

Women in Prison and Family Preservation

NAWJ Annual Conference

2025

Dr Kathleen Darcy

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Dr Maya Barak

Introductions



CRIMINOLOGY, LAW, & CRIMINAL JUSTICE

Dr. Kathleen Darcy, JD, PhD

Assistant Professor in Criminology, Law, and Criminal Justice at University of Michigan-Dearborn. She holds a PhD from Michigan State University in Criminal Justice, a Master's degree from University of Chicago with a focus on law, criminal justice, and human rights, and a law degree from Michigan State University College of Law. Her research is interdisciplinary and primarily focuses on examining gender inequity, especially how the law impacts those affected by gender-based violence. She is particularly concerned with understanding system dynamics that exacerbate and contribute to harm when abuse occurs in institutional settings (e.g., prison, higher education, the military). Her work has been published in *The Georgetown Journal of Gender and the Law*, *Pepperdine Law Review*, *Feminist Criminology*, *Criminal Justice Policy Review*, and *Law and Human Behavior*, among others.

Liliana Hamze

Liliana is currently a junior at the University of Michigan-Dearborn. I am pursuing a major in Criminology and Criminal Justice with a minor in Law and Society. I aspire to attend law school and become a lawyer, with a strong passion for advocating for women in prison and addressing the unique challenges they face within the justice system. My academic and career goals reflect my commitment to understanding and improving the legal system's impact on marginalized communities

Dr. Maya Barak, PhD

Dr. Maya Barak is an Associate Professor of Criminal Justice Studies and affiliate of Women's and Gender Studies and Arab American Studies at the University of Michigan-Dearborn. She holds a PhD in Justice, Law and Criminology from American University, an MA in Criminology and Criminal Justice from Eastern Michigan University, and a BA in Social Anthropology from the University of Michigan. Dr. Barak is the author of *The Slow Violence of Immigration Court: Procedural Justice on Trial*, and the coauthor of *Capital Defense: Inside the Lives of America's Death Penalty Lawyers*.

Note on Language

- Time in prison can be dehumanizing
- People called by numbers, “inmate,” “prisoner,” etc.
- Push to use humanizing language – incarcerated people, justice-involved people



Learning objectives

1. Review the existing literature and theory on justice-involved women in the US prison system, including offending, experiences in prison, and experience with re-entry
2. Focus on identifying the multi-faceted and gendered issues that are associated with experiencing pregnancy and parenting in carceral settings for women and their families
3. Understand the importance of seeking to promote family preservation for justice-involved women
4. Explore the harms associated with family separation for justice-involved women, their children, and society
5. Investigate gendered issues within immigration detention with focus on family separation
6. Analyze possible policy solutions and their barriers to implementation, with a focus on evidence-based best practices to promote ethical treatment of pregnant incarcerated women and support family unification

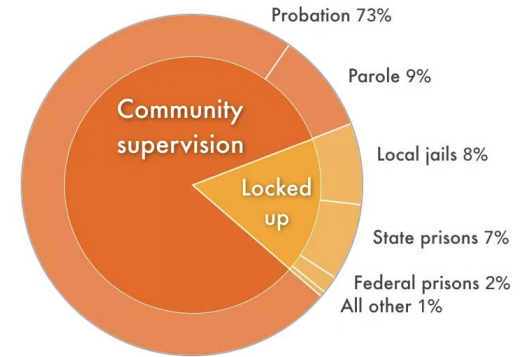
Women in Prison

- The U.S. incarcerates women at the world's highest rate
- There are **190,600 women** locked up in the United States (PPI, 2024)
- Women make up 15% of the local jail population
- 8-9% of the state prison population
- While men's populations decrease, women increase
- Example: Michigan reduced the number of men incarcerated in its state prisons by 8% between 2009-2015, but counterproductively incarcerated **30% more women** over the same period (PPI, 2014)
- 700 % hike in the number of women serving time since 1980 (Edevane, 2018)

Scope of this presentation

- Women in jail are the fastest growing correctional population in the country—increasing 14-fold between 1970 and 2014.
- Dearth of research
- Jail can deepen the societal disadvantages they face
- Community corrections
- Focus on prison

Correctional control of women



To avoid double-counting, any woman with more than one status was included in the most restrictive category, with probation counted as the least restrictive and imprisonment as the most restrictive. Percentages may not total 100% due to rounding.

Understanding Trends: Criminological Theory

Feminist Pathways Theory (Daly, 1992, Richie, 1996)

“Women often become involved with the justice system as a result of efforts to cope with life challenges such as **poverty, unemployment,** and significant **physical or behavioral health** struggles. Most are jailed for **low-level, nonviolent** offenses. Once incarcerated, women must grapple with systems designed primarily for men. As a result, many leave jail with diminished prospects for physical and behavioral health recovery, as well as greater **parental stress** and financial instability.” (Vera, 2018 p. 9)

(See also, Boppre et al., 2018; Daly, 1992)

Table 1
Sample Pathways

Sample Pathways From Victimization to Crime

Child Corruption/Abuse

- Guardian pimps to dealers for drugs → prostitution, addiction
- Guardian makes steal for drug money → shoplifting, burglary, theft
- Guardian introduces to drugs → addiction
- Household abuse or household addiction → drugs to numb → addiction
- Household abuse → run away → trade sex → addiction, prostitution
- Statutory rapist as “sugar daddy” → trade sex → prostitution, addiction

Partner Abuse

- Partner abuses → implicated in homicide of abuser
- Partner abuses family → implicated in abuse of children
- Partner abuses → coerced into crime

Property Loss

- Abusive partner steals or damages property → financial crime to recoup losses
- Abusive partner causes eviction → homelessness, criminal affiliates → prostitution, addiction

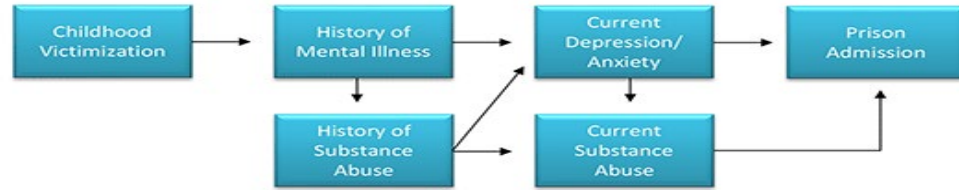
Sample Pathways From Crime to Victimization

- Prostitution → abuse by clients
 - Drug dealing → robbed or attacked by clients
 - Drug use → raped or robbed due to intoxication or trying to obtain drugs
-

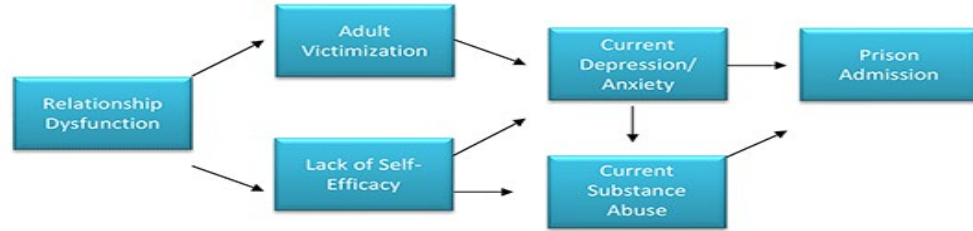
(DeHart, 2008)

