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INVISIBLE WOMAN: HOW PRISONS PUNISH PREGNANCY

Nº20 - JUNE 2020 \$5,00

> deconstructing the institutions oppresing black bodies, because **black lives matter.**

women's health needs to be front and center: **because health is a human right**

PROTECT SAFE, LEGAL ABORTION

enthood

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INTRODUCTION

Rejected rights, rejected life

BY HALA BARADI



yodor Dostoevsky once said, "A country should not be judged by how it treats its outstanding citizens, but by how it treats its criminals." This statement is especially sentient in the United States today, where mass incarceration is endemic.

Historically, mass incarceration in the United States has disproportionately targeted people of color. However, while mass incarceration is a well-documented phenomenon, its discourse often fails to include pregnant inmates. Thus, women of color are both historically marginalized and often invisible within discussions regarding the injustices of the penal system.

This is astonishing, considering that women of color are among the fastest-growing segments of the penal system¹

Why does the penal system target such a specific segment of the population? The structural and political inequality in-

The structural and political inequality inflicted on women of color creates an oppressive system that places undue constraints on the lives of these women, perpetuating unjust social relations. For example, it is well-documented that incarcerated women are subject to healthcare inequality and have higher rates of substance abuse, mental illnesses, and histories of domestic and sexual abuse than the general population.² Furthermore, the majority of incarcerated women are charged with non-violent offenses, such as drug use or possession, or property crimes often motivated by economic circumstances.³ All too frequently, women are incarcerated for "crimes of survival," attempting to make ends meet in an economy developed to exclude them.⁴ The question then is:

Does our society, as it exists today, create intolerable injustices for this population that eventually lead to their incarceration? In other words, does our society perpetuate the criminalization of women of color?

If women of color are subjected to a disproportionately unjust penal system, being pregnant while incarcerated compounds the problem exponentially. According to the American Journal of Public Health, at any point in time in the U.S. penal system, 6-10% of incar-

1 Roberts, Dorothy E. "The Social and Moral Cost of Mass Incarceration in African American Communities." Stanford Law Review, vol. 56, no. 5, April 2004, p. 1271-1306. HeinOnline.

2 Clarke, G. Jennifer, et. al. "Reproductive Health Care and Family Planning Needs Among Incarcerated Women." *American Journal of Public Health*, Vol. 96 issue 5, 2006.

3 Ocen, A. Priscilla. "Punishing Preg-

nancy: Race, Incarceration, and the Shackling of Pregnant Prisoners." California Law Review, vol 100, no. 5, October 2012, p. 1239-1311. Jstor.

4 McConnell, Torrey. "The War on

Women: The Collateral Consequences of Female Incarceration." Lewis & Clark Law Review, vol. 21, no. 2, 2017, p. 493-524. HeinOnline. cerated women are pregnant⁵. Despite this, the penal system frequently lacks adequate reproductive services that these inmates desperately need.² Many women, for example, are forced to give birth in dismal conditions that strip them of their humanity and cause long-lasting trauma.

In general, the treatment of incarcerated women by the state is draconian and crimes or blatant mistreatment against pregnant inmates often go unpunished. Their subjugation by the state penal system, compounded by their individual experiences as a result of an unjust society, leads to high-risk pregnancies for inmates. A racial and gendered analysis reveals that this demographic is regularly deemed "unfit mothers," and is frequently used by the state to justify mistreatment.³ Though incarcerated pregnant women are typically an overlooked demographic, they nonetheless are highly vulnerable members of our society. This magazine will explore how legacies of oppression directly induce biological changes in the mother and fetus.

Ultimately, society has failed an entire segment of our population. People of color are not afforded the same rights, protections and privileges as those enjoyed by their white counterparts. More specifically, women are even more negatively impacted by societal injustices and, if the woman is incarcerated and pregnant, the statististics unfortunately are yet more dismal. In sum, society must care that human decision-making has directly led to the sociopolitical and health disparities among women of color. It is imperative to critique a system that justifies the punishment of pregnant women, while simultaneously refusing to provide them adequate healthcare. It is irrefutable that there exists a moral obligation to rectify instances of injustice and better the institutions that perpetuate inequalities that pregnant incarcerated women are forced to endure.

This issue of the magazine, 1919, aims to reveal a historically invisible segment of the U.S. population: pregnant incarcerated women. To do this, the magazine will explore sustainable solutions to systemic flaws in our penal system.

