoma City Chamber Criminal Justice Task Force,” *Vera Institute of Justice*, December 2016, <https://www.vera.org/publications/oklahoma-city-chamber-criminal-justice-task-force-report> (accessed July 30, 2018), p. 9.

<sup>347</sup> Gentzler, “Issue Brief: The Cost Trap,” p. 4.

<sup>348</sup> *Ibid.*

<sup>349</sup> *Ibid.*, p. 16.

<sup>350</sup> *Ibid.*, p. 17.

<sup>351</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, January 23, 2018.

her basic needs and to pay fines and fees. She is worried she will not be able to afford her electric bill. She said she “will have to struggle to pay every month.”<sup>352</sup>

- Ashley Wilson, a 38-year-old mother of two, told us that she owes over US\$10,000 in fines and fees to the court, but she says she “just ha[s] money to take the bus” to visit her children and cannot afford to pay for anything else on top of her basic living expenses.<sup>353</sup>
- Tiffany Stewart, a 31-year-old mother of three, told us that “[Fines and fees] is why a lot of addicts stay addicts. You feel like you will never get out of it, so why bother.”<sup>354</sup>
- Kelly Lambert, a 32-year-old mother of three, told us “I never thought I would be able to pay my court debt. It was just digging me deeper into a hole I would never be able to get out of. ... I felt like court costs would bury me.”<sup>355</sup>

### *Driver’s License Suspension or Revocation*

Oklahoma can suspend driver’s licenses indefinitely not only for criminal offenses involving a vehicle but also for unpaid fines and fees<sup>356</sup> and for unpaid child support payments.<sup>357</sup> Reinstating a driver’s license can cost hundreds of thousands of dollars in court fees and other costs.

In 2013, the Oklahoma Legislature passed a measure establishing a provisional driver’s license program for people with revoked or suspended licenses.<sup>358</sup> To enter the program, a \$25 non-refundable enrollment fee is required in addition to proof of liability insurance and a minimum monthly payment of \$25 per month that goes toward driver’s license reinstatement fees.<sup>359</sup> The provisional driver’s license lasts six months but can be renewed indefinitely.<sup>360</sup> Certain offenses are ineligible for the program and the driver is only able to travel to specified locations, which do not include trips to the grocery store or doctor’s appointments.<sup>361</sup>

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<sup>352</sup> Human Rights Watch interview with Erin Jones (pseudonym), Oklahoma City, January 19, 2018.

<sup>353</sup> Human Rights Watch interview with Ashley Wilson (pseudonym), Oklahoma City, January 19, 2018.

<sup>354</sup> Human Rights Watch interview with Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018.

<sup>355</sup> Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.

<sup>356</sup> 47 OK Stat. § 47-6-206.

<sup>357</sup> 47 OK Stat. § 47-6-201.1.

<sup>358</sup> 47 OK Stat. § 47-6-212.

<sup>359</sup> *Ibid.*

<sup>360</sup> *Ibid.*

<sup>361</sup> *Ibid.*

Kelly Lambert said that she had her driver’s license revoked as a result of a traffic stop where police officers searched her car and found illicit drugs. She now has a provisional license and pays \$25 per month towards the \$1,400 she owes to restore her driver’s license—at this rate, it will take more than four years for her driver’s license to be fully restored.<sup>362</sup>

Mothers who are not eligible for a provisional driver’s license will need to save up to pay the costs of driver’s license reinstatement before they can drive legally.

Since Oklahoma does not have a sophisticated public transportation system, people who lose their driver’s license have difficulties getting around. This can result in noncompliance with conditions of probation or child welfare reunification requirements if they cannot find reliable transportation to mandatory drug tests, classes, or meetings. This is especially troublesome for mothers who do not live in a city center.

Lindsey Russell, a 38-year-old mother of three, told us it was hard to comply with conditions of probation in Shawnee (a city 35 minutes from Oklahoma City) because she said there were no buses and the places she needed to be were not within walking distance.<sup>363</sup>

Some may end up driving with a suspended license and risk further suspension and fines and fees so that they can get from one place to another, which only “dig[s] a hole they can’t get out of.”<sup>364</sup>

### *Jail Fees*

During our calls to local jails, seventeen jails told us that jailed people are billed for each day they are incarcerated (jail stay fee). These fees range between \$15 and \$47.50 per day.<sup>365</sup> Comanche County, Garfield County, and Muskogee County bill a one-time fee when

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<sup>362</sup> Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.

<sup>363</sup> Human Rights Watch interview with Lindsey Russell (pseudonym), Oklahoma City, January 20, 2018.

<sup>364</sup> Clifton Adcock, “Ex-Offenders Face Steep Price to Reinstate Driver’s Licenses,” *Oklahoma Watch*, February 23, 2015, <http://oklahomawatch.org/2015/02/23/for-released-offenders-a-steep-price-to-drive-again/> (accessed July 30, 2018).

<sup>365</sup> Human Rights Watch survey of Oklahoma jails, Appendix III.

a jailed person is booked in and/or bonding out of jail (\$10 bond fee, \$35 and \$100 book-in fee).<sup>366</sup>

In Oklahoma County, for example, one month in jail is billed at over \$1,000 (\$36.19 per day),<sup>367</sup> which is more than the average rent for an unsubsidized, three-bedroom apartment in Oklahoma City.<sup>368</sup> As one public defender phrased it—people are charged “for the benefit of staying in jail.”<sup>369</sup>

The Oklahoma Policy Institute has noted:

Jail [stay] fees are perhaps the most pernicious financial obligation because they add up quickly and because they disproportionately affect those who cannot afford to bond out of jail as they await disposition of their case.<sup>370</sup>

While most people admitted into local jails are released within 30 days, many formerly jailed mothers told us that they were incarcerated for months and left jail owing several thousands of dollars in jail stay fees—in some cases more than \$10,000.<sup>371</sup>

In addition to stay fees, jailed people may also accrue expenses related to medical care and transportation. Twenty-three jails indicated that they bill jailed people for medical care received, ranging from \$4 to \$70 per doctor visit.<sup>372</sup> Eighteen jails told us that they contract with private companies to provide medical care.<sup>373</sup> Eight jails told us that jailed people are

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<sup>366</sup> Ibid.

<sup>367</sup> Ibid.

<sup>368</sup> “Oklahoma City, OK Rental Market Trends,” RENTCafé, <https://www.rentcafe.com/average-rent-market-trends/us/ok/oklahoma-city/> (accessed August 25, 2018).

<sup>369</sup> Human Rights Watch telephone interview with Tim Laughlin, Oklahoma Indigent Defense System non-capital trial division chief, July 27, 2018.

<sup>370</sup> Gentzler, “Issue Brief: The Cost Trap,” p. 6.

<sup>371</sup> Human Rights Watch interview with Erin Jones (pseudonym), Oklahoma City, January 19, 2018 and Lindsey Russell (pseudonym), Oklahoma City, January 20, 2018.

<sup>372</sup> Human Rights Watch survey of Oklahoma jails, Appendix III.

<sup>373</sup> Ibid; A private company providing a vast majority of health care services in the Oklahoma county jails we surveyed has been sued for allegedly failing to provide medical care, resulting in several deaths and severe injuries. Brianna Bailey, “Oklahoma contractor sued several times over jail deaths,” *NewsOK*, August 13, 2017, <https://newsok.com/article/5559827/oklahoma-contractor-sued-several-times-over-jail-deaths> (accessed September 16, 2018).

billed for transportation to and from court proceedings and/or to medical providers.<sup>374</sup> Bryan County Jail also told us that they bill \$40 for a shot and \$15 for a pregnancy test.<sup>375</sup>

Some 5 percent of women entering jails in the US are pregnant and in need of prenatal care in detention.<sup>376</sup> However, only 35 percent of them report receiving pregnancy care.<sup>377</sup> Lack of access to prenatal care is especially troublesome because incarcerated pregnant women are at risk of having high-risk pregnancies that can result in miscarriages and stillbirths.<sup>378</sup>

Since most jails charge for medical services, jailed mothers told us that they could not afford the expense. One mother, who was in jail just 11 days after giving birth, told us that she avoided going to the doctor “no matter what” because of the cost per visit.<sup>379</sup> Two other mothers told us that in jail they “can’t even get a Band-Aid”<sup>380</sup> or Tylenol without being charged.<sup>381</sup>

Pregnant women may also face extra charges for additional food. One mother told us that she was billed for “double trays” (extra food) while she was pregnant in jail.<sup>382</sup> In response to an inquiry from Human Rights Watch, Creek County Jail indicated that they bill everyone

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<sup>374</sup> Ibid.

<sup>375</sup> Human Rights Watch telephone interview with Bryan County Jail staff, September 12, 2018.

<sup>376</sup> Laura M. Maruschak, “Medical Problems of Jail Inmates,” *Bureau of Justice Statistics*, November 2006, <https://www.bjs.gov/content/pub/pdf/mpji.pdf> (accessed July 30, 2018).

<sup>377</sup> Ibid.