Feminist Pathways Theory

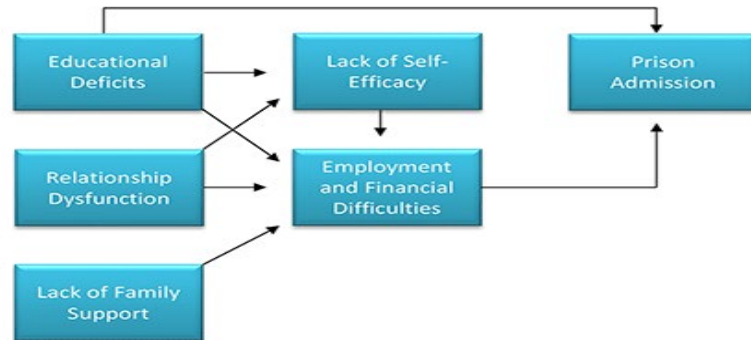
Childhood Victimization Pathway



Relational Pathway



Human and Social Capital Pathway



Understanding Trends: Prison Design

- Men are often the focus of prison reform efforts, not women
- Officials also acknowledge there's been little long-term research centered on female offenders, even though almost 200,000 women in the U.S. are currently incarcerated



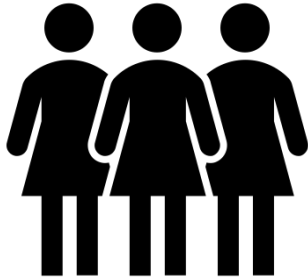
This Photo by Unknown Author is licensed under [CC BY-SA](#)

(Sentencing Project, NPR, 2018)

Understanding the Trends: Gendered Issues

- Gender growth for women and broader systemic shifts
- While they are incarcerated, women may face a greater likelihood of **disciplinary action**— and more severe sanctions — for similar behavior when compared to men (McClellan, 1994)
- **Fewer diversion programs** are available to women.
 - In Wyoming, for example, a “boot camp” program that allows first-time offenders to participate in a six-month rehabilitative and educational program in lieu of years in prison is only open to men
- **Net widening**
 - Mandatory arrests for fighting back against domestic violence
 - Overcriminalization of drug use and peripheral involvement in drug networks has driven women’s prison growth

Gendered Obstacles: Trauma, Abuse, Mental Health, Substance Use



- Women are more likely to enter prison with a history of abuse, trauma, and mental health problems (Prison Policy Institute, 2024)
- Estimate 90% of all women with justice system involvement have some form of **childhood trauma** (ACES) (CCJ, 2024; Bowles, 2012; DeHart, 2008; DeHart & Moran, 2015)
- Disproportionately face **sexual abuse by correctional staff** (Struckman-Johnson & Struckman-Johnson, 2006)
- 66% of women in prison experienced a **mental health issue** (vs. 35% of men)
- 69%–72% of justice-involved women meet the criteria for a **substance use disorder** (vs. 57% men)
- While the prevalence of **co-occurring mental health and substance use disorders** hovers around 3% in the general population, the prevalence among people incarcerated in jails is estimated to be as high as 10% for men and 22% for women (CCJ, 2024; Robertson et al., 2020)
- Formerly incarcerated women were 5.5x more likely to **die by overdose in the two years after their release** compared to women who had never been incarcerated (CCJ, 2024)

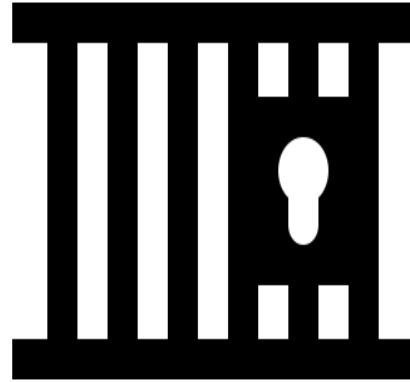
Gendered Obstacles

- Women have **different physical health needs**,
 - reproductive healthcare, management of menopause, nutrition, substance use disorders
- Economic obstacles
 - Even before they are incarcerated, women in prison earn less than men in prison, and earn less than non-incarcerated women of the same age and race
 - Women's prisons struggle to meet the need or demand for vocational and educational program opportunities.
- Once released, the **collateral consequences** of incarceration make finding work, housing, and financial support even more difficult.

Gender and Parenting

- Most women in prison (62%) are mothers of minor children
 - 58% of women in state prisons are mothers to minor children
 - 75% of women in local jails are mothers, many of whom are pretrial detainees
- **More likely than fathers in prison to be the primary caretakers of their children**
- Incarcerated women and their families suffer from lack of face-to-face contact:
 - Distance
 - Foster care and separation

Pregnancy in Prison



What We Know About Pregnancy in Prison

- 4% to 5% of women reported being pregnant upon admission (Sufrin, 2019)
- Approximately 2,000 incarcerated women give birth each year
- Incarcerated pregnant women have a unique set of health and safety needs, such as access to prenatal care and maternal nutrition (GAO, 2024)
- Various professional organizations recommend standards and guidance for the care of pregnant women in correctional settings
- Voluntary adherence
- No national requirement that facilities obtain and maintain accreditation (GAO, 2024)





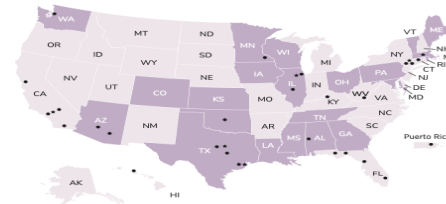
Incarcerated Pregnant People in a 12 Month Period

Collecting Data on Incarcerated Pregnant People

From 2016-2017, statistics were collected on pregnancy outcomes from all federal prisons and a sample of state prisons and of large jails across the US, representing 57% of females in prison and 5% of females in jail. Participating prisons and jails reported aggregate data on a monthly basis for one year.

- State Department of Corrections
- * Jails
- Federal Bureau of Prisons

Outcomes reported for 22 state DOCs, all Federal prisons, and 6 jails.



US PRISONS



1396

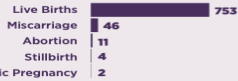
Admissions of pregnant people

4%

of females entering state prison were pregnant

-3,000 admissions of pregnant people to U.S. prisons each year

Pregnancy Outcomes in US Prisons¹



¹ 2 newborn deaths; 0 maternal deaths

US JAILS



1622

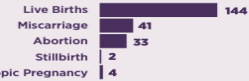
Admissions of pregnant people

3%

of females entering jail were pregnant

-55,000 Admissions of pregnant people to U.S. jails each year

Pregnancy Outcomes in US Jails¹



¹ 2 newborn deaths; 0 maternal deaths



117 Pregnant people

WERE ADMITTED TO STATE PRISONS WITH AN OPIOID USE DISORDER^{1†}



81 RECEIVED MOUD 36 DETOXED

MOUD - medications for the treatment of OUD (methadone or buprenorphine)
[†] 18 prisons continued MOUD but only 4 of them initiated; 11 prisons discontinued MOUD postpartum



50 Pregnant people

WERE ADMITTED TO JAILS WITH AN OPIOID USE DISORDER^{1†}



37 RECEIVED MOUD 16 DETOXED

MOUD - medications for the treatment of OUD (methadone or buprenorphine)
[†] 4 jails continued MOUD but only 2 of them initiated; 3 jails discontinued MOUD postpartum

Breastfeeding¹

11 Prisons allowed pumping and/or breastfeeding

8 Breastfeeding Individuals

Monthly average at state prisons, out of **55 postpartum people**.

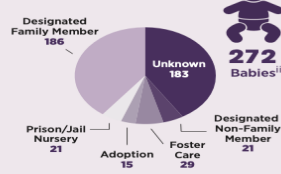
5 Jails allowed pumping and/or breastfeeding

6 Breastfeeding Individuals

Monthly average at jails, out of **22 postpartum people**.



Placement of Infants Born in Jails & Prisons



Postpartum Tubal Sterilization

11 Prisons and 5 Jails provided access to tubal sterilization



3 STERILIZATIONS AMONG 101 PEOPLE

4 STERILIZATIONS AMONG 53 PEOPLE

¹Pregnancy outcomes data were available for women whose pregnancies ended while they were still incarcerated.
ⁱData collected in a 6 month period. For a subset of sites that chose to report these outcomes (OUD: 20 prisons, 4 jails; Breastfeeding numbers: 13 prisons, 5 jails; breastfeeding policies were reported for all 22 prisons and 6 jails; Infant placement: 19 prisons, 5 jails; Tubal numbers: 10 prisons, 4 jails; tubal policies were reported for all 22 prisons and 6 jails)
ⁱⁱReporting discrepancy in # of people with OUD and # of treatment interventions
 For full data and citations, please visit arwp.org.