⁵ Clarke, G. Jennifer, et. al. "Reproductive Health Care and Family Planning Needs Among Incarcerated Women." *American Journal of Public Health*, Vol. 96 issue 5, 2006.

Looking Ahead in this Issue:

of The WOMEN **INN PRISON**



BY EMMA JANNIBEKYAN

The debilitating circumstances of pregnant incarcerated women render them a key vulnerable population, in need of more holistic treatment. The burden of a prison-like environment, without the full range of healthcare resources normally available to pregnant women in stable situations, adds to the culminating stress that accompanies pregnancy.

Beyond the stresses of pregnancy and lack of proper healthcare, many pregnant prisoners face circumstances far worse: they are subject to cruel and unusual punishment.

One story, which is similar to thousands, includes many themes in the experiences of pregnant inmates^{1.} A former pregnant inmate sued over her treatment during birth in Santa Rita jail, claiming that she was subjected to 'barbaric conduct,' after being admitted to the jail for a few days.

"Nobody paid any attention to her — they just let her scream for hours," says the inmate's attorney.

The woman, Candace Steel, complained of pain and cramping and had high-risk early delivery symptoms. She was diagnosed with a urinary tract infection and left writhing in pain while waiting to see a healthcare professional. When finally examined by a nurse, Steel was accused of exaggerating and inflating a simple stomach ache.

As punishment for complaining, she was chastised with solitary confinement. Left alone in a dirty concrete cell, with a metal bed and no blankets or prenatal care, Steel was abandoned to scream for hours until her baby was born1.

Not only was Steel denied prenatal care, attention, and emotional support, she was punished for requesting care for her symptoms. The punishment inflicted upon Steel far surpasses medical negligence; it is torture. Disturbingly, her reality is one that too many incarcerated women in the United States encounter.

Cases like Steel's force the question: How does society prevent the unethical, appalling, and arduous treatment of pregnant incarcerated women?

While this may present a seemingly insurmountable hurdle, society must first understand how the prison system developed into what it is today. Secondly, it is imperative to implement interventions that combat future injustice. While the challenges facing the prison system remain systemic, it is paramount to consider the impact of the prison system on a case-by-case basis in order to understand the individual effects of institutional corruption.

Therefore, we will analyze the general factors that lead to the mass incarceration crisis, who this system disproportionately targets, and how to effectively dismantle the dismal treatment of these women through interventions emphasizing rehabilitation, rather than punishment.

¹ "Former Inmate Sues Alameda County Over Treatment During Birth In Jail." CBS San Francisco, CBS Broadcasting Inc. and Bay City News Service, 20 Aug. 2018, sanfrancisco.cbslocal.com/2018/08/20/ former-inmate-sues-alameda-county-over-treatment-during-birth-in-jail/. Accessed 7 June 2020.

A BRIEF HISTORY OF

MASS INCAR CERAT ION

1865-1877

The South began to arrest Black people for minor crimes like loitering or vagrancy. These once enslaved people, with no education or skills, were again in chains and forced into unpaid labor. The motivation was to use them to rebuild the South's economy after the war

1973

Nixon's federal spending for "law and order" movement and "war on drugs" doubled. This stated a commitment to treat drug use and drug addiction as a crime issue rather than a health issue. He wanted to "enforce the law" so that all Americans can be subject to "law and order." He wanted a "war on crime." This is dog whistle politics, because who he was really targeting was the Black liberation movemnt, the anti-war movements, the women's and gay rights

1976

The court decided Estelle V. Farmer. **This case ruled that a prisoner's pain and suffering does not necessarily violate the Eighth Amendment.** The court insisted that there must be evidence of "deliberate indifference" by an officer when subjecting an inmate to punishment. **The term "deliberate**

indifference" is ill-defined by the court. However, there are generally two criteria. One, the party must show that the inmate is incarcerated under conditions that pose serious harm. Second, prison officials must be aware of the harm that is imposed on their prisoners. The court, therefore, required proof of intent. Consequently, this provides a disincentive for prison officials to keep records of an inmate's mistreatment and motivates them to ignore potential threats to the health and well-being of inmates.

Mass incarceration finds its roots dating back to 1865, despite the 13th Amendment banning slavery in the United States.

1895¹

The 13th amendment is passed. It freed the slaves and banned slavery except as a punishment for a crime, which essentially legazlied the institution of savery within the penal system.