<sup>378</sup> Human Rights Watch telephone interview with Travis Smith, Tulsa County public defender, May 17, 2018 (“[Pregnant women are] really concerned about the safety of the baby ... what happens when there’s complications. Most are already high risk pregnancies because of the nature of who they are ... many are users and continue to use while pregnant. The health of the baby and the health of the mother is of great concern. ... Immediate issues with women who are pregnant [are] getting the things they need.”); Texas Criminal Justice Coalition, “An Unsupported Population: the Treatment of Women in Texas’ Criminal Justice System,” April 2018, p. 14, <https://www.texascjc.org/womens-justice> (accessed July 30, 2018); Sharona Coutts and Zoe Greenberg, “Deprived of Care, Incarcerated Women Suffer Miscarriages, Stillbirths, and Ectopic Pregnancies,” *Rewire.News*, March 2015, <https://rewire.news/article/2015/03/31/deprived-care-incarcerated-women-suffer-miscarriages-stillbirths-ectopic-pregnancies/> (accessed July 30, 2018); The Rebecca Project for Human Rights and the National Women’s Law Center, “Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children,” October 2010, <https://nwlc.org/resources/mothers-behind-bars-state-state-report-card-and-analysis-federal-policies-conditions-confinement-pregnant-and-parenting-women-and-effect-their-children/> (accessed July 30, 2018); BA Hotelling, “Perinatal Needs of Pregnant, Incarcerated Women,” *The Journal of Perinatal Education*, 2008, 17(2): 37-44, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2409166/> (accessed July 30, 2018).

<sup>379</sup> Human Rights Watch interview with Tiffany Stewart (pseudonym), Oklahoma City, January 18, 2018.

<sup>380</sup> Human Rights Watch interview with Lisa Peterson (pseudonym), Oklahoma City, January 19, 2018.

<sup>381</sup> Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.

<sup>382</sup> Ibid.

who requires extra food, including pregnant women.<sup>383</sup> Staff at several other jails told us that they did not bill, did not know if they billed, would not answer, or do not provide extra food to anyone.<sup>384</sup> A staff member of a reentry program working with formerly incarcerated women referred to the diet in Oklahoma County Jail as “honey buns and bologna,” which alludes to fare that is far from the nutritious diet pregnant women may need.<sup>385</sup>

### *Probation Fees*

As noted in the Background Section, most women who come into contact with the criminal justice system end up on probation. Conditions of probation often require the payment of fees, including fees for supervision and drug testing. Several formerly jailed mothers we spoke with told us that they were required to pay supervision fees for probation. Some of these fees were paid to the district attorney’s office and assessed at \$40 per month.<sup>386</sup> Supervision fees can be required for years, amounting to thousands of dollars.<sup>387</sup>

While probation is typically used as an alternative to incarceration, failure to pay supervision and other fees can result in incarceration, as discussed below.

### *Incarceration for Failure to Pay and Applications to Revoke or Accelerate*

The US Supreme Court established in *Bearden v. Georgia*,<sup>388</sup> that the Fourteenth Amendment prohibits the incarceration of people who cannot pay court fines and fees. It also held that courts must hold a hearing on the person’s financial circumstances and may only incarcerate for failure to pay upon a finding that nonpayment was willful, rather than due to inability to pay.<sup>389</sup>

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<sup>383</sup> Human Rights Watch telephone interview with Creek County Jail staff, June 13, 2018.

<sup>384</sup> Human Rights Watch survey of Oklahoma jails, Appendix III. Insert some call info

<sup>385</sup> Human Rights Watch interview with Kaitlin Black Salinas, ReMerge therapist, Oklahoma City, January 18, 2018. During a tour of Oklahoma County Jail on July 19, 2018, a Human Rights Watch researcher observed bologna sandwiches served for lunch around 9:30 am.

<sup>386</sup> 22 OK Stat. § 22-991d.

<sup>387</sup> One mother told us that she owes probation supervision fees until 2024 in Creek County even though she is not required to report to a probation officer or any other person. Human Rights Watch interview with Sonya Pyles, Tulsa, January 23, 2018.

<sup>388</sup> 461 U.S. 660 (1983).

<sup>389</sup> *Ibid.*



Oklahoma law requires a hearing to assess and make a judicial finding of a defendant's ability to pay fines and fees.<sup>390</sup> However, research conducted in 2014 by the University of Tulsa College of Law found that these hearings were not being held in Tulsa County courts.<sup>391</sup> Vera has also reported "no ability-to-pay assessment [is] done at the time costs are imposed" in Tulsa County but some "judges do conduct indigency assessments at the early stages of a case."<sup>392</sup>

For those who cannot afford to pay their fines and fees, they can be subject to arrest and incarceration. A Human Rights Watch researcher observed court proceedings in Tulsa County district court in January 2018, where a few people came before the court after already having had paid \$250 bail to be released from jail for failure to pay.<sup>393</sup> People unable to afford bail can remain in jail for days before being seen by the court.<sup>394</sup> The Oklahoma Policy Institute has reported similar occurrences in Sequoyah County, where a person arrested for failure to pay is required to pay \$250 towards their fines and fees to be released from jail prior to seeing a judge.<sup>395</sup> Afterwards, they meet with a judge to reevaluate payment plans on the "cost docket."<sup>396</sup>

Vera reviewed jail admissions and the average daily population in Tulsa County Jail in 2016 and found that failure to pay court costs was one of the most common criminal charges leading to incarceration.<sup>397</sup> In 2016, failure to pay court costs was the fourth most common reason for jail admission overall and the third most common reason for jail admission for women.<sup>398</sup>

Human Rights Watch analyzed Tulsa County Jail admissions data from 2016 and 2017 and found that during this two-year period, 1,124 women were booked into the jail for failure to

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<sup>390</sup> 22 OK Stat § 18.

<sup>391</sup> Quinn Cooper, et al, "Assessing the Cost": Criminal Fines, Court Costs, and Procedure versus Practice in Tulsa County," *University of Tulsa College of Law*, April 2014, <https://law.utulsa.edu/wp-content/uploads/sites/3/2014/12/Final-Report-Assessing-the-Cost.pdf> (accessed August 25, 2018), p. 11-12.

<sup>392</sup> Nancy Fishman et al, "Report to Tulsa County Stakeholders on Jail Reduction Strategies," *Vera Institute of Justice*, August 2017, p. 14, <https://www.vera.org/publications/report-to-tulsa-county-stakeholders-jail-reduction-strategies> (accessed July 30, 2018), p. 14.

<sup>393</sup> Human Rights Watch observation of Tulsa County District Court "cost docket," January 23 and January 26, 2018.

<sup>394</sup> Fishman et al, "Report to Tulsa County Stakeholders on Jail Reduction Strategies," p. 14.

<sup>395</sup> Ryan Gentzler, "Issue Brief: The Cost Trap," p. 9.

<sup>396</sup> *Ibid.*

<sup>397</sup> Fishman et al, "Report to Tulsa County Stakeholders on Jail Reduction Strategies," p. 14.

<sup>398</sup> *Ibid.*, 14, 20.

pay a fine or court costs, which accounted for 9 percent of women’s jail admissions.<sup>399</sup> These women stay in jail an average of six days before they are released.<sup>400</sup> Our data analysis also found that Black women were disproportionately jailed for failure to pay a fine or court costs, accounting for 37 percent of women booked in jail for failure to pay though Black women represent 24 percent of jail admissions.<sup>401</sup>

Several formerly jailed mothers told us that they are juggling payment plans and supervision requirements in several different counties at once<sup>402</sup> and one mother told us that she had taken out payday loans to pay court costs because she feared arrest if she did not make payments on time.<sup>403</sup> Individuals with greater financial means can simply pay fees directly to the court and do not risk incarceration for failure to pay.

Ryan Gentzler, a policy analyst at the Oklahoma Policy Institute, told us:

People with families have obligations beyond themselves. ... If you add diapers, and formula, and all the expenses that come with parenthood, especially as a single parent, ... what kind of choice [is it] to decide between food for your kid and paying your court costs to keep you out of jail? ... It’s a choice that people shouldn’t have to make, but people do.<sup>404</sup>

In addition to the risk of arrest and driver’s license suspensions noted above, those who cannot afford to pay their fines and fees are subject to additional penalties in the form of collection fees. Oklahoma law authorizes municipalities to contract with collection agencies for the collection of fines, fees, and additional penalties when the defendant has failed to appear or failed to satisfy a monetary obligation.<sup>405</sup> A municipality can authorize a

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<sup>399</sup> Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>400</sup> Ibid.

<sup>401</sup> Ibid.

<sup>402</sup> Human Rights Watch interviews with Heather Morris (pseudonym), Oklahoma City, January 18, 2018, Lauren Miller (pseudonym), Oklahoma City, January 19, 2018, Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018, Lisa Peterson (pseudonym), Oklahoma City, January 19, 2018, and Lindsey Russell (pseudonym), Oklahoma City, January 20, 2018.

<sup>403</sup> Human Rights Watch interview with Sonya Pyles, Tulsa, January 23, 2018.

<sup>404</sup> Human Rights Watch telephone interview with Ryan Gentzler, Oklahoma Policy Institute researcher, January 30, 2018.