Incarcerated People, Pregnancy, and Data Gaps

- DOJ's BJS does not regularly collect comprehensive data on incarcerated pregnant women in state prisons and local jails—nor are state DOCs and jails typically required to provide data to BJS
- BJS Ad-hoc data collection
- The Department of Health and Human Services (HHS) collects near national-level data on maternal health and pregnancy outcomes, but none of these efforts have systematic indicators to identify incarcerated pregnant women (GAO, 2024)



TABLE 2

Challenges to reporting aggregate-level maternal health data, by site type

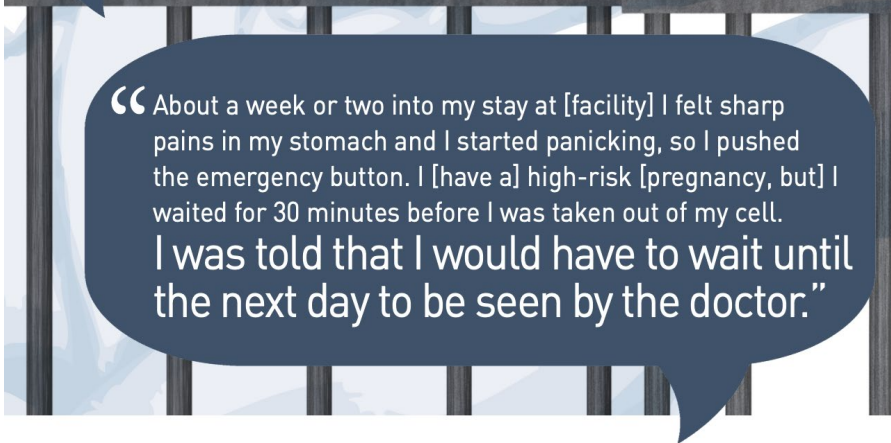
Challenges	DOCs	Local jails
Legal challenges	10	13
Legal approval	7	11
Privacy issue because too few women	4	1
No access to OB/GYN records	0	1
Technical challenges	11	8
Data are in notes, text, PDF form	6	5
Multiple databases and double counting	1	0
Creation of codes/process to run a new data query	4	3
Resource challenges	8	5
Staff to coordinate, retrieve, or analyze the data	8	2
Time to develop process and retrieve data	2	3
Money to pay for staff time, resources needed	2	1

Note: OB/GYN denotes obstetrician-gynecologist. Twenty-two Departments of Corrections (DOCs), including the Federal Bureau of Prisons, and 20 jails participated in the study. These data were based on open-ended questions and represent the number of sites that provided details on their challenges. Details may not sum to totals because respondents could report multiple challenges.

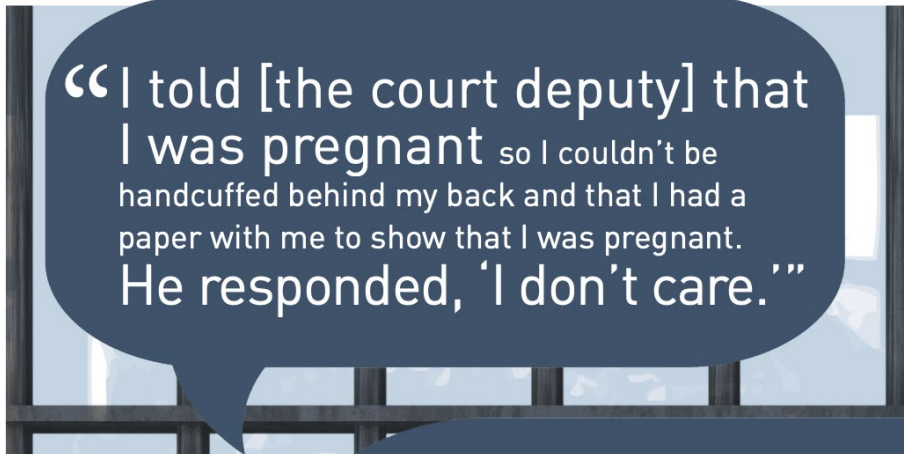
Barriers Identified

- Lack of access to timely abortion
- Lack of adequate or timely prenatal care
- Shackling or use of force
- Insufficient dietary or physical accommodations
- Lack of lactation support
- Coercive sterilization
- Lack of staff training to recognize labor

(ACLU, 2016; ACOG, 2011)



“About a week or two into my stay at [facility] I felt sharp pains in my stomach and I started panicking, so I pushed the emergency button. I [have a] high-risk [pregnancy, but] I waited for 30 minutes before I was taken out of my cell. I was told that I would have to wait until the next day to be seen by the doctor.”



“I told [the court deputy] that I was pregnant so I couldn't be handcuffed behind my back and that I had a paper with me to show that I was pregnant. He responded, 'I don't care.'”

Lack of bonding time and separation effects

“I suffered the most from not being allowed to see my baby...I was in the hospital for four days after my delivery but I only saw my baby on two of those days.” --
Fernanda



(ACLU, 2016; ACOG, 2011)

Balance of Rights: Confinement and Perinatal Care

- The American College of Obstetrics and Gynecology (ACOG) standards for perinatal care in correctional settings include
 - pregnancy testing;
 - access to pregnancy counseling and abortion services;
 - assessing and treating for substance abuse, HIV, and depression;
 - appropriate vitamins and diet;
 - delivery in a licensed hospital with facilities for high-risk pregnancies; and postpartum contraception (Friedman et al., 2020)

(Beckerman, 1991; *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Plata*, 563 U.S. 493 (2011)).

Pregnancy and Prison: What Resources Do Exist?

- In 21 participating DOCs:
- Majority of sites had policies and procedures on how to care for pregnant women
- Some also had specialized training and modules for new correctional officers
- Most sites had an on-site infirmary or medical care unit capable of providing prenatal care, delivering a baby, and handling complications such as a miscarriage
- However, **varied among sites**
- Often, medical areas had on-site nursing staff and the capacity for external providers to offer care through scheduled appointments or clinics
- Few had 24-hour nursing care or on-call medical providers



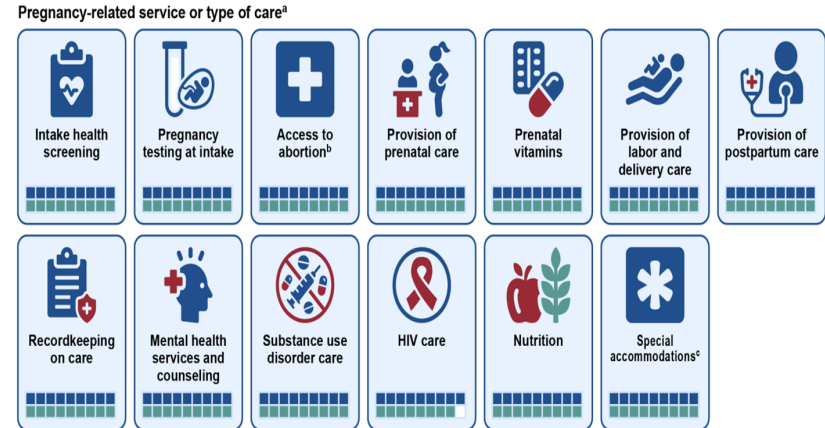
One study found that
38 states
had no policies requiring
prisons to provide basic
prenatal care to incarcerated
pregnant women.³²

(Dworski et al., 2020; Irazola, et al., 2024; GAO 2024)

Pregnancy and Prison: What Resources Do Exist?