1865-1928

Convicts were leased to wealthy Southern landowners to perform manual labour without pay, as per the loophole in the 13th amendment.

1968

John Ehrlichman said "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies, the anti-war left and Black people. You understand what I'm saying? We knew we couldn't make it illegal either to be against the war or Black...but by getting the public to associate the hippies with marijuana and Black people with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did." Ehrlichman was a Nixon Administration aide.

1983

The Correctional Corporations of America opens the market for private prisons

1980 - 1990 🕻

A poll at the time showed that the public did not regard drug use to be a serious problem. However, Ronald Reagan was determined to put the issue on the agenda. He cut many welfare programs to the point that poverty in the U.S. reached record highs. Reagan also criminalized crack cocaine. In addition, mandatory sentences were passed by Congress that created longer sentences for crack, which was typically funneled into communities of color, than powdered cocaine, which were instead used by white communities. Drug enforcement budgets skyrocketed. In the war on drugs, Reagan essentially criminalized the social implications of economic inequality, hypersegregation in cities, and drug abuse.

1987

Turner v. Safley established that inmates' constitutional rights can be limited if the policy is related to legitimate penological interests. Thus, a prison can infringe on constitutional rights in the greater interest of creating a safe correctional system. Prisons can require waiting periods for seeking abortions or extra bureaucratic loops in the interest of security.

1994 (

The Federal Crime Bill of 1994 expanded the prison system and added incentives for police to criminalize people. Additionally, it increased state funding to build prisons and militarized police departments with equipment and SWAT teams. This resulted in an exponential explosion of prison populations.



 Ocen, A. Priscilla. "Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners." California Law Review, vol 100, no. 5. October 2012. p. 1239-1311. Jstor.

5

1986

Congress passed the Anti-Drug Abuse Act which established mandatory minimums for drug offenders and imposed harsher sentences for crack cocaine than powdered cocaine. Thus, Black drug users, who predominantly used crack cocaine, were given harsher sentences than their White counterparts. This is despite the fact that crack and powdered cocaine are chemically equivalent. Criminals would have to serve at least 85% of their sentences before even being considered for parole or shorter sentences for good behavior. This was called truth in sentencing: you serve the time you were sentenced and parole was not considered even if you are no longer a threat to society.

1993

The Three-Strikes law was passed. A life sentence would be imposed for any crime (even minor crimes) if the defendant had two prior convictions deemed "serious" or "violent." Most inmates serving life sentences are doing so for nonviolent crimes, like drug possession.

2009 3

Nelson vs. Correctional Medical Services was the first Supreme Court case dealing with the shackling of pregnant inmates. Nelson sued through violation of the Eighth Amendment. The panel ruled that the individual officer who placed the shackles on Nelson was guilty. But, the panel ruled that the prison director was not guilty because he was not deliberately indifferent to Nelson's pain. The panel decided to interpret the Eighth Amendment toward individual actors rather than institutional conditions. This made it harder to advocate for structural change.

Demographics of Incarcerated Women

Incarcerated pregnant women are a disadvantaged population in the United States and lack visibility in media or politics outside of sensationalized, racialized, or discriminatory representation. To dispel any pervasive cultural or societal misunderstandings of this group of women, let's consider their demographics.

General Statistics

With 6.7 million people under some form of correctional control, the United States leads the world with the highest incarceration rate of any country.1

African American girls make up 14 percent of the general population but a disproportionate 33 percent of African Americans girls are detained in their lifetime.2

Most incarcerated women:3

- Have only graduated high school or have a GED equivalent (43%)
- Do not have health insurance (54.3%)
- Have hepatitis C infection (19.7%)
- Reported heroin, coçaine, or other opiate use in the 3 months before their
- Reported a history of childhood sexual abuse (40.5%)

STD Risks 4

31.5% tested positive for gonorrhea or chlamydia

Gonorrhea and chlamydia can increase the risk of miscarriage, pre-term birth, higher rates of infection of the amniotic sac and fluid, and preterm premature rupture of the membranes (PPROM). This risk is compounded with the higher rates of pregnancy complications that pregnancy complications that incarcerated women endure.

8.9% tested positive for pelvic inflammatory disease.

Incarceration is the only opportunity for many disenfranchised women to receive medical care. Incarcerated women lack preventative health measures, like Pap tests, STD screens, family planning counseling, and preconception counseling.