<sup>405</sup> 19 O.S. § 514.4, 514.5.

collection fee of up to 35 percent, which is charged to the defendant in addition to what they owe the court, further driving people into debt.<sup>406</sup>

A lawsuit filed in February 2018 named 54 county sheriff offices in addition to judges and court clerks, alleging a scheme with Aberdeen Enterprises, Inc. (Aberdeen), a collections agency, to extort the collection of fines and fees without an assessment of an individual's ability to pay.<sup>407</sup>

Tara Howard, a 40-year-old mother of two, had fines and fees in collections with Aberdeen. She told us that what she owes has grown substantially. She said, "I don't think it's fair. ... With every \$25 payment, I don't see it going down at all."<sup>408</sup>

Fines and fees also are not compiled in an accessible and reliable manner. Several reentry program workers also told us that they have attempted to determine the amount of fines and fees owed by the mothers they serve so that they can help them set up payment plans. However, as one diversion program director told us: "One of the hardest things is to get accurate information. ... We think we looked everything up then lo and behold there's something else. It happens a lot where things don't show up and then they just do."<sup>409</sup>

Oklahoma's practice of arresting people for inability to pay fines and fees has prompted public critique and debate. Despite this, Tulsa County public defender Travis Smith said, "[we] still are seeing a bunch of applications to revoke suspended sentences because [the defendants] can't afford their supervision fees. ... It's the difference between if their children eat or not."<sup>410</sup>

Thus, noncompliance with probation can be a frequent pathway to jail and prison. Violations of probation "may [] result from the challenges of juggling supervision requirements with work and family responsibilities" and the "potentially conflicting

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<sup>406</sup> Ibid.

<sup>407</sup> *Carly Graff et al v. Aberdeen Enterprises II, Inc.*, 17cv606 (CVE)(JF), <https://www.documentcloud.org/documents/4365230-Oklahoma-Aberdeen-Lawsuit.html> (accessed August 25, 2018).

<sup>408</sup> Ibid.

<sup>409</sup> Human Rights Watch interviews with Terri Woodland, ReMerge executive director, July 23, 2018.

<sup>410</sup> Human Rights Watch telephone interview with Travis Smith, Tulsa County public defender, May 17, 2018.

expectations” of multiple court systems.<sup>411</sup> A former judge told us that complying with probation is a catch 22: “Probation would want you to drop everything to get a pee test” but people can end up losing their jobs in order to comply.<sup>412</sup>

A 2014 study also found that 20 percent of women who entered Oklahoma prisons were incarcerated for noncompliance with probation or parole.<sup>413</sup> In addition to being sentenced to probation, many of the mothers we spoke with were also subject to a period of probation as part of a suspended sentence or a deferred sentence.

Our analysis of Tulsa County Jail admissions from 2016 and 2017 found that applications to revoke a suspended sentence or to accelerate a deferred sentence accounted for 15 percent of women’s jail admissions and nearly half of the women held in jail until they were sent to state prison were charged with an application to revoke.<sup>414</sup> These women did not bail out of jail after their arrests and were held nearly four months on average (mean = 118 days, median = 88 days) before being sentenced to prison.<sup>415</sup>

Probation failures are likely a result of financial instability. While judges in Oklahoma have discretion to waive or reduce most fines and fees assessed by the court<sup>416</sup> and can waive jail stay fees proportionally,<sup>417</sup> much needs to be done to ensure that judges are indeed waiving and reducing fines and fees for those living in poverty or subsisting on disability benefits. Much also needs to be done to ensure that no one is spending days, a week, or longer in jail simply because they are behind on a payment plan.

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<sup>411</sup>Elizabeth Swavola, Kristine Riley, and Ram Subramanian, “Overlooked: Women and Jails in an Era of Reform,” *Vera Institute of Justice*, August 2016, <https://www.vera.org/publications/overlooked-women-and-jails-report> (accessed July 30, 2018), p. 32.

<sup>412</sup> Human Rights Watch telephone interview with Dynda Post, former state district court judge, April 17, 2018.

<sup>413</sup> Susan F. Sharp, Melissa S. Jones, and David Axlyn McLeod, “Oklahoma Study of Incarcerated Mothers and Their Children,” *University of Oklahoma*, September 2014, <https://www.ok.gov/occy/documents/CIP%20incarcerated%20wome n%20study%20report%202014.pdf> (accessed July 30, 2018), p. 2.

<sup>414</sup> Human Rights Watch analysis of 2016-2017 Tulsa County Jail admissions data.

<sup>415</sup> *Ibid.*

<sup>416</sup> 22 O.S. § 983a.

<sup>417</sup> 22 O.S. § 979a(D).

## Fees as a Barrier to Family Reunification

Fees associated with services needed to meet the requirements of child welfare reunification plans can also be another financial hurdle for formerly jailed mothers to jump over to regain child custody. Satisfying reunification conditions requires some form of financial stability, which can be challenging to achieve for those with criminal records.

A non-profit lawyer told us, “Lots of people fail because they can’t afford all the conditions of reunification.”<sup>418</sup> A review of Oklahoma appellate case law reveals several instances in which parents struggled to meet the requirements of their reunification plans for financial reasons and had their parental rights terminated, though in some cases this decision was reversed on appeal.<sup>419</sup>

Mothers seeking to regain custody of their children in foster care may need to take parenting classes, undergo a mental health evaluation, and submit to random drug testing through urinary or hair follicle analysis as part of their reunification plan. These requirements often entail fees that are beyond the reach of formerly jailed mothers.<sup>420</sup>

Attorneys told us that drug tests (urinary analysis and follicle tests) can be expensive and can easily add up: “If you’re testing three times a week that’s \$21 per week [and] that’s almost \$100 per month.”<sup>421</sup>

OKDHS may provide referrals, use contingency funds, and provide vouchers to help parents meet the conditions in their reunification plans or judges can also order OKDHS to fund required services.<sup>422</sup> A district attorney who handles juvenile court cases in Oklahoma

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<sup>418</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018.

<sup>419</sup> See, e.g. *Jeremiah v. State*, Court of Civil Appeals of Oklahoma, 286 P.3d 659, August 27, 2012 (noting mother’s statements that she “continues to be employed but has not been able to obtain housing. [Mother] states that [DHS] is taking so much from her for child support, that she is unable to obtain housing. [Mother] has also missed three weeks of her domestic violence classes as reported by STAT. [Mother] also reports that this is due to her not having enough money to pay for her classes.”); *Garrison v. State*, Court of Civil Appeals of Oklahoma, 293 P.3d 986, October 26, 2012 (noting a progress report stating that “Mother was not testing because of financial constraints - she was earning \$30 per week and Father was unable to work because of a back injury for which he was awaiting surgery.”).

<sup>420</sup> *Ibid.*

<sup>421</sup> Human Rights Watch telephone interview with Alexis Gardner, Tulsa contract attorney, May 16, 2018.

<sup>422</sup> *Ibid.*; Human Rights Watch telephone interview with Dynda Post, former state district court judge, May 10, 2018, and interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018 (“[OK]DHS is not mandated statutorily or in their policies to pay for the services some individuals are required to do. ... Courts can order [OK]DHS to pay for the services.”).

County told us, “We expect you to financially afford yourself” but OKDHS has contracts to provide services at no cost with referrals.<sup>423</sup>

However, funds are limited. An OKDHS worker told us that if OKDHS makes referrals, “a lot of times” services will be available at no cost but “if you go into more expensive things, like a hair follicle, a lot of times parents will be footing that cost. ... Same with psych[ological] evaluations. ... There are some [services] that are not covered and there is no funding for [them] and if there is no funding ... then the parents are responsible. ... [and] that does suck.”<sup>424</sup> She added:

Anytime the parent expresses, ‘Well I don’t have money for this,’ then [OKDHS] should be looking if we have contingency funds ... [but] that is going to be at the discretion of each division director. ... Our state has been in a huge funding deficit [and] we haven’t had enough money than [we’ve had] in years past. ... It all depends on what has been used up and what is left, ... but if we have [contingency funds] we should be recommending we use it.<sup>425</sup>

As one attorney said, even if OKDHS provides financial support for one service, they may not provide additional assistance parents living in poverty need:

If someone has a psych[ological] evaluation and [OK]DHS already helped with transportation (bus pass each month) or utilities, then [OK]DHS will say, ‘[W]ell we used your contingency funds on your bus pass so we can’t help with anything else.’ If you don’t have a car, you don’t have an apartment, you’ve been living on the street ... you’re going to need a bus pass, you’re going to need some contingency funds for housing.<sup>426</sup>

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<sup>423</sup> Human Rights Watch telephone interview with Jackie Rivera, Oklahoma County assistant district attorney, July 19, 2018.

<sup>424</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018; Human Rights Watch email correspondence with OKDHS, September 21, 2018 (“Most services (out of jail) are free of charge to the parents and in cases where they are not, [OK]DHS assists with vouchers, within the limits of available funds.”).

<sup>425</sup> Ibid.

<sup>426</sup> Human Rights Watch telephone interview with Alexis Gardner, Tulsa contract attorney, May 16, 2018.