- In general, sites provided pregnant women: (GAO, 2024)
- A special diet,
- Standardized information on options regarding the pregnancy outcome and the baby's placement,
- Substance use disorder treatment,
- Prenatal medication
- Officials said 15 federal grant programs were available to support maternal health care in the facilities.
- They help fund a prison nursery, breastfeeding support, etc.

Figure 2: Services and Types of Care Officials Representing Nine Selected State Prisons and Local Jails Reported Providing for Pregnant and Postpartum Women



Legend

■ Number of prisons whose representatives reported providing this service or type of care

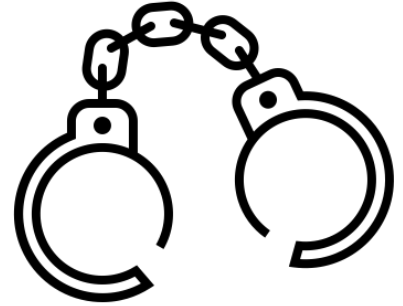
■ Number of jails whose representatives reported providing this service or type of care

HIV Human immunodeficiency virus

Source: GAO analysis of information provided by officials representing selected state prisons and local jails; GAO adaptation of Icons-Studio/stock.adobe.com illustrations. | GAO-25-106404

Balance of Rights: Confinement and Perinatal Care

About 40 states, have passed laws limiting the use of restraints such as handcuffs, leg restraints and belly chains on pregnant people in law enforcement custody (Rayasam, 2023)



Less Progress: Separation at Birth

- Incarcerated pregnant people are only given one to two days to recover after birth while the recommended period of physical recovery is at least six weeks (Mahtani, 2022)
- Incarcerated individuals are often separated from their child less than 24 hours after birth (Mahtani, 2022)
- Contact with a newborn can enhance mother-child bonding and positively affect the mother's well-being
- The American College of Obstetricians and Gynecologists (ACOG) and the American Public Health Association (APHA) strongly recommend that jails allow women time to connect with their infants after delivery by:
 - having longer postpartum hospital stays,
 - diversion programs,
 - and in-custody nursery programs


How Many Children?

About half of people in state prisons are parents to children under 18

In fact, there are as many children with a parent in prison as there are adults in prison.

1,248,300 ADULTS IN STATE PRISONS NATIONWIDE



 = about 50,000 adults in prison



 = about 50,000 minor children

1,252,100 MINOR CHILDREN WITH A PARENT IN STATE PRISON

Source: Bureau of Justice Statistics' *Survey of Prison Inmates, 2016* and *Parents in Prison and their Minor Children*.

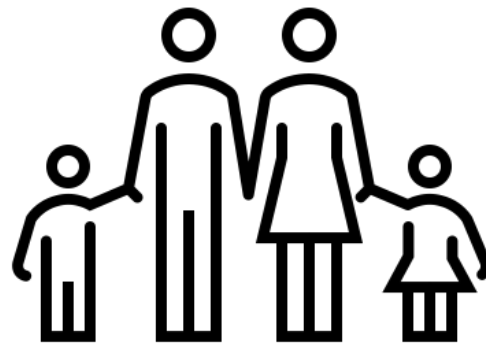
PRISON
POLICY INITIATIVE

Impacts of Family Separation

- Approximately 15-20% of children in foster care had a parent who was incarcerated (Chan, 2020)
 - Mother-child separation deprives the child of a vital emotional and physical bond, leaving them with no memory of their mother (Chan, 2020)
 - Separation disrupts family structures and affects children's well-being.
 - Children of incarcerated mothers often face emotional, behavioral, and cognitive challenges (Pregnant women in state prisons and local, 2024)
-

Impacts of Family Separation

- Children of incarcerated women are at higher risk of **behavioral health problems** than their peers (Lee, Fang, & Luo, 2013)
- This population is also more likely to have later personal **criminal justice contact** (Huebner & Gustafson, 2007)
- Affected children also experience parental separation, and often parental illicit substance use, mental illness, and domestic violence, all of which are adverse childhood experiences associated with **morbidity and premature mortality** (Brown et al., 2009)
- Children with mothers behind bars were 1.6 times more likely to experience **depression** than other children (Effects of Maternal Incarceration on Child Health 2023)
- Young children with incarcerated mothers often experienced **insecure caregiver relationships**, an issue linked to depression and anxiety disorders in adults (Effects of Maternal Incarceration on Child Health 2023)
- At risk for cognitive delays, **school failure**, even dropping out of school (Effects of Maternal Incarceration on Child Health 2023)
 - Sons of incarcerated mothers were 25% more likely to quit school than other children-- in some cases--their own involvement with the justice system (Effects of Maternal Incarceration on Child Health 2023)



Impacts of Family Separation

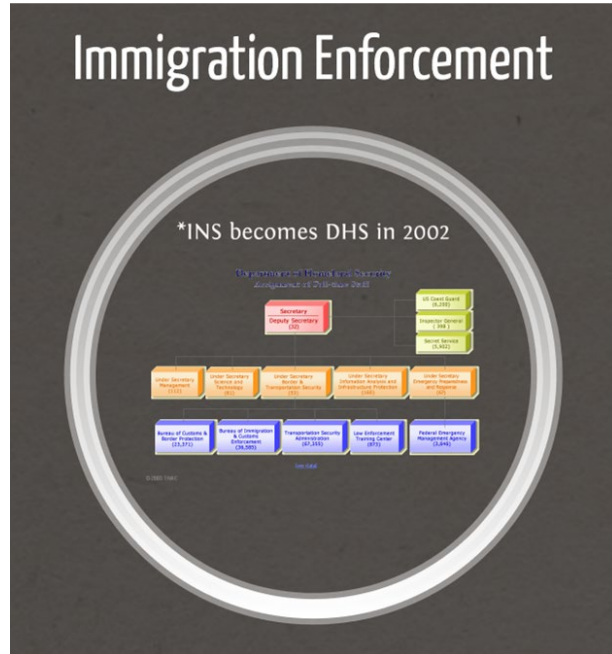
- Approximately 21 percent of parents incarcerated in state prisons had no contact with their children at all during their incarceration (telephone, mail or visits) (Mooney & Bila, 2018)
- ~47% of parents incarcerated in state prisons had never talked with their child over the phone and 59 percent never had the opportunity to visit with their child (Mooney & Bila, 2018)
- Accessible visitation **can reduce child anxiety** surrounding parental absence (Mooney & Bila, 2018)
- With numbers of women in prison growing exponentially compared to men, these issues will only continue to grow in scale

Immigration, Detention, & Family Separation

- Unauthorized migration to the US historically a male phenomenon; increase in women and children since the 1970s
- Unauthorized movement across US-Mexico border historically temporary (i.e. seasonal migration); increase in permanent migration since the 1970s (and accompanying increase in family migration/reunification through migration)
 - Sharp increase in number of family asylum seekers (mostly mothers with young children) in 2010s
 - E.g. 2016 there were 4,829 women and girls in ICE (14.5% of total detained population); in 2018 increased 1.5x → 7,686,

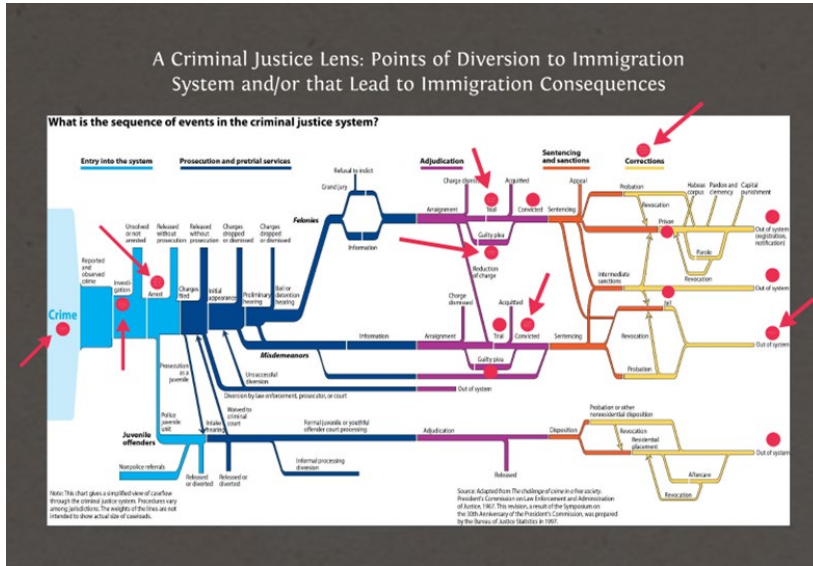
US immigration enforcement system was not designed for women and children