80.4% reported inconsistent condom use, increasing their risk of unplanned pregnancies. Unplanned pregnancy increases the risk of pregnancy complications. This creates an urge to provide reproductive health care services to incarcerated individuals.

The lack of social, medical, and political privilege afforded to

political privilege afforded to these women prior to incarceration becomes chillingly apparent through these statistics. While each area of disenfranchisement poses a risk to these women, many experience multiple levels of social disadvantage simultaneously, thus increasing their risk of incarceration exponentially.

incarceration exponentially.

Women are generally convicted of nonviolent crimes, such as burglary. These are often categorized as "crimes of survival," because they are the result of economic or social desperation. While uncommon, of violent crimes, females commit more than two times as many (34%) against individuals close to them, such as intimate partners or relatives, in response to domestic violence. In 1999, a majority of State and federal prisoners reported having a child under the age of eighteen, and almost fifty percent lived with their children prior to incarceration. Seven percent of Black children had a parent in prison in 1999, making them nearly nine times more likely to have an incarcerated parent than white children.

SOURCES:

I ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 2 ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 3 ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 4 ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 21, NO. 2, 2017, P. 439-254. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROPEORTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, O. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATION IN AFRICAN AMERICAN COMMUNITIES." STANFORD LAW REVIEW, VOL. 56, NO. 5, APRIL 2004, P. 1271-1306. HEINONLINE. 5 ROBERTS, DOROTHY E. "THE SOCIAL AND MORAL COST OF MASS INCARCERATIO



There's another pipeline, however, that has yet to break its way into national media. And it involves sexual abuse.

BY KRISTIE-VALERIE HOANG

The school-to-prison pipeline starts in the classroom and ends with schools throwing children into the juvenile and criminal justice system.

According to the American Civil Liberties Union, children with learning disabilities or histories of poverty, abuse or neglect would benefit from education and counseling services.¹ But, the system pushes them out. Schools rarely tolerate truancies and often lack the therapy services that their students so desperately need, and instead discipline them for absences or non-compliant behavior that can lead to suspension.

This narrative is long-touted by politicians and activists, and it is a heartbreaking trend describing the cruelty of the criminal justice system.

There's another pipeline, however, that has yet to break its way into national media. And it involves sexual abuse.

Girls in the juvenile system are disproportionately victims of sexual violence. Sexual violence is also one of the strongest predictors of a girl's re-entry into the prison system.

This problem exists in multiple dimensions. Civil rights advocate and lawyer Kimberle Crenshaw explains the flaws in these systems through the phenomenon of intersectionality.² Women of color experience additional layers of injustices as a result of both their race and gender. The experiences of a woman of color are not wholly explicable in terms of being Black, or being a woman. Rather, each experience presents layers of its own injustices and oppression—layers that are not due to their race or being or women alone.

"At the simplest level, race, gender, and class are implicated together because the fact of being a woman of color correlates strongly with poverty," Crenshaw said. Being a woman of color means that

Defing a woman of color means that

Resources, ACLU. "School-to-Pris-

on Pipeline." American Civil Liberties Union, 2014, www.aclu.org/issues/racial-justice/ race-and-inequality-education/school-prison-pipeline.

2 Crewnshaw, Kimberle "Demargin-

alizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics." The University of Chicago Legal Forum, 1989 https://philpapers.org/archive/CREDTI. pdf?ncid=txtlnkusaolp00000603 an individual can face economic and social oppression both as a result of their race and gender. Women of color, for example, often cannot break the language barrier required to get a job due to the fact that English may not be their first language. This job can both pull her out of poverty, and perhaps provide economic independence to leave domestic violence. There are multiple patterns of subordination that women experience as a sort of "double jeopardy."

In terms of sexual violence and prison, girls are too often victims of sexual violence. Eleven million women reported their first completed or attempted rape occuring prior to the age of eighteen. Thirty-one percent of girls in juvenile correctional systems are sexually abused, compared to only seven percent of boys in these institutions. Aside from just the sheer number of girls experiencing sexual violence, their rate of complex trauma is also nearly twice as high compared to that of boys. Complex trauma constitutes an "adverse childhood experience" which can impair a child's mental development through destruction of their stress-response system.

Researchers said these factors combined greatly impacts the likelihood of girls' re-entry into the system. The experience of sexual abuse, notably, did not have the same impact on boys, researchers said.