One attorney, who represents children in juvenile court, told us that “People can get nickled and dimed to death and a lot of people don’t have a lot of nickels and dimes. ... That’s the thing that almost all these parents have in common, ... mostly they are poor.”<sup>427</sup> A clinical professor also said that OKDHS will “require people to get these things done who have no way to pay for the services.”<sup>428</sup>

Alicia Bryant, a 31-year-old mother of four, told us that she had to pay \$75 for a mental health evaluation and \$75 for a psychological examination, which were beyond her means without assistance. She was able to get a voucher from OKDHS for one. Luckily, the father of one of her children was able to help her pay for the other.<sup>429</sup>

Complying with reunification plans may also require a flexible schedule<sup>430</sup> and reliable transportation. One mother told us that she could not keep a job because she was trying to comply with multiple requirements from OKDHS.<sup>431</sup> OKDHS progress reports track parents’ compliance with these requirements.<sup>432</sup>

Parents may also be ordered to pay child support to the state (if the child is in foster care) or to the custodial parent or family member (if the child is not in state custody). Lindsey Russell, a formerly incarcerated mother of three, was charged \$800 per month in child support based on her pre-incarceration income. She told us that child support orders were

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<sup>427</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.

<sup>428</sup> Human Rights Watch telephone interview with Amy Pepper, University of Oklahoma College of Law professor, July 27, 2018.

<sup>429</sup> Human Rights Watch interview with Alicia Bryant (pseudonym), Oklahoma City, January 20, 2018.

<sup>430</sup> Human Rights Watch telephone interview with Dynda Post, former state district court judge, May 10, 2018 (“Even if [reunification services are] free, think about how do you go to parenting classes, substance abuse counseling. ... How do you do all that and work your basic minimum wage job, you don’t get off work, you don’t get paid leave.”).

<sup>431</sup> Human Rights Watch interview with Tanisha (pseudonym), Oklahoma City, January 20, 2018.

<sup>432</sup> See, e.g. *Jeremiah v. State*, Court of Civil Appeals of Oklahoma, 286 P.3d 659, August 27, 2012 (“Mother, who was still unemployed but DHS reported as ‘actively looking,’ quickly completed her parenting class, but was delayed starting the domestic violence class at the YWCA until December 2008. The record reveals the delay resulted from the YWCA’s first assessment indicating Mother did not need any services, and DHS’s requirement for reassessment. On January 9, 2009, Mother pleaded guilty and was sentenced in her criminal misdemeanor case, part of which included a 52-week Batterer’s Intervention Program with STAT Court Services (‘the STAT class’). Although Mother had just started the STAT class in February, DHS recommended termination of Mother’s parental rights in its March 9, 2009 ISP progress report, because she had lost her Section 8 housing due to nonpayment of her gas bill.”)(internal citations omitted); *Garrison v. State*, Court of Civil Appeals of Oklahoma, 293 P.3d 986, October 26, 2012 (noting a progress report stating that Mother “has [begun] testing and has tested negative...[and] has also completed all of her other services.’ She had also begun Family Counseling services. The December 16, 2010 report stated Mother was not testing because of financial constraints - she was earning \$30 per week and Father was unable to work because of a back injury for which he was awaiting surgery.”) (internal citations omitted).

entered in three counties for each of her children, far exceeding her ability to pay and not reflective of her current income.<sup>433</sup>

In some cases, parents are assessed child support based on full-time minimum wage employment (approximately \$220 per month for one child), even when they are unemployed, working only part-time, or while they are incarcerated.<sup>434</sup> Some judges may set child support at a lesser amount but a former judge and an attorney both told us that the court does not waive child support.<sup>435</sup> While an incarcerated parent can file a motion to modify a child support order based on their current income,<sup>436</sup> some may not be aware of their ability to do so.

Courtney Nelson, a mother of three, was incarcerated in Garfield County Jail in 2014 for multiple counts of false impersonation and obtaining cash and property under false pretenses. She said that the father of her youngest child sought custody and child support while she was in jail and jail staff refused to transport her to the custody hearing because it was not a criminal matter. A child support order was entered, which she said ordered her to pay \$210 per month based on her income prior to her incarceration. Courtney said she now owes her child's father back child support that has accrued while she was in and out of jail and prison. She told us that she cannot get her driver's license back until she pays child support for three months, in addition to extensive fees for driver's license reinstatement.<sup>437</sup>

An attorney representing children in juvenile court told us that child support order amounts are not “debated in the court,” which is surprising since the child support “money is going to recuperate [OK]DHS and [the children's attorney] would rather [parents]

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<sup>433</sup> Human Rights Watch interview with Lindsey Russell (pseudonym), Oklahoma City, January 20, 2018.

<sup>434</sup> Human Rights Watch telephone interviews with Joey Combs, clerk to the chief judge of Tulsa district court juvenile division, May 16, 2018.

<sup>435</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018, and telephone interview with Dynda Post, former state district court judge, April 17, 2018.

<sup>436</sup> Oklahoma Department of Human Services, “Incarcerated Parents and Child Support Services,” May 2016, <http://www.okdhs.org/OKDHS%20Publication%20Library/15-38.pdf> (accessed September 16, 2018); Human Rights Watch email correspondence with Jeff M. Wagner, OKDHS Office of Communications, May 16, 2018. (“actual income is used when known” and child support “is set by the judge who may deviate from the [child support] guidelines depending on the circumstances”), p. 3.

<sup>437</sup> Human Rights Watch interview with Courtney Nelson (pseudonym), Oklahoma City, January 20, 2018.



have money in their pocket.”<sup>438</sup> He noted that “[Parents] need to be using that money to put themselves in a situation where they can get the kids out[] of [OK]DHS custody.”<sup>439</sup>

Before an OKDHS case is closed, parents are also expected to work out a child support payment plan<sup>440</sup> and a former judge told us that OKDHS would want separate payment plans for currently accruing child support and back child support,<sup>441</sup> which many may be unable to afford. But failure to make payments can result in jail time or serve as a basis for TPR.<sup>442</sup>

## Collateral Consequences of a Criminal Record

Human Rights Watch and the American Civil Liberties Union have previously documented the many formal and informal barriers to employment, housing, education, and transportation experienced by people with criminal records.<sup>443</sup>

Without support after their release, some mothers are unable to get low-income housing because of their felony convictions,<sup>444</sup> are charged “felon deposits” (an extra fee in addition to the security deposit) for rentals,<sup>445</sup> and cannot get their own apartment due to previous evictions or utility arrearages.<sup>446</sup> As one non-profit lawyer explained, “everyone understands if I don’t get out of jail, I’m going to be evicted.”<sup>447</sup>

Once convicted and released from jail, accessing housing is a challenge. According to policy analysis conducted by the Oklahoma Policy Institute, public housing authorities in Oklahoma have policies barring people with felony drug arrests and convictions from

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<sup>438</sup> Human Rights Watch telephone interview with Ryan Hauser, Oklahoma County public defender, July 27, 2018.

<sup>439</sup> Ibid.

<sup>440</sup> Human Rights Watch telephone interview with Tasha Granillo, OKDHS worker, August 17, 2018.

<sup>441</sup> Human Rights Watch telephone interview with Dynda Post, former state district court judge, April 17, 2018.

<sup>442</sup> Willful nonpayment is grounds for termination of parental rights. 10A OK Stat. § 10A-1-4-904. Under current case law interpreting the Fourteenth Amendment, court-appointed counsel is not categorically required when a person faces incarceration for nonpayment of child support in proceedings brought by a custodial parent against a non-custodial parent. See *Turner v. Rogers*, US Supreme Court, 564 U.S. 431, June 20, 2011.

<sup>443</sup> See Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, October 2016, <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states>.

<sup>444</sup> Human Rights Watch interview with Tanisha (pseudonym), Oklahoma City, January 20, 2018.

<sup>445</sup> Human Rights Watch interview with Robin Wertz, Exodus House Oklahoma City site director, Oklahoma City, January 20, 2018.

<sup>446</sup> Human Rights Watch interview with Kelly Lambert (pseudonym), Oklahoma City, January 19, 2018.

<sup>447</sup> Human Rights Watch interview with non-profit attorney (name withheld), Tulsa, January 22, 2018.

public housing, reflecting a stricter policy than federal restrictions.<sup>448</sup> Those with felony drug arrests or convictions are barred from public housing assistance for a period of three years.<sup>449</sup> This bar is even longer for people arrested, convicted, or incarcerated for using, distributing, or manufacturing methamphetamine.<sup>450</sup>

Inadequate access to housing can be a barrier to regaining child custody. A non-profit lawyer said that she has seen “plenty of judges not terminate guardianships or [not] end juvenile actions because of the places [parents] live, but people are too poor to move. They have to live where people will take them.”<sup>451</sup> Another attorney, who represents parents in juvenile court, told us that OKDHS will not reunify if a parent is living in a shelter,<sup>452</sup> which may be the only housing a formerly jailed mother can find to live.