US Immigration System: An Overview



- Changes in immigration management & enforcement over time: states → Department of Treasury (1891) → Department of Commerce (1903) → Department of Labor (1913) → Immigration and Naturalization Service (1933) → Department of Homeland Security (2002)
 - CBP – >60k agents – border zone (200 miles)
 - ICE – >20k agents – interior
- Immigration is more than DHS (e.g.):
 - DOJ oversees Executive Office for Immigration Review;
 - DHHS oversees Office of Refugee Resettlement (e.g. unaccompanied minors)

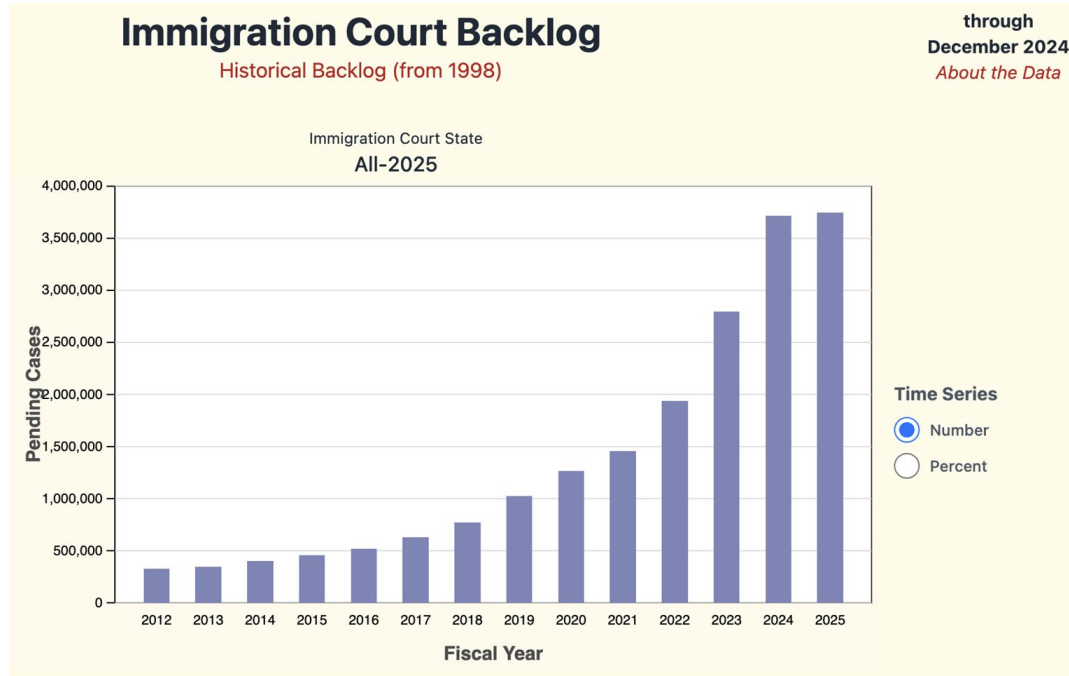
Intersections of Immigration & Criminal Justice



- Immigration has historically been a civil—not criminal—matter
- 100+ years of research demonstrating immigrants offend at lower rates than US-born; however...
- Creation of criminal penalties for immigration offenses (e.g. IIRIRA 1996)
- Extension of immigration enforcement powers to local law enforcement (e.g. Secure Communities)

→ **Expansion of detention facilities & *use* of detention**

Immigration Court (EOIR)



- Established 1983 within the Department of Justice
- >3.7 million pending cases
- Most are “removal” (deportation) cases
- Many, but not all, subject to mandatory detention

Detention

- Detention initiated upon entering/exiting US; *any* non-citizen may be subject to detention
- CBP & ICE engage in detention activities (CBP facilities designed for <72 hour holds)
 - Average daily CBP population in 2024: 25,489
 - Average daily ICE population in 2024: 12,232
 - Combined Feb 2025 detained population: ~41,000
- Custody Management division is part of ICE's Enforcement and Removal Operations (ERO)
 - “develops and promotes best practices in civil detention and enforcement initiatives”
 - “oversees civil immigration detention in facilities nationwide that house aliens to secure their presence for immigration proceedings or removal from the U.S.”
 - “detains aliens who are subject to mandatory detention or those that ICE determines are a public safety or flight risk during the custody determination process”

Detention

- ICE has ~ 200 facilities in US: mix of federal and private detention facilities + contracted space in local/state jails
 - Combine detainees with and w/out criminal charges/convictions
- Piloted “Family Residential Centers” (FRCs) to house adult parents/legal guardians and children together, but ended in December 2021
 - Shifted resources to Alternatives to Detention (ATD) → currently ~188,000 families & single individuals as of January 2025
- Body of ERO standards provide operations guidelines & guarantees adequate quality of life for detainees; ample research demonstrates guidelines are routinely violated due to lack of capacity, training, and oversight

Pregnancy, Childbirth, & Infant Care

- *Identification and Monitoring of Pregnant, Postpartum, or Nursing Individuals* (ICE Directive 11032.4, 2021): ICE will not detain, arrest, or take into custody individuals known to be pregnant, postpartum, or nursing unless release is prohibited by law or exceptional circumstances exist
 - Requires identification and monitoring for “general health and wellbeing” to ensure appropriate prenatal/postnatal/mental health care provided & housing facilities are suitable; weekly reevaluation of detention affording case-by-case discretion whether or not individual remains detained

Pregnancy, Childbirth, & Infant Care

- 2020 Government Accountability Office (GAO) report found:
 - “ICE detained pregnant women over 4,600 times from calendar year 2016 through 2018”; “68% of these detentions were for 1 week or less, while 10% were for more than 30 days”; “78% of these initial detentions occurred at facilities staffed with ICE medical personnel”
 - “79% or greater compliance with most [ICE] pregnancy-related performance measures,” noting limited CBP data due to “[reliance] on offsite care for pregnant women”
- In 2023, average length of stay for pregnant, postpartum, and nursing individuals in ICE custody was 11.27 days (compared to 35.77 days for general population)

Pregnancy, Childbirth, & Infant Care

- American College of Obstetricians and Gynecologists (ACOG) 2023 Report:
 - “It is well documented that there is inadequate access to reproductive health care in immigration detention, including care for pregnant individuals. Substandard care may range from lack of responsiveness to requests for care, lack of translation or use of interpreters, provision of care by unqualified medical staff, lack of adequate mental health care, and delays in providing offsite medical care to outright refusal to provide medical care, including contraception and abortion. Individuals have experienced miscarriage and unsafe birth in custody, but the true incidence of these occurrences is unknown because various agencies refuse to collect or release this information. Reliable information is difficult to obtain because there is a lack of transparency across detention systems, a fact made worse by the use of private, for-profit prisons and detention centers. Investigations of detention facilities managed by for-profit contractors have concluded that they are ill-equipped to meet ICE’s standards of care and experience no penalties when repeatedly failing to correct deficiencies. The U.S. Government Accountability Office has also found fault with ICE failing to provide the standard of care in facilities it operates and oversees.”