Women are more likely than men to develop mental health problems as a result of exposure to trauma. Overwhelmingly, researchers found 70 percent of girls in the juvenile detention system had been exposed to some form of trauma and over 65 percent had experienced symptoms of PTSD at some point in their lives.

This problem is even further exacerbated when the juvenile system fails to address, and even amplifies the trauma that caused girls' admittance into the system. The system does not offer specialized treatment for girls who are pregnant or have been sexually abused. Reproductive healthcare is dismal at best, and prenatal care or parenting education is rarely provided.

What's more, girls are at heightened risk for re-traumatization. Procedures, such as use of restraints, strip searches and the

3 Morgan, Rachel, and Barbara

Oudekerk. "Criminal Victimization, 2018." *Bureau of Justice Statistics*, U.S. Department of Justice, Sept. 2019, www.bjs.gov/content/ pub/pdf/cv18.pdf. prison environment itself takes a dangerous toll on their mental health. Prison officials are rarely held accountable for abusive actions within correctional facilities.⁴

The American College of Obstetricians and Gynecologists recommends federal and state mandates that require correctional health facilities to receive accreditation in order to provide the specialized treatment that many young girls entering the system require. Furthermore, correctional facilities need minimum funding to provide continuous care.⁵ Establishing such regulations can address the health disparities and perhaps limit exposures to trauma when girls are placed in a correctional facility.

At the end of the day, dismantling the pipeline involves an analysis that moves beyond immediate interventions at the correctional facility level. The pipeline has a starting point: sexual violence. Combatting the existence of sexual violence can improve child welfare and prevent the trauma that often leads girls to prison in the first place.

Sexual violence disproportionately affects low-income women of color, and a system that punishes these women with the same crime that lead to their imprisonment exacerbates their health and suffering. Rather than implementing mental health treatment programs in prisons, or eradicating sexual violence in correctional systems, correctional facilities instead do nothing.

The sexual violence to prison pipeline is only strengthened over time.

4 Ocen, Priscilla. "Punishing

Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners." *California Law Review*, vol. 100, no. 5, Oct. 2012, pp. 1239-311.

Committee Opinion, ACOG.

"Reproductive Health Care for Incarcerated Women and Adolescent Females." *American College of Obstetricians and Gynecologists*, Aug. 2012, www.acog. org/clinical/clinical-guidance/committee-opinion/articles/2012/08/reproductive-health-care-for-incarcerated-women-and-adolescent-females.

INTERSECTIONALITY

Identity is at the crossroads of two historically disadvantaged populations that generate a unique social experience from either one of these identities independently.

"

BY CYNTHIA TSANG

Intersectionality, a term coined by Kimberlee Crenshaw, is used describe the multiple layers to of oppression and disadvantages that come with combinations of social circumstances.¹ In a TedTalk, Crenshaw discusses Emma, a woman who filed a lawsuit against a company for employment discrimination. Emma is a Black woman, and the company argued that they hired Black and female individuals. However, the Black individuals that were hired were men and the women hired were White.² Thus, no Black women were hired in the company, which pertained to Emma's case.

It is impossible to understand Emma's circumstances without considering both aspects of her social identity as Black and a woman. While it is not mentioned whether she won her case, Emma's case exemplifies intersectionality, as her identity is at the crossroads of two historically disadvantaged populations that generate a unique social experience from either one of these identities independently.

In addition to facing unique challenges as women in a patriarchal society, women of color are members of historically marginalized racial and socioeconomic groups. With rising unrest with African American social experiences today, especially regarding systemic police brutality and mass incarceration, Crenshaw highlights the focus on Black male endangerment.³However, there

1 Crenshaw, Kimberle. "Mapping the

Margins: Intersectionality, Identity Politics, and Violence against Women of Color." Stanford Law Review, vol. 43, no. 6, 1991 1990, pp. 1241–300.

2 Crenshaw, Kimberlé. The Urgency of

Intersectionality. www.ted.com, <u>https://www.ted.</u> com/talks/kimberle_crenshaw_the_urgency_of_intersectionality. Accessed 7 June 2020.

3 Crenshaw, Kimberlee. "From Private

Violence to Mass Incarceration: Thinking Intersectionally About Women, Race, and Social Control." UCLA Law Review, Sept. 2012. www.uclalawreview. org, https://www.uclalawreview.org/from-private-vihas been little conversation surrounding Black female experiences. Their exclusion from prevailing discourses that address economic insecurity, lack of public resources, and police violence perpetuate the specious impression that these circumstances do not exist for Black women.