A recent report by the Prison Policy Initiative has reported that formerly incarcerated people are nearly 10 times more likely than the general public to be homeless.<sup>453</sup> Formerly incarcerated women have higher rates of homelessness than men and formerly incarcerated Black women have the highest homelessness rate.<sup>454</sup> Being incarcerated more than once increases the rate of homelessness.<sup>455</sup>

Securing employment is also difficult for people with criminal records. The Prison Policy Initiative has also reported that formerly incarcerated people are five times more likely than the general public to be unemployed (27.3 percent, compared with 5.2 percent).<sup>456</sup> Formerly incarcerated Black women have the highest unemployment rate (43.6 percent).<sup>457</sup>

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<sup>448</sup> Carly Putnam, “Barriers to Affordable Housing for Oklahomans with Felony Convictions,” *Oklahoma Policy Institute*, July 2015, [https://okpolicy.org/wp-content/uploads/Affordable\\_Housing\\_Brief.pdf?x43134](https://okpolicy.org/wp-content/uploads/Affordable_Housing_Brief.pdf?x43134) (accessed August 25, 2018).

<sup>449</sup> *Ibid.*

<sup>450</sup> *Ibid.*

<sup>451</sup> *Ibid.*

<sup>452</sup> Human Rights Watch interview with Claire Rogers, Still She Rises family defense practice supervisor, Tulsa, July 20, 2018.

<sup>453</sup> Lucius Couloute, “Nowhere to Go: Homelessness among formerly incarcerated people,” Prison Policy Initiative, August 2018, <https://www.prisonpolicy.org/reports/housing.html> (accessed August 25, 2018).

<sup>454</sup> *Ibid.*

<sup>455</sup> *Ibid.*

<sup>456</sup> Lucius Couloute and Daniel Kopf, “Out of Prison & Out of Work: Unemployment among formerly incarcerated people,” July 2018, <https://www.prisonpolicy.org/reports/outofwork.html> (accessed August 25, 2018).

<sup>457</sup> *Ibid.*

One mother, who accepted a guilty plea to return home to her children quickly, told us that she had a hard time finding permanent employment because of her conviction history. She also found it difficult to find employment that fit within the schedule of her reentry program. She said, “I had no idea when I pled I was going to be labeled a felon forever and that it would be hard to get jobs.”<sup>458</sup>

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<sup>458</sup> Human Rights Watch interview with April Weiss, Tulsa, January 23, 2018.

## VI. International Human Rights Standards

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

-International Covenant on Civil and Political Rights, Article 10(1)

### Pretrial Detention and Money Bail

The International Covenant on Civil and Political Rights (ICCPR), which the US ratified in 1992, codifies the right to liberty.<sup>459</sup> Article 9(3) of the ICCPR allows for pretrial detention but emphasizes that it should “not be the general rule.”<sup>460</sup> International treaty bodies and other authoritative interpretations of Article 9(3) are uniform in the view that pretrial detention should be the exception—“a means of last resort”—and not the norm. When concerns about flight risk or safety require some conditions on pretrial release, to the extent possible non-custodial measures should be used rather than pretrial detention. Where pretrial detention is used, its duration should be as short as possible.<sup>461</sup>

The maximum length of pretrial detention should be proportionate to the maximum potential sentence a detainee faces if ultimately convicted.<sup>462</sup> If imprisonment is “not to be expected” as punishment for a crime, every effort should be made to avoid any resort to pretrial detention.<sup>463</sup>

Where resort is made to money bail, it should not become a device that tends to put pretrial release out of reach for low-income defendants. The European Court of Human

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<sup>459</sup> Article 9(1), International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992.

<sup>460</sup> ICCPR, Art 9(3).

<sup>461</sup> See, for example, UN Human Rights Committee, General Comment No. 8, Right to liberty and security of persons (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.9 (vol. I)(2008), p. 179, para. 3; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. res. 45.110 (“Pre-trial detention shall be used as a means of last resort in criminal proceedings...alternatives to pretrial detention shall be employed at as early a state as possible. Pretrial detention shall last no longer than necessary.”).

<sup>462</sup> Centre for Human Rights, Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention* (New York and Geneva: United Nations, 1994), available at [https://www.un.org/ruleoflaw/files/training3\\_en.pdf](https://www.un.org/ruleoflaw/files/training3_en.pdf) (accessed September 10, 2018), p. 18.

<sup>463</sup> *Ibid.*, p. 16.

Rights—in jurisprudence that is a useful and practical application of the human rights principles at stake even though it is not binding on the United States—has held that because the fundamental right to liberty is at stake, authorities should take as much care in fixing appropriate amount of bail—with reference to the accused and their assets—as in deciding whether or not the accused’s continued detention is indispensable.<sup>464</sup> Pretrial detention imposed on criminal defendants accused of low level offenses solely because they cannot afford bail is inconsistent with the rights to liberty, the presumption of innocence, and the right to equality under the law.<sup>465</sup>

## Communication and Family Visits

Broadly speaking, governments should take care not to needlessly aggravate the inherently “afflictive” nature of incarceration.<sup>466</sup> This imperative is if anything even stronger in situations of pretrial detention, where detainees have not been convicted of any crime or sentenced to a term of incarceration.<sup>467</sup>

A person’s detention should not unreasonably restrict their contact with family and the outside world in general. Article 17 of the ICCPR guarantees the right to be free from arbitrary interference with one’s correspondence.<sup>468</sup> The UN Human Rights Committee, which is the expert body charged with interpreting and monitoring state compliance with the ICCPR, has maintained that under Article 17, “prisoners should be allowed under necessary supervision to communicate with their family ... at regular intervals, by

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<sup>464</sup> *Islawanczuk v Oikabdl Bojilov v Bulgaria*, European Court of Human Rights, Commission’s report 1980, Decisions and Reports 23, p. 196, para 171.

<sup>465</sup> For a fuller discussion of human rights violations associated with pretrial detention and money bail in the US criminal justice system, see Human Rights Watch, *United States—“Not in it for Justice”: How California’s Pretrial Detention and Bail System Unfairly Punishes Poor People*, April 2017, <https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly>; Human Rights Watch, *United States—The Price of Freedom: Bail and Pretrial Detention of Low Income Nonfelony Defendants in New York City*, December 2010, [https://www.hrw.org/sites/default/files/reports/us1210webwcover\\_o.pdf](https://www.hrw.org/sites/default/files/reports/us1210webwcover_o.pdf).

<sup>466</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), General Assembly resolution 70/175, annex, adopted 17 December 2015, [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf) (accessed September 10, 2018), Rule 3. The Mandela rules are a non-binding, but authoritative and useful guide to generally accepted good principles and practices to ensure respect for the rights of people in criminal detention. The rules emphasize that, “Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation.” Ibid.

<sup>467</sup> Ibid., Rules 111- 120, elaborating how pretrial detainees should “benefit from a special regime” rooted in their unique status.

<sup>468</sup> ICCPR, Art. 17.

correspondence as well as by receiving visits.”<sup>469</sup> People serving sentences and pretrial detainees should be able to communicate with family and friends in writing, by receiving visits and also through telecommunication, digital and other means.<sup>470</sup> Pretrial detainees should be able to receive visits from their families “with the minimum restrictions compatible with the good order of the place of detention and the need to avoid destruction of evidence.”<sup>471</sup> In order to facilitate regular visits, incarcerated people should to the extent possible be placed in facilities close to their homes.<sup>472</sup>

The government’s responsibilities in this area implicate the rights of children just as profoundly as the rights of their parents. The Convention on the Rights of the Child (CRC) recognizes that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be the primary consideration.”<sup>473</sup> Policies regarding visitation, and decisions about the resources allocated to facilitate such visits, should be seen not only as implicating the rights of people in detention to *receive* visits but also the right of children *to visit and have contact with* their parents. Under the CRC, states are required to “respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.”<sup>474</sup> It also requires that “no child shall be subjected to arbitrary interference with his or her privacy, home or correspondence.”<sup>475</sup> The US has signed, but not ratified the Convention and as such is not legally bound by its provisions. However, it remains a useful and authoritative guide to the measures the US should adopt to guarantee and protect the fundamental human rights of children.

Disciplinary sanctions or restrictive measures in detention should not include the prohibition of family contact. Any restriction on the means of family contact should only be

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<sup>469</sup> UN Human Rights Committee, *Miguel Angel Estrella v Uruguay*, p. 98, para 9.2, <http://hrlibrary.umn.edu/undocs/session38/74-1980.htm> (accessed September 10, 2018).

<sup>470</sup> Mandela Rules, Rule 58.

<sup>471</sup> *Human Rights and Pre-Trial Detention*, para 119.

<sup>472</sup> Mandela Rules, Rule 59.

<sup>473</sup> Convention on the Rights of the Child, Art. 2.

<sup>474</sup> CRC, art. 9(3).

<sup>475</sup> *Ibid.*, art. 16.

for a limited time period and only as strictly required for the maintenance of security and order.<sup>476</sup>

## Custody and Family Unity

The treatment of incarcerated people should emphasize “not their exclusion from the community but their continuing part in it.”<sup>477</sup> As such, governments should establish community agencies to assist incarcerated people in transitioning back into their communities after release.<sup>478</sup> Authorities should also take steps to help ensure the “maintenance and improvement” of relations between an incarcerated person and her family.<sup>479</sup> Government agencies should work in a coordinated manner to facilitate the smooth transition of incarcerated people back into society.<sup>480</sup> This should include the provision of all appropriate assistance in maintaining an incarcerated and formerly incarcerated person’s relationship with and custody of their minor children. Authorities should take care that the mere fact of a woman’s detention pending trial does not impede her ability to retain custody of her children.