Family Separation: A Case Study

- Spring 2018 the Administration announced “zero tolerance” policy of immigration enforcement (Office of Inspector General, 2018); parents charged with “illegal entry” separated from children, children placed in ORR custody*
- >5,000 children (as young as 4 months old) were separated during this time, with half separated between May-June 2018 (separations 2017-2019);
 - At least 1,033 <10 years old; at least 103 <5
- June 2018 Judge Sabraw of Southern District of California issued preliminary injunction requiring the government stop separating families & reunite all children and families within 1 month; government was unable to comply, citing inadequate record-keeping that left them unable to locate children & identify their parents (Office of the Inspector General, 2019)
 - By the end of 2021, all but 27 of the children *known* to have been separated from their parents were reunited with their families, many having been separated for over 1 year

*Note: William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires DHS to transfer unaccompanied minors to ORR; Flores Settlement ensures minors in immigration custody are treated in a manner appropriate for age and special needs, requires minors be transferred to ORR or family member within 72 hours & limits detention to 20 days; Children in ORR custody guaranteed: classroom education, health care, mental health services, legal services, recreation, and vocational training; case management services with the goal of family reunification whenever possible

Family Separation: A Case Study

- Independent reviews by journalists, lawyers, and politicians found many children's facilities failed to meet basic health, hygiene, and safety requirements; reports & lawsuits documented:
 - Children held in cells with standing room only, sleeping on concrete or outside with mylar blankets;
 - Children given inadequate meals and subjected to forced dehydration;
 - Children denied soap, toothpaste, and showers (sometimes for weeks);
 - Lack of adult supervision (children left to care for other children);
 - Children not being permitted to console one another (including siblings);
 - Children being moved to high security facilities for disclosing migration-related trauma or displaying feelings of depression to social workers/psychologists (including incidents in which children were locked in cells, pepper sprayed, and physically assaulted by guards);
 - Children forced to take antidepressants, anti-anxiety, and antipsychotic medications not FDA-approved for children (including incidents of children being tied up in restraint chairs and injected with drugs)
 - Children placed in ORR-contracted facilities with documented histories of abuse (e.g. criminal charges/convictions for child sexual abuse and aggravated assault by multiple staff, death)
 - At least 2 child deaths in CBP custody (actual number unknown → no requirement to track or report these deaths, but 0 child deaths in the decade prior)

Family Separation: A Case Study

- Research on family separation in other contexts indicates damages caused by periods of separation may be irreparable; separation severely harmful to children's emotional growth and cognitive development, and is also associated with increased risk of anxiety, depression, and suicidal thoughts among parents
- Preliminary reports on family separation in this case indicate findings are applicable:
 - 2019 HHS Office of Inspector General Report: “separated children exhibited more fear, feelings of abandonment, and post-traumatic stress than did children who were not separated [from their parents, but still in ORR care]. Separated children experiences heightened feelings of anxiety and loss as a result of their unexpected separation from their parents after their arrival in the United States. For example, som separated children expressed acute grief that caused them to cry inconsolably”

Family Separation: A Case Study

- Preliminary reports on family separation in this case indicate findings are applicable:
 - 2020 Physicians for Human Rights Report: “nearly everyone interviewed exhibited symptoms and behaviors consistent with trauma and its effects: being confused and upset, constantly worried, crying a lot, having sleeping difficulties, not eating well, having nightmares, being preoccupied, having severely depressed moods, overwhelming symptoms of anxiety, and physiological manifestations of panic and despair (racing heart, shortness of breath, and headaches), feeling ‘pure agony’ and hopelessness, feeling emotional and mental anguish, and being ‘incredibly despondent’...children exhibited reactions that included regression in age-appropriate behaviors, crying, not eating ,having nightmares and other sleeping difficulties, loss of developmental milestones, as well as clinging to parents and feeling scared following reunification with their parents”

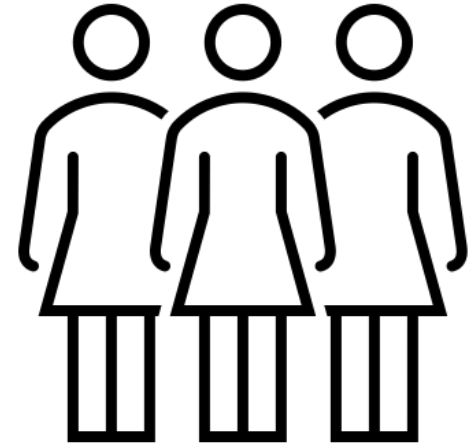
ACOG Recommendations (2023)

Among recommendations from the American College of Obstetricians and Gynecologists:

- People detained in immigration custody settings should be protected from abuse and coercion and should receive obstetric and gynecologic care that complies with accepted clinical guidelines and evidence-based protocols
- Policies and immigration-enforcement practices that are detrimental to health and wellbeing should be opposed, including:
 - Separation of children from parents or caregivers
 - Targeting of people who are pregnant or parenting at points of entry for immigration-enforcement activities
 - Detention of individuals who are pregnant, nursing, or postpartum

Policy solutions

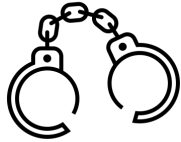
- **Most generally, criminal justice agencies must take a gender-responsive approach to meet the needs of justice-involved women**
- Considering the large number of women whose experiences with trauma, substance use disorders, and mental health problems have led to their contact with the criminal justice system, **alternatives to incarceration that treat these underlying issues** are likely more appropriate for many women than prisons, where these problems are often exacerbated
- Understand and acknowledge women’s unique pathways to criminal justice involvement, “the criminalization of women’s survival behaviors” may shift to treatment and services as more effective crime prevention strategies
- Correctional agency programming and staff training should also be **“trauma-informed”** recognizing that most of the women in their care are victims as well as “offenders”



(Prison Policy Initiative, 2018)

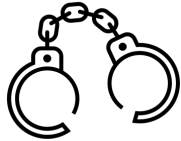
Policy Suggestions

- **State and local governments should expand the use of diversion strategies and programs at each possible stage, from pre-arrest to re-arrest.**
- **Reclassify criminal offenses and change responses to low-level offenses to avoid over-criminalizing behaviors that pose little threat to public safety.**



Policy Suggestions

- **Federal, state, and local governments should fully fund indigent criminal defense**
- **States should change policies that criminalize poverty or that create financial incentives for unnecessarily punitive sentences**



Policy solutions: Prison Nurseries

- How do they work?
- Currently, eight states have prison nursery facilities:
 - Illinois, Indiana, Nebraska, New York, Ohio, South Dakota, Washington, and West Virginia (Dotson et al., 2019)
 - Ninth scheduled to open in 2025 in Missouri (Muller, 2022)
 - Vary in terms of underlying philosophy, political will to support them, and resources available to mother and child (Bryne et al. 2012)



Daidre Kimp prepares for the day. She'll get daughter, Stella, ready for daycare. The residential program selects up to 20 women to participate.