This invisibility leads to a lack of legislation and social services, and by not directly considering people at the crossroads of disadvantageous circumstances, we do not consider them or address their needs. While these impressions remain, conditions, such as exposure to domestic violence are directly linked to a risk for incarceration. In fact, women, compared to men, are twice as likely to commit a violent crime against someone close to them, such as an intimate partner

 $\frac{olence-to-mass-incarceration-thinking-intersection-ally-about-women-race-and-social-control/}{2}$

or relative, because of domestic violence relationships.⁴

While women are the fastest-growing population under criminal supervision, there is little consideration of the effects on women of color. Until the social factors related to mass incarceration in Black communities are applied to both male and female cohorts, coherent policies that connect communities with support and resources will be impossible and Black women will remain invisible.

4 Snell, Tracy L. and Mortion, Danielle C.. Women in Prison. Bureau of Justice Statistics, 1994, https://www.bjs.gov/index.cfm?ty=pbdetail&iid=569.





IN-PRISON LIFE

Access to abortion: A FUNDAMENTAL RIGHT

BY KRISTIE-VALERIE HOANG

Roe v. Wade affirmed abortion's legality under the U.S. Constitution. But even half a century after the landmark Supreme Court case enumerated the right to choose in the nation's holiest document, abortion access remains a battle.

Currently, nine states have passed bills to limit access to abortion, banning the practice after a fetal heartbeat is detected.¹

Regardless if a woman lives in Alabama, where abortion access is perhaps the most heavily restricted in the United States, or California, receiving an abortion in prison is almost impossible.

The wording of the Constitution has provided a legal loophole for denying women access to abortion. Though *Roe v. Wade* paved a wide path for women's rights, judicial precedents that followed *Roe v. Wade* have limited access to abortion.

Planned Parenthood v. Casey sought to balance the State's interest in preserving potential life and a woman's right to choose. This case established that institutions and laws may not place an undue burden on a woman's abortion rights. Examples of such practices include notifying spouses of abortion or imposing a large time gap requirement between the appointment and procedure. However, States may ban abortions after the point of fetal viability: the third trimester. After the third trimester, women are only allowed to obtain abortions if it places her life at risk.²

1 Rebecca, K. K. "Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year." *The New York Times*, The New York Times, 15 May 2019, www.nytimes.com/interactive/2019/us/abortion-laws-states.html.

2 "Planned Parenthood of Southeastern Pennsylvania v. Casey." Legal Information Institute, *Legal Information Institute*, www.law.cornell.edu/supremecourt/text/505/833. Accessed 28. The *Casey* standard barred undue burdens placed on women seeking abortions. But, in 1987, *Turner v. Safley* reversed the precedent of this principle.

According to *Turner v. Safley,* inmates' constitutional rights can be limited if the policy is somewhat related to legitimate penological interests. Thus, a prison can infringe on constitutional rights in the greater interest of creating a safe correctional system. It is important to note, however, that this case was decided on the first amendment rationale. The prison wanted to limit written correspondence between prisoners and the court affirmed this interest's constitutionality.

However, the basis of this case is widely different from the precedent *Turner* established. Legally, governmental discrimination is constitutional if the legislation furthers a "compelling government interest" and is narrowly tailored to do so.³ Thus, prisons can require waiting periods for seeking abortions or extra bureaucratic loopholes in the interest of security. Prisons could justify these lengthy plans for extra verification or paperwork needed to undergo a medical procedure such as an abortion. And some prisons also require extra documentation of counseling before a woman can receive an abortion.

These structures make it incredibly difficult for women to receive an abortion. Navigating a bureaucracy, one that's specifically designed to punish them, is practically a futile effort.

These legal precedents are perhaps the strongest walls impeding women from access to abortion. But, legislation and even social standards outside of prison make it even more difficult for incarcerated women to receive an abortion prior to their sentence.

The Hyde Amendment prevents the usage of federal funds to pay for abortion services except in cases where it saves the life of a woman, or if the pregnancy comes as a result of incest or rape.⁴

<u>April 2020.</u>

3 "Strict Scrutiny." Legal Information

Institute, Legal Information Institute, 2020, <u>www.law.cornell.edu/wex/strict_scrutiny#:~:-</u> text=To%20pass%20strict%20scrutiny%2C%20 the,the%20constitutionality%20of%20governmental%20discrimination.