As is true of visitation, actions or omissions by state authorities that impact an incarcerated mother’s ability to maintain custody of her children implicates the fundamental human rights of those children as well as of their mother, and the best interests of the child should be a primary consideration. The CRC emphasizes that states should “ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>481</sup> Authorities need to take care to ensure that the mere fact of a mother’s incarceration does not in practice impede her ability to participate in such deliberations, or trigger a family separation that is not in the child’s best interests.

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<sup>476</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 93.

<sup>477</sup> *Ibid.*, Rule 61.

<sup>478</sup> *Ibid.*

<sup>479</sup> *Ibid.*, Rule 79.

<sup>480</sup> *Ibid.*, Rule 61.

<sup>481</sup> CRC, art. 9(1).

## Healthcare in Detention

Prisons and jails should provide necessary health care services for incarcerated people free of charge, and the standard of care in detention should at least equal what is generally available in the community.<sup>482</sup> Places of detention should also ensure the provision of all necessary hygiene supplies and prenatal and postpartum care and treatment.<sup>483</sup>

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<sup>482</sup> Standard Minimum Rules, Rule 22.

<sup>483</sup> *Ibid.*, Rule 17, 23.



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## Appendix I: Tables of County Jail Visitation Policies

Human Rights Watch conducted a survey of the 25 most populated counties in Oklahoma.<sup>484</sup>

### Counties with Regularly Scheduled In-Person Visitation

Counties with Regularly Scheduled In-Person Visitation	Visit Length, Form, and Quantity	Children Permitted to Visit (Yes/No)	Appointment Required to Visit (Yes/No)	When Visitation Begins
Comanche	15 minutes, two per week, behind a glass partition, maximum two adult visitors	Yes  Staff unsure if there's a child visitor limit  (requirements: biological children only, custodial parent or legal guardian chaperone, birth certificate)	No	After booked in (one to two day delay for visitor forms)
Delaware	30 minutes, one per week, behind a glass partition, no visitor maximum  (visitation restricted if in segregation)	Yes, no maximum children visitors  (requirements: parent chaperone)	No	72 hours after booked in
Le Flore	15 minutes, one per week, behind a glass partition, maximum three adult visitors  (visitation restricted if in segregation)	Yes, maximum three children visitors  (requirements: parent or legal guardian chaperone)	Yes	After booked in

<sup>484</sup> Oklahoma has 77 counties, each with their own county jail. Our survey did not include city jails. The counties surveyed are as follows (in alphabetical order): Bryan, Canadian, Carter, Cherokee, Cleveland, Comanche, Creek, Delaware, Garfield, Grady, Kay, Le Flore, Logan, Muskogee, Oklahoma, Osage, Payne, Pittsburg, Pottawatomie, Rogers, Sequoyah, Stephens, Tulsa, Wagoner, and Washington. The populations of the 25 counties represented in our survey account for 70 percent (3,111,524) of the state's total population (3,930,864). For a county-by-county population interactive map, see United States Census Bureau, "QuickFacts: Oklahoma; Oklahoma County, Oklahoma," <https://www.census.gov/quickfacts/fact/map/ok,oklahomacountyoklahoma/PST045217> (accessed August 12, 2018). A call log is on file with the researcher.

Stephens	15 minutes, one per week, behind a glass partition, maximum three visitors	No	No	Weekend after booked in
Tulsa	30 minutes, one per week, behind a glass partition, maximum one adult visitor  (visitation restricted if in segregation)	Yes, no maximum children visitors  (requirements: If under 18—custodial parent or legal guardian chaperone and birth certificate or court order; If under 14—visitation scheduled through Chaplain’s office or through the Parenting in Jail program)	Yes	Visitor background check is required (7-10 business days to complete)
Wagoner	15 minutes, one per week, behind a glass partition, maximum four visitors  (visitation restricted if in segregation)	Yes  (requirements: adult chaperone)	No	48 hours after booked in

### Counties with In-Facility and/or Remote Video Visitation

Counties with In-Facility and/or Remote Video Visitation	Visit Length, Form, and Quantity	Children Permitted to Visit (Yes/No)	Appointment Required to Visit (Yes/No)	When Visitation Begins	Costs
Bryan	In-facility: 30 minutes, five per week, no maximum visitors  Remote: unlimited, no maximum visitors  (visitation permitted even if in segregation)	Yes, no maximum children visitors  (requirements: parent or legal guardian chaperone)	Yes, through the provider (HomeWav)	After arraignment	In-facility: no cost  Remote: 50 cents per minute
Canadian	In-facility: 15 minutes, one per week, maximum three adult visitors	Yes, no maximum children visitors	No	After booked in	In-facility: no cost

	(visitation permitted even if in segregation)	(requirements: adult chaperone)			
Carter	In-facility: 15 minutes, one per week, maximum one visitor  Remote: unlimited  (visitation restricted if in segregation)	In-facility: no  Remote: yes	No	Staff did not know	In-facility: \$7.50 for 15 minutes  Remote: staff did not know per minute rate
Cherokee	In-facility: 20 minutes, one per week, maximum two visitors  Remote: 20 minutes, every day  (visitation restricted if in segregation)	No	Yes, through the provider (Securus)	After booked in	In-facility: no cost  Remote: \$6.95 for 20 minutes
Cleveland	In-facility only: 15 minutes, two per week, maximum two adult visitors  (visitation restricted if in segregation)	Yes, no maximum children visitors  (requirements: biological children only, parent or legal guardian chaperone, must call to be verified)	Yes	After booked in	No cost
Creek	In-facility only: 30 minutes, one per week, maximum two adult visitors  (visitation permitted even if in segregation)	Yes	Yes, through the provider (NCIC)	Staff did not know	Staff did not know
Garfield	In-facility: 20 minutes, every day, no maximum visitors  Remote: unlimited, no maximum visitors  (visitation restricted if in segregation)	Yes  (requirements: adult chaperone)	No	After booked in	In-facility: no cost  Remote: 27 cents per minute
Grady	In-facility: 10 minutes, one per week, maximum two adult visitors	Yes  In-facility:	Yes, through the provider (HomeWav)	After housed (one to two days)	In-facility: no cost

	Remote: unlimited, no maximum visitors  (visitation restricted if in segregation)	maximum two children visitors (one child per adult visitor)  (requirements: adult chaperone)			Remote: 50 cents per minute
Kay	In-facility: 26 or 27 minutes, two per week, maximum two visitors  Remote: unlimited, no maximum visitors	Yes  (requirements: adult chaperone)	Yes, through the jail  Provider: City Tele Coin	After booked in	In-facility: no cost  Remote: 50 cents per minute
Le Flore	In-facility: 15 minutes, one per week, maximum three adult visitors  Remote: 15 minutes, no limit per week, no maximum visitors  (visitation restricted if in segregation)	Yes  In-facility: maximum three children visitors  (requirements: parent or legal guardian chaperone)	Yes, through the provider (City Tele Coin)	After booked in	In-facility: no cost  Remote: staff did not know per minute rate
Logan	In-facility: 15 minutes, one per week, no maximum visitors  Remote: 15 minutes, five visits per week, no maximum visitors  (visitation restricted if in segregation)	Yes  (requirements: adult chaperone)	Yes, through the provider (HomeWav)	After booked in	In-facility: no cost  Remote: staff did not know per minute rate
Muskogee	In-facility: 20 minutes, two per week, maximum two to three visitors  Remote: 20 minutes, no limit per week, no maximum visitors  (visitation permitted even if in segregation)	Yes  (requirements: adult chaperone)	Yes, through the provider (City Tele Coin)	After booked in	In-facility: one visit per month at no cost (\$5 for other visits)  Remote: 50 cents per minute
Oklahoma	In-facility: 15 minutes, one per week, maximum two adult	Yes	Yes, through the provider	After housed and visitor	In-facility: no cost

	visitors  Remote: 15 minutes, one per week, maximum two adult visitors  (visitation restricted if in segregation)	In-facility: maximum two children visitors (one child per adult visitor)  (requirements: parent or legal guardian)	(Telmate)	application is approved (one week)	(with option to extend visit for additional 15 minutes for \$3.75)  Remote: \$10 for a 15 minute visit
Osage	In-facility: 25 minutes, one per week, maximum four visitors  Remote: 15 minutes, every day, no maximum visitors  (visitation restricted if in segregation)	Yes  In-facility: adult chaperone  Remote: no adult supervision required	Yes, through the provider (City Tele Coin)	After housed (one to two days)	In-facility: no cost  Remote: staff did not know per minute rate
Payne	In-facility only: 15 minutes, one per week, maximum three visitors	Yes  (requirements: adult chaperone)	No	After booked in	No cost
Pittsburg	In-facility: 20 minutes, one per week, maximum two to three visitors  Remote: Unlimited, maximum two to three visitors  (visitation permitted even if in segregation)	In-facility: no  Remote: yes	Yes, through the provider (Homewav)	After booked in	In-facility: no cost  Remote: 60 cents per minute
Pottawatomie	In-facility only: 20 minutes, one per week, maximum three adult visitors  (visitation restricted if in segregation)	Yes, maximum two children visitors (requirements: second-degree biological relationship required, parent or legal guardian chaperone, birth certificate)	Yes, 48 hours in advance	7 day waiting period after booked in then a visitor form must be completed	No cost
Rogers	In-facility: 20 minutes, one per week, maximum two adult	Yes	Yes, through the provider	After housed (one to two	In-facility: no cost