Eman Mohammed for NPR

(NPR, 2018)

Critiques

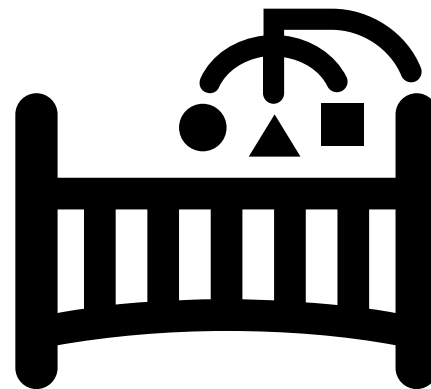
- The program is not without critics. James Dwyer, a law professor and child policy expert at College of William and Mary, is one of the most vocal.
- He calls the programs a reckless hope and a gamble, though Dwyer says he has not visited a prison nursery.
- He says there is little evidence to show they provide long-term benefits for children or that they keep the mothers from returning to prison (NPR, 2018)
- Punishment for the children
- Other concerns: serious budgetary barriers

Prison Nursery Policy Assessment

- **Recidivism:** Three years after release 86.3% remained in the community (Goshin et al., 2013)
 - Only 4% of women returned to prison for new crimes
 - Survival modeling indicated that women who had previously violated parole had a significantly shorter mean return to prison time than those who were in the nursery for a new crime
- Longitudinal research in the oldest U.S. prison nursery — **development during infancy and toddlerhood** was within normal limits across domains (Byrne, 2010)

Prison Nursery Policy Assessment

- Attachment was more likely to be **secure** than what would be expected (due to pre-existing insecurity and unresolved trauma in the mothers' backgrounds) (Byrne, Goshin, & Joestl, 2010)
- During the preschool period, children who had lived with their mothers in the prison nursery had **lower anxious-depressed behavior problem scores** than a comparison group of children who were separated from their mothers in infancy or toddlerhood because of incarceration (Goshin et al., 2014)
- Some positive outcomes



Michigan Examples

Program allows incarcerated moms to reunite with children before Mother's Day



Prison: Women and Infants at Risk

- Women with low-level, nonviolent offenses
- Leave the prison prior to their third trimester
- Enter a secure community-based residential facility where they could reside with their infants for a minimum of 4 months after birth before returning to their homes
- Attachment theory
- For women involved in WIAR in Michigan, decreased CJ involvement (arrest, conviction, confinement) for those who participated in the program.
 - Greater proportion of the treatment group remained arrest free during the 10 years post birth than the comparison group (40% vs. 25%, respectively) (Pimlott-Kubiak et al., 2010)

Jail: Genesee County Jail, Motherly Intercession

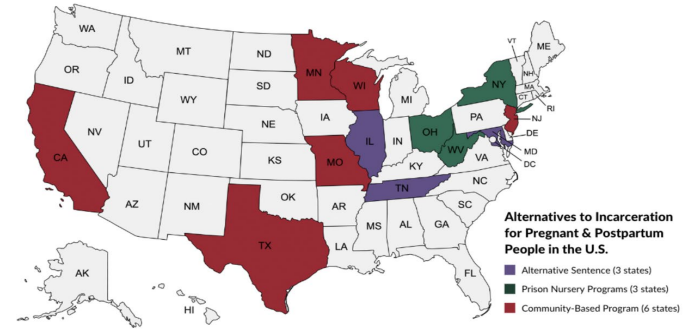
- *“At the end of the day they still are their parents. You know, they’re still the mother, they’re still the father, that child is still yearning for the love of their parent.”*

State and Local Programs

- Washington example:
 - Parenting Inside Out
 - Read to Me, Daddy/Mommy
- Illinois Example:
 - Moms and Babies
 - Cook County Jail: Start Early Program
- Multi-state:
 - Girl Scouts Beyond Bars

Summary of State Laws:

Twelve states have laws related to sentencing alternatives or programs specifically for pregnant and/or postpartum people.



Questions?

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Scan the QR Code for
References and Additional
Resources!



Thank you to Judge Rick, Sheryl Kubiak, Gina Fedock, Vivek Sankaran

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[Byrne, Goshin, & Blanchard-Lewis, 2012](#)

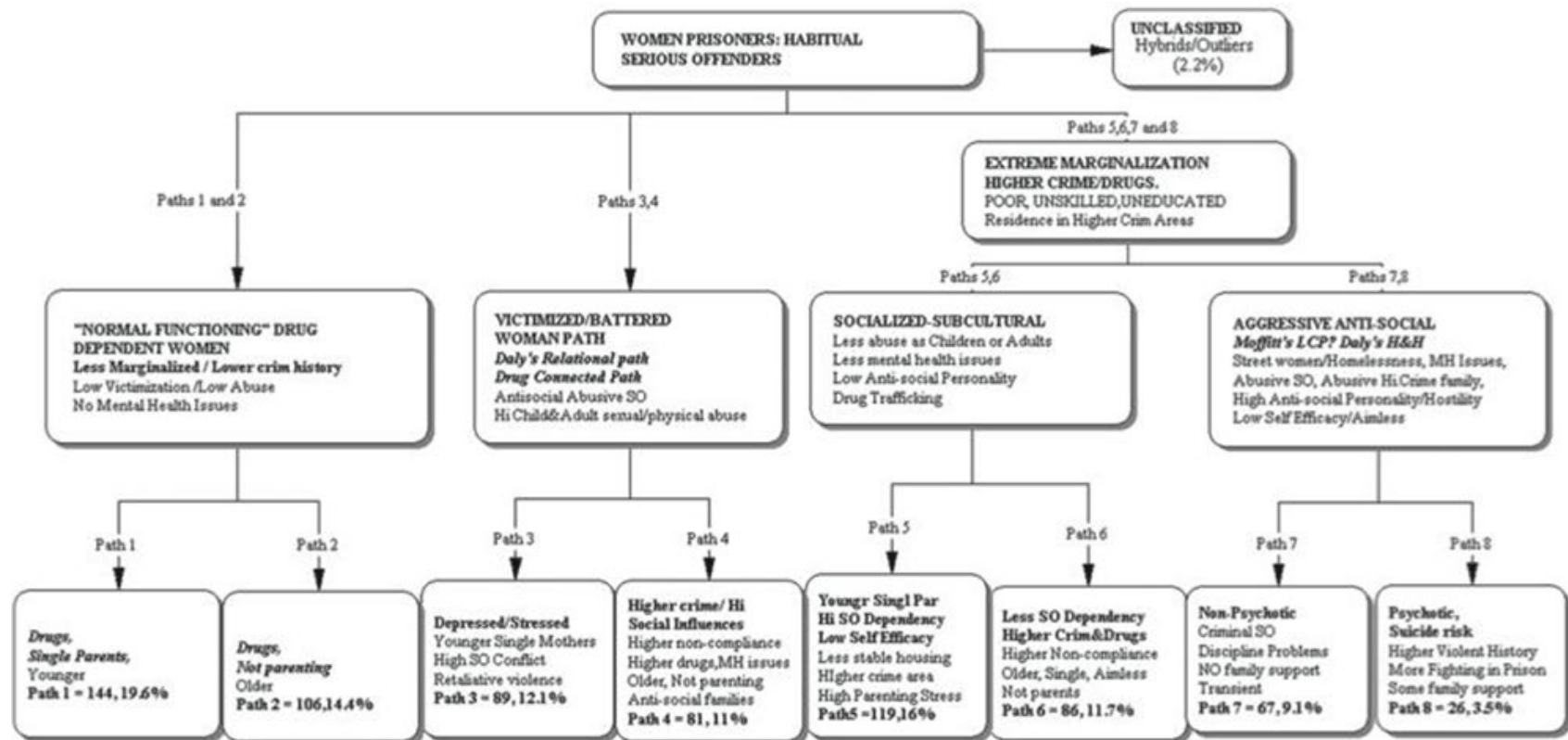
[Byrne, Goshin, & Joestl, 2010](#)

[Byrne, Goshin, & Blanchard-Lewis, 2012](#)

Extra Slides

Child Protective Services and Foster Care: Policy Barriers

- Unrealistic time demands
- Jurisdictional issues courts and corrections
- Alternatives to termination of parental rights



Federal Policy Solutions

- House Resolution 948: Justice for Incarcerated Moms Act of 2021 was introduced to Congress as a part of the Black Maternal Health Omnibus.
- The Justice for Incarcerated Moms Act aims to improve health care and promote dignity for incarcerated pregnant and parenting people through an array of policies and oversight.
- Five HHS and 10 DOJ grant programs could be used to support maternal health care in state prisons and local jails
- 23 of its grant awards were used to provide maternal health care in state prisons or local jails during this time.
- For example, one HHS grant recipient reported using grant funds to support its prison nursery
- The primary purpose of DOJ's 10 grant programs is to enhance substance use and other behavioral health treatments and improve reentry outcomes for people leaving prisons and jails.