4 Williamson, Heidi, and Jamila Taylor. "The Hyde Amendment Has Perpetuated Inequality in Abortion Access for 40 Years." Center for American Progress, 29 Sept. 2916, www.americanprogress.org/issues/women/ For many women, this restriction is not an issue because private insurance companies provide them healthcare coverage. But, the majority of women accessing their healthcare through government programs, like Medicaid, are low-income women of color.

It should also come at no surprise that imprisoned women are disproportionately low-income women of color.

Aside from lacking access to abortion, women in these groups are also less likely to have access to contraception and maternal health resources, and thus experience unwanted pregnancy.

Supreme Court judges know this. Justice Marshall wrote, in a dissenting opinion of a case regarding the Hyde Amendment, it is "designed to deprive poor and minority women of the constitutional right to choose abortion."

There are additional hurdles besides income and race that prevent many incarcerated women from recieving abortions. The Department of Justice appropriations legislation, which determine the use of department budget, has even banned public funding for abortions in federal prisons. Additionally, incarcerated women today require a court order to receive an abortion.

It's hard to get an abortion as a woman, and even harder if you are incarcerated. Sometimes, women attempting to receive an abortion will go to jail because of it.

A Black woman giving birth to a stillborn child, as a result of her attempted medical abortion, went to prison for second-degree murder⁵

It's important to note this woman didn't actually illegally ingest medical abortion pills. However, her mere internet search was enough to secure her indictment.

Self-managed medical abortions are legal and approved by the U.S. Food and Drug Administration. A recently-passed bill in California mandates availability of medical abortions at California university campuses.

This procedure isn't taboo. But, society's criminalization of abortion, equating the act to murder, make it so that women attempting to exercise their right to choose in States

reports/2016/09/29/145009/the-hyde-amendment-has-perpetuated-inequality-in-abortionaccess-for-40-years/. Accessed 29 April 2020.

5 Schwab, Katharine. "How an Online Search for Abortion Pills Landed This Woman in Jail." Fast Company, Fast Company, 26 Feb. 2020, www.fastcompany.com/90468030/howan-online-search-for-abortion-pills-landedthis-woman-in-jail. Accessed 1 May 2020.



"It's hard to get an abortion as a woman, and even harder if you are incarcerated. "Current prison policies completely deprive women of a constitutional liberty, that is, the right to have an abortion, which under the Constitution can only be deprived through due process. with incredibly restrictive abortion laws risk potential jail time.

It is more often than not that these cases imprison women of color who cannot obtain an abortion due to the aforementioned legal barriers. Society punishes women for exercising their human right to body--the right to an abortion--and we punish women for unsuccessful pregnancies through no fault of their own. It seems less about upholding the "right to life," and more about disproportionately imprisoning poor women of color.

Luckily, legal scholars have argued against the *Turner* standard's constitutionality.

According to the Minnesota Law Review, federal prison policies governing abortion are unconstitutional because they patently deny constitutionally-protected procedures that should allow them to terminate their pregnancy.⁶ Current prison policies completely deprive women of a constitutional liberty, that is, the right to have an abortion, which under the Constitution can only be deprived through due process.

The Brooklyn Law Review states that the *Turner* standard also violates the Eighth Amendment which argues for no cruel and unusual punishment⁷ Abortion restrictions

7 Budnitz, Elizabeth. Not a Part of Her Sentence: Applying the Supreme Court' essentially forcing a woman to give birth in jail is cruel and unusual punishment; women are only required to bring their fetuses to term because they don't have access to abortion.

In addition, the precedent *Johnson v. California* rejected the use of the *Turner* standard in validating racially-based prison policies. Abortion restrictions don't serve any legitimate prison interests, aside from applying the same oppressive and limiting regulations that women already face outside of prison.

Thus, because there is no true prison interest, policies that infringe on incarcerated womens' rights must undergo strict scrutiny.

Despite what legal loopholes scholars may find to either expand or restrict abortion, abortion access won't get expanded without standards in prisons that prioritize women's health.⁸ And until we move towards that reality, abortion acces in prison will continue to be dismal and unethical.

s Johnson v. California to Prison Abortion Policies. Brooklyn Law Review. Article 4, Vol. 71 No. 3, <u>https://brooklynworks.brooklaw.</u> <u>edu/blr/vol71/iss3/4?utm_source=brooklyn-</u> works.brooklaw.edu%2Fblr%2Fvol71%2Fiss3%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages Accessed 28 April 2020.