	<p>visitors</p> <p>Remote: 20 minutes, two visits per week, no visitor limit</p> <p>(visitation permitted even if in segregation)</p>	<p>In-facility: three children limit</p> <p>(requirements: parent or legal guardian)</p>	(IC Solutions)	days)	Remote: \$10 per 15 minute visit
Sequoyah	<p>In-facility: 20 minutes, four per week, maximum two visitors</p> <p>Remote: 20 minutes, every day, maximum two visitors</p> <p>(visitation permitted even if in segregation)</p>	<p>Yes</p> <p>In-facility: maximum one child visitor</p> <p>(requirements: parent or legal guardian chaperone)</p>	Yes, through the provider (HomeWav)	After booked in	<p>In-facility: no cost</p> <p>Remote: 25 cents per minute</p>
Tulsa	<p>In-facility: 30 minutes, one per week, maximum one adult visitor</p> <p>Remote: unlimited, no maximum visitors</p> <p>(visitation restricted if in segregation)</p>	<p>Yes</p> <p>(requirements: same protocol as in-person visitation but difficult to enforce)</p>	Yes, through the provider (HomeWav)	Visitor background check is required (7-10 business days to complete)	<p>In-facility: no cost</p> <p>Remote: 27 cents per minute</p>
Washington	<p>In-facility only: 20 minutes, two per week, maximum two adult visitors</p> <p>(visitation restricted if in segregation)</p>	<p>Yes, no child limit</p> <p>(requirements: adult chaperone)</p>	No	After booked in	No cost



## Appendix II: Table of County Jail Telephone and Mail Policies and Costs

Counties	Phone Call Length and Availability	Phone Call Costs	Mail Costs	Limits on Mail
Bryan	No time limits, available after booked in	Prepaid available via commissary  50 cents per minute  No free calls are available  Provider: HomeWav or Prodigy	USPS, stamps and letter writing materials available via commissary  Indigent people are provided with mail writing materials every one to three weeks after being held for three weeks	Can receive five photos that can be held onto at one time  Can receive cards  Can receive crayon drawings from children
Carter	No time limits, available after booked in	Prepaid available via commissary, or collect calls  21 cents per minute for prepaid, 25 cents per minute for collect  One free call at book in  Provider: City Tele Coin	USPS, stamps and letter writing materials available via commissary  Indigent people can receive three envelopes and letter writing materials each week once held for 30 days	Can receive photos (on copy paper only)  Can send or receive cards  Can receive crayon drawings from children
Canadian	No time limits, available after booked in	Prepaid via commissary or collect  15 to 20 cents per minute  One free call at book in and one once housed  Provider: Prodigy	No physical mail permitted  Two free credits provided per week (equivalent to eight pages or one photo)  \$1 to begin using the service, 50 cents per credit  Provider: SmartJailMail	Digital copies only of photographs, cards, and drawings permitted
Cherokee	No time limits, available after booked in	Prepaid via commissary or collect  21 cents per minute for prepaid, 25 cents per minute	USPS, stamps and letter writing materials available via commissary  Indigent people receive	Can receive no more than five photos (4x6 in size or smaller, on copy paper only) Can receive

		for collect  One free call at book in  Provider: City Tele Coin	supplies for one or two letters per week	unaltered postcards  Can receive crayon drawings from children
Cleveland	15 minutes per call, available after booked in	Prepaid only, available via commissary  19 cents per minute for local, 56 cents per minute for long distance  One free call at book in  Provider: Lattice	USPS, stamps and letter writing materials available via commissary  SmartJailMail, 50 cents each message, \$1 per photo  No free stamps	Can receive photos  Can send or receive cards  Cannot receive crayon drawings from children (color pencil only)
Comanche	No information provided	Prepaid via commissary or collect	Indigent people can send two letters or postcards per week at no cost	No information provided
Creek	No time limits, available after booked in	Prepaid available via commissary, or collect  21 cents per minute for prepaid, 25 cents per minute for collect  One free call at book in and one after bond is set  Provider: City Tele Coin	USPS, stamps and letter writing materials available via commissary  Indigent people receive mailing materials once per week	Can receive photos  Can send and receive cards  Can receive crayon drawings from children
Delaware	No time limit, available after booked in	Prepaid via commissary or collect  21 cents per minute for prepaid, 25 cents per minute for collect  One free call at book in and a free call is allowed periodically  Provider: City Tele Coin	USPS, stamps and letter writing materials available via commissary  Indigent people can send out one letter per week at no cost	Can receive 2 photos  Can send and receive cards  Can receive crayon drawings from children
Garfield	20 minutes per call,	Prepaid via commissary or	USPS and email, stamps	Can receive five

	available after booked in	<p>collect</p> <p>19 cents per minute for local, 56 cents per minute for long distance</p> <p>One free call at book in</p> <p>Provider: Lattice</p>	and letter writing materials available via commissary	<p>photos</p> <p>Can send and receive cards</p> <p>Cannot receive crayon drawings from children</p>
Grady	No time limit, available after booked in	<p>Prepaid available via commissary</p> <p>15-20 minute call costs between \$3-5</p> <p>One free call may be made at book in</p> <p>Provider: Prodigy</p>	<p>USPS, stamps and letter writing materials available via commissary (stamped envelope costs 62 cents)</p> <p>No free mail supplies are provided</p>	<p>Can receive five photos (4x6 in size or smaller)</p> <p>Can send and receive cards</p> <p>Cannot receive crayon drawings from children (black ink or pencil only)</p>
Kay	No time limit, available after booked in	<p>Prepaid</p> <p>21 cents per minute</p> <p>Two free calls at book in</p> <p>Provider: City Tele Coin</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>Indigent people may receive free mail supplies</p>	<p>Can receive five photos (no larger than a standard envelope)</p> <p>Can send and receive cards</p> <p>Can receive crayon drawings from children</p>
Le Flore	No time limit, available after booked in	<p>Prepaid via commissary or collect</p> <p>21 cents per minute for prepaid, 25 cents per minute for collect</p> <p>Two free calls at book in</p> <p>Provider: City Tele Coin</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>Indigent people receive three stamps and four pieces of paper and envelopes per week</p>	<p>Can receive photos (excessive number may be stored with property)</p> <p>Can receive cards</p> <p>Can receive crayon drawings from children</p>

Logan	No time limit, available after booked in	<p>Prepaid via commissary or collect</p> <p>21 cents per minute for prepaid, 25 cents per minute for collect</p> <p>Two free calls at book in</p> <p>Provider: City Tele Coin</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>Indigent people can receive free mail supplies once per week</p>	<p>Can keep five photos at a time (5x7 in size)</p> <p>Can receive cards</p> <p>Can receive crayon drawings from children</p>
Muskogee	No time limit, available after booked in	<p>Prepaid</p> <p>\$10 for 20 minute prepaid card</p> <p>Two free calls at book in</p> <p>Provider: City Tele Coin</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>No free mail supplies are provided</p>	<p>Can receive photos</p> <p>Can send and receive cards</p> <p>Can receive crayon drawings from children</p>
Oklahoma	No time limit, available after booked in	<p>Prepaid via commissary and collect</p> <p>25 cents per minute for prepaid, 50 cents per minute for collect calls within Oklahoma, 21 to 25 cents per minute for out of state collect calls</p> <p>Provider: Telemate</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>No free mail supplies provided</p>	<p>Can receive up to five photos per letter (5x7 and smaller, can keep five at a time)</p> <p>Cannot send or receive cards</p> <p>Cannot receive crayon drawings from children</p>
Osage	No time limit, available after booked in	<p>Prepaid available via commissary and collect</p> <p>21 cents per minute for prepaid, 25 cents per minute for collect</p> <p>Two free calls at book in and if indigent, free calls may be arranged at discretion of jail staff</p> <p>Provider: City Tele Coin</p>	<p>USPS, stamps and letter writing materials available via commissary</p> <p>Indigent people can receive free mail supplies but stamps must be purchased</p>	<p>Can receive photos</p> <p>Can send and receive cards</p> <p>Can receive crayon drawings from children</p>