Gendered Collateral Consequences

A Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits

By Virginia McCalmont

November 14, 2013

A provision of the 1996 welfare reform legislation passed by Congress subjects an estimated 180,000 women in the 12 most impacted states to a lifetime ban on welfare benefits.

Statistics on Women in Prison in US

- In 2022, there were about 181,000 incarcerated women in local jails and state and federal prisons across the U.S
- 60% of women in jails under local control have not been convicted of a crime and are awaiting trial
- 58,000 pregnant women are estimated to be admitted into jails and prisons annually in the U.S

*(GAO, 2024;
Council on
Criminal
Justice, 2024)*

Unique Pressures: COVID-19

Marsh, L. N., Kramer, C., Shlafer, R. J., & Sufrin, C. B. (2024). Impacts of the COVID-19 pandemic on the experiences of incarcerated pregnant people. *Health & Justice, 12*(1), 40.

COVID-19 introduced new stressors and exacerbated preexisting stressors around participants' reproductive and parenting experiences. Three major themes emerged: 1) incarceration causes mental, emotional, and physical distress during pregnancy and parenting; 2) COVID-19 worsened conditions of incarceration, contributing to participants' distress; and 3) the introduction of quarantine protocols during the pandemic felt uniquely punitive for pregnant and postpartum people.

Most programs are staffed by a combination of civilian professionals and correctional officers. In some cases, the professionals include counselors, nurses, day-care workers, and even lactation consultants (Ward, 2018). In NY, screened prisoners are allowed to work at the daycare (Chuck, 2018).

<https://docs.google.com/document/d/1oA3MXGP2I8TqR3-CFv9LCo1AWd37fAsz/edit>

Swift and Sure Program

- The swift and sure sanctions probation program (SSSPP) is an intensive probation supervision program that targets high-risk felony offenders with a history of probation violations or failures.
- Governed by MCL 771A.1 et seq., SSSPP is modeled on Hawaii's Opportunity Probation with Enforcement (HOPE) program, which studies have shown to be very successful in improving the rate of successful completion of probation among high-risk probationers.
- SSSPP participants are closely monitored, including being subjected to frequent random testing for drug and alcohol use and being required to attend frequent meetings with probation and/or case management staff.
- SSSPP aims to improve probationer success by promptly imposing graduated sanctions, including small amounts of jail time, for probation violations.
- Judges in Michigan's SSSPP courts have reported a reduction in positive drug tests and failures to appear at scheduled meetings with probation officers among their SSSPP participant population.

Swift and sure

<https://www.courts.michigan.gov/4964b3/siteassets/reports/psc/sssppannualreport.pdf>

Other Resources

- [Overview](#) of Swift and Sure (video)
- [10 Differences](#) Between the Swift and Sure Program and Treatment -Based Problem-Solving Courts (video)
- Michigan's Judiciary: [Swift and Sure Sanctions Probation Program](#)
- Recommended Sanctions Grid
- [List](#) of Swift and Sure Sanctions Probation Program
- SSSPP Legislation [MCL 771A.1 - MCL 771A.8](#)
- SSSPP Legislation [MCL 600.1086](#)
- [Model Local Administrative Order](#) for Establishing a Swift and Sure Sanctions Probation Program

<https://www.courts.michigan.gov/4964b3/siteassets/reports/psc/sssppannualreport.pdf>

SCAO provides funding assistance for an intensive probation supervision program. Courts must adhere to [MCL 771A.1 - MCL 771A.8](#) to receive funding. SSSPP is not a problem-solving court and probationers are not required to attend treatment for substance use or mental health disorder

Best guess

About 3% of admissions of females to U.S. jails are of pregnant people; extrapolating study results to national female jail admission rates suggests nearly 55,000 pregnancy admissions in 1 year. It is feasible to track pregnancy statistics about this overlooked group..<https://pmc.ncbi.nlm.nih.gov/articles/PMC7183903/>

Data Pregnancy Outcomes

Irazola, S., Maruschack, L., & Bronson, J. (2024). Data on maternal health and pregnancy outcomes from prisons and jails: Results from a feasibility study. *Bureau of Justice Statistics*.

Through various data collections, BJS has historically collected basic information on maternal health on an ad-hoc basis, including: 1 the number of women in prisons and jails who reported being pregnant at time of admission and the number who reported receiving prenatal care since admission 2 the number of women in prison who were pregnant and pregnant women who died from COVID-19 while in prison 3 data on pregnancy outcomes and use of restraints during pregnancy, labor, and postpartum recovery among women held by the Federal Bureau of Prisons (BOP) as required by the First Step Act of 2018. 4 Independent researchers have also conducted studies on maternal health, including the Pregnancy in Prison Statistics study, the first systematic administrative data collection administered in both prisons and jails.

Juvenile system and Jails

Pregnancy Prevalence and Outcomes in Three U.S. Juvenile Residential Systems

GA, Maryland, CA

Sufrin, C., Jones, R. K., Mosher, W. D., & Beal, L. (2020). Pregnancy prevalence and outcomes in US jails. *Obstetrics & Gynecology*, 135(5), 1177-1183.

There were 1622 admissions of pregnant people in 12 months in the selected jails. The highest one-day count of pregnant people at a single jail was 65. The majority of these admissions involved the release of a pregnant person. Of the 224 pregnancies that ended in jail, 144 (64%) were live births, 41 (18%) were miscarriages, 33 (15%) were induced abortions, and 4 were ectopics (1.8%). One third of the births were cesarean deliveries and 8% were preterm. There were 2 stillbirths, 1 newborn death, and no maternal deaths.

US Prison and Pregnancy Outcomes

Sufrin, C., Beal, L., Clarke, J., Jones, R., & Mosher, W. D. (2019). Pregnancy outcomes in US prisons, 2016–2017. *American journal of public health*, 109(5), 799-805.

Objectives. To collect national data on pregnancy frequencies and outcomes among women in US state and federal prisons.

Methods. From 2016 to 2017, we prospectively collected 12 months of pregnancy statistics from a geographically diverse sample of 22 state prison systems and the Federal Bureau of Prisons. Prisons reported numbers of pregnant women, births, miscarriages, abortions, and other outcomes.

Results. Overall, 1396 pregnant women were admitted to prisons; 3.8% of newly admitted women and 0.6% of all women were pregnant in December 2016. There were 753 live births (92% of outcomes), 46 miscarriages (6%), 11 abortions (1%), 4 stillbirths (0.5%), 3 newborn deaths, and no maternal deaths. Six percent of live births were preterm and 30% were cesarean deliveries. Distributions of outcomes varied by state.

Conclusions. Our study showed that the majority of prison pregnancies ended in live births or miscarriages. Our findings can enable policymakers, researchers, and public health practitioners to optimize health outcomes for incarcerated pregnant women and their newborns, whose health has broad sociopolitical implications.

Breaking the silence

Many justice-involved women have experienced trauma during their lifetimes. However, jails and prisons offer little or no trauma-informed care or mental health services. No one wants to talk about what it is like to have a monthly menstrual cycle while incarcerated and how humiliating this can be when men run the prison. Pap smears don't happen, mammograms go incomplete, and rape goes unreported. Thus, the trauma that women experience prior to prison goes untreated and they become more traumatized by incarceration.

Even when policies are intended to help, they fall short. One example: The Prison Rape Elimination Act (PREA). When it was created it did not include statistics of female-on-female sexual violence. I can tell you from first-hand survival: incarcerated women routinely experience sexual assault at the hands of each other. Male guards may find this funny or stimulating, and speaking up to them makes you a target for more abuse. Just as in the outside world, women can be treated as mere objects for pleasure.<https://www.vera.org/news/gender-and-justice-in-america/breaking-the-silence-about-women-in-prison>

Issues unique to women in prison

Historical impact of war on drugs

Bail and gender

Feminist criminology–feminist pathways

Trauma/ACEs

Sexual assault in prison

Pregnancy

Family separation