Payne	No time limit, available after booked in	Prepaid available via commissary  21 cents per minute  Two free calls at book in  Provider: City Tele Coin	USPS, stamps and letter writing materials available via commissary  No free mail supplies are available	Can receive up to three photos (4x6 in size)  Can send and receive cards  Can receive crayon drawings from children
Pittsburg	No time limit, available after booked in	Prepaid via commissary and collect  30 cents per minute  Two free calls at book in  Provider: jailatm.com	USPS and jailatm.com, stamps and letter writing materials available via commissary  One free postcard is provided per week	Cannot receive photos  Can send and receive cards  Can receive crayon drawings from children
Pottawatomie	No time limit, available after booked in	Prepaid via commissary and collect  15-20 minute call costs between \$3-5  Two free calls at book in  Provider: Prodigy	USPS, stamps and letter writing materials available via commissary  Indigent people are provided with one post card per week to send at no cost	Cannot receive photos  Can receive plain cards  Can receive crayon drawings from children but must be able to see through the paper
Rogers	No time limit, after housed (one to two days after booked in)	Prepaid via commissary and collect  25 cents per minute  One free call at book in and one call once bail is set  Provider: IC Solutions	USPS, stamps and letter writing materials available via commissary  Indigent people can receive free paper and envelopes but stamps must be purchased	Can receive three photos in each letter  Can send and receive cards  Can receive crayon drawings from children
Sequoyah	No time limit	Prepaid available via commissary	USPS, stamps and letter writing materials available via commissary	Can receive photos  Can send and receive

				cards  Can receive crayon drawings from children
Stephens	No time limit, available after booked in	Prepaid only  15-20 minute call costs between \$3-5  One free call at book in  Provider: Prodigy	USPS, stamps and letter writing materials available via commissary  Indigent people are provided with mail supplies	Cannot receive photos  Cannot receive cards  Cannot receive crayon drawings from children (plain letters only)
Tulsa	No time limit, available after booked in	Prepaid available via commissary or collect  30 cents per minute for local, 55 cents per minute for long distance  One free call at book in  Provider: Correct Solutions	USPS, FedEx, stamps and letter writing materials available via commissary  Indigent people are provided with mail supplies once per month	Can receive photos  Can send and receive special occasion cards two weeks prior and two weeks after designated holidays  Cannot receive crayon drawings from children
Wagoner	No time limit, available day after booked in	Prepaid (not available via commissary) or collect  21 cents per minute  Two free calls at book in  Provider: Securus	USPS, stamps and letter writing materials available via commissary  Indigent people are able to send one letter per month at no cost	Can receive 10 photos at a time  Can send and receive cards  Can receive crayon drawings from children
Washington	No time limit, available after booked in	Prepaid via commissary or collect  21 cents per minute  Two free calls at book in	USPS, stamps and letter writing materials available via commissary (one stamped envelope is 57 cents)  Indigent people are	Cannot receive photos  Cannot send or receive cards  Can receive crayon

		Provider: Securus	provided with free mail supplies	drawings from children
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## Appendix III: Table of County Jail Fees

Counties	Daily Stay Fee and Rate (Yes/No)	Bill for Medical Costs (Yes/No)	Bill for Extra Food (Yes/No)	Bill for Transportation (Yes/No)
Bryan	No	\$4 for medical visit, \$15 for emergency room visit, \$40 for shots, \$15 for pregnancy test, \$15 for lab, \$4 for prescription  Provider: private company (Turn Key Health)	Staff did not know	Yes
Canadian	\$31	\$10 for medical visit, \$10 for prescription  Provider: private company (Turn Key Health)	No	Yes  (only “overflow inmates” from other counties)
Carter	No	\$10 for medical visit, \$35 for local emergency room visit, \$70 for out-of-county specialist  Provider: private company (Turn Key Health)	No	Yes  (for medical transport only)
Cherokee	No	No  Provider: at jail or local hospital	No	No
Cleveland	\$47.50	\$15 for medical visit, no charge for mental health or chronic health care (including prenatal care)  Provider: private company (Turn Key Health)	No	No
Comanche	No  (\$100 book-in fee)	\$8 for medical visit, no cost for prescription (but if narcotics, family will need to fill prescription and bring to the jail)  Provider: staff would not answer	No	No
Creek	\$31.13	\$8 for medical visit, fees for medication and emergency visits (staff did not know rate)	Yes	No



		Provider: private company (Turn Key Health)		
Delaware	\$37	\$45 for medical visit, \$25 for medical exam, \$10 for prescription  Provider: private company (Turn Key Health)	No	Yes  (54 cents per mile)
Garfield	No  (\$35 book-in fee and \$10 bond fee)	Staff would not answer	Staff would not answer	No
Grady	\$45	\$8 for medical visit  Provider: private company (Turn Key Health)	No	No
Kay	\$15-25	\$10 for medical visit, \$5-10 for prescription  Provider: private company (staff would not answer)	No	No
Le Flore	Staff did not know rate	\$8 for medical visit, \$8 for prescription  Provider: local doctor	No	No
Logan	\$25	Free medical visit provided upon book in, \$15 for additional medical visits, \$15 for prescription  Provider: private company (Turn Key Health)	Staff did not know	Staff did not know
Muskogee	\$43  (for people booked in from out-of-county; in-county fee is a one-time \$35 book-in fee)	\$8 for medical visit, \$5-8 for prescription  Provider: local doctor	No	No
Oklahoma	\$36.19	\$15 for medical visit, \$15 initial intake medical assessment, fee schedules for other care  Provider: private company (Armor Correctional Health)	Staff did not know	Staff did not know

Osage	\$27	\$10 for medical visit, \$8 for prescription, \$5 for over the counter medications  Provider: local doctor	No	Yes  (54 cents per mile, minimum \$50 cost)
Payne	\$27	\$8-15 for medical visit, \$15 for prescription  Provider: private company (staff unsure of company name)	No	Yes
Pittsburg	\$44	Staff unsure of co-pay rate  Provider: local medical center	No	No
Pottawatomie	\$44	\$15-20 for medical visit and prescription  Provider: private company (ESW)	No	No
Rogers	No	\$8 for medical visit, \$8 for prescription  Provider: private company (Turn Key Health)	No	No
Sequoyah	\$22	\$12-15 for medical visit, \$10 for prescription  Provider: private company (Turn Key Health)	No	Yes  (for medical transport)
Stephens	Staff would not answer	\$8 for medical visit, \$8 for prescription  Provider: private company (Turn Key Health)	No	Staff would not answer
Tulsa	No	\$8 for medical visit, \$3 for prescription  Provider: private company (Turn Key Health)	Staff did not know	Staff did not know
Wagoner	\$27.50	\$4 for prescription  Provider: private company (staff would not answer)	Staff would not answer	Yes  (for medical transport)

Washington	\$38	\$8 for medical visit Provider: private company (staff would not answer)	Staff would not answer	No
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## Appendix IV: Table of County Jail Programming and Drug Treatment

Counties	Parenting Classes (Yes/No)	Drug Treatment or Support Groups (Yes/No)	Other Programming (Yes/No)
Bryan	No	No	Yes
Canadian	No	No	No
Carter	No	Yes, both support groups and treatment (if court ordered) are available	Yes
Cherokee	Staff did not know	Yes, treatment is available No drug treatment	Yes
Cleveland	Yes (for women only)	Yes, both support groups and treatment (application required) are available	Yes
Comanche	No	No support groups available Staff did not know if treatment is available	Yes
Creek	No	Yes, treatment is available Staff did not know if support groups are available	Yes
Delaware	No	Yes, treatment available (if court ordered) No support groups	No
Garfield	Yes	Yes, both support groups and treatment (upon request) are available	Yes
Grady	No	No	No
Kay	Yes	Yes, support groups are available Staff did not know if treatment is available	Yes
Le Flore	No	No	No
Logan	No	No	No
Muskogee	No	Staff did not know if treatment or support groups are available	No
Oklahoma	No	Yes, support groups are available Staff did not know if treatment is available	Yes
Osage	No	No	Yes
Payne	Yes	Yes, support groups are available Staff did not know if treatment is available	Yes
Pittsburg	No	No	Yes
Pottawatomie	No	Yes, support groups are available No treatment	Yes
Rogers	Yes	Yes, support groups are available No treatment	Yes

Sequoyah	No	Yes, both support groups and treatment are available	No
Stephens	No	Yes, treatment is available No support groups	No
Tulsa	Yes	Yes, both support groups and treatment are available	Yes
Wagoner	No	No	Yes
Washington	No	Yes, support groups available No treatment	Yes



# “YOU MISS SO MUCH WHEN YOU’RE GONE”

## The Lasting Harm of Jailing Mothers Before Trial in Oklahoma

Each day in the US, mothers accused of crimes are arrested and separated from their children for days, weeks, months, a year or more awaiting the disposition of their cases. Many remain in jail because they cannot afford to pay money bail.

Based on more than 160 interviews, this joint report by Human Rights Watch and the American Civil Liberties Union documents the harms suffered by women with minor children coming in and out of pretrial detention in Oklahoma jails. Oklahoma incarcerates more women per capita than any other US state.

“*You Miss So Much When You’re Gone*” finds that even short stays behind bars can have a lasting impact on mothers and their children. Jailed mothers often feel acute pressure to plead guilty so that they can return home to their children. Jails, which are intended for relatively short periods of custody, are not equipped to facilitate meaningful visitation and communication between parents and their children. While jailed, mothers face obstacles when trying to participate in legal proceedings affecting their children. Once released, many formerly jailed mothers face steep fines and fees that further destabilize their lives and the prospect of regaining or maintaining child custody.

Human Rights Watch and the ACLU urge Oklahoma and other states to require the consideration of a defendant’s caretaker status in bail and sentencing proceedings, expand alternatives to incarceration, facilitate the involvement of incarcerated parents in their children’s lives and proceedings related to child custody, and substantially curb the imposition of fees and costs.

*(above) April Weiss, a mother of three, holds up a picture of her eldest daughter who she has not seen in five years. September 2018.*

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