8 Walsh, Kate. "Inadequate Access:

Reforming Reproductive Health Care Policies for Women Incarcerated in New York State Correctional Facilities." *Columbia Journal of Law and Social Problems*, 2016, pp. 45-95.



⁶ Deason, Claire Bernice. Unexpected Consequences: The Constitutional Implications of

Federal Prison Policy for Offenders Considering Abortion. *Minnesota Law Review*. Vol. 93, No. 4, 2009. 5 May 2009. <u>https://ssrn.com/</u> <u>abstract=1399553 Accessed 28 April 2020.</u>

IN-PRISON LIFE

The United States prison system has failed at providing pregnant incarcerated women with prenatal care.

BY HALA BARADI AND EMMA JANIBEKYAN

This the United States, the treatment of incarcerated women creates stressinducing circumstances due to the inadequate provisions of necessary prenatal care. Throughout pregnancy, women need sufficient prenatal care in order to ensure a stress-free environment in which the fetus can develop.

According to the National Institute of Health, thorough prenatal care should include proper physical exams, weight checks, blood tests, ultrasounds, and nutritional advice to pregnant women in order to ensure a safe and healthy pregnancy.¹While meeting these requirements often proves difficult due to socioeconomic factors, inadequate healthcare access, and other societal issues, such burdens are further bolstered when faced within debilitating environments, such as correctional facilities.

The United States prison system has ultimately failed at providing pregnant incarcerated women with acceptable prenatal care. It has been negligent in meeting even the most basic requirements for ensuring healthy pregnancies.

One study evaluating the efficacy of healthcare for pregnant women provided throughout nineteen U.S. state prisons found great inadequacies in pregnant inmates' healthcare.² It deduced that despite established policies made by the National Commission on Correctional Health Care and the American Public Health Association demanding specialized care for these incarcerated pregnant women, facilities rarely enforced these set standards and provided women with minimal care.

1 What is Prenatal Care and Why is

it Important? 31 Jan. 2017, www.nichd. nih.gov/health/topics/

pregnancy/conditioninfo/prenatal-care. Accessed 7 June 2020.

2 Ferszt, Ginette G., and Jennifer G. Clarke. "Health care of pregnant women in US state prisons." *Journal of Health Care for the Poor and Underserved* 23.2 (2012): 557-569.

These prisons were not meeting expectations for nutritional requirements for pregnancy, with only a limited diet of fruits and vegetables. Out of the 19 facilities, only nine allow for additional resting time, four lack accommodations for a decrease in working load for pregnant prisoners, and 10 provide parental education services.2 During transportation to the hospital, some facilities use belly chains, leg irons, handcuffs, with other shackles, and many maintain these restraints even during the delivery of the baby and the recovery period after the pregnancy. With respect to their psychosocial needs, incarcerated women do not receive proper education regarding childbirth and delivery, cannot pick the healthcare provider of their choice, and do not have access to emotional support groups.²

This further adds to their stress that they already experience from being in an emotionally, physically, and mentally taxing environment. The clear lack of prioritization of women's healthcare within prisons in the United States not only undermines basic physical necessities like food but also severely undervalues emotional needs pertinent for maternal and fetal health. In addition to this lack of care, further physical stressors like shackles burden women who are already experiencing a stressful event. The shackling of women during labor and delivery can contribute to elevated stress levels, resulting in delivery complications. Lack of physical and mental care with the addition of the inhumanity of shackling places an undue burden of stress on both the mother and the child living in these types of environments.

On average, jails incarcerate women for much shorter periods of time than prisons, so the allocation of resources for long-term support systems for pregnancies seems unnecessary and wasteful to such institutions. Thus, jails use their size to justify not adhering to necessary care practices for pregnant incarcerated women. However, this remains no excuse for negligence and cruelty towards women in these circumstances.

Another study that examined the healthcare given in jail facilities in the United States found that jails, like prisons, lacked adherence to standards of care for pregnant incarcerated women.³ Fewer than a third of facilities informed women of their pregnancy options, such as termination, and a third of facilities did not have onsite OB/GYN care.3 Additionally, women were also shackled upon delivery, with about 23% of facilities allowing only a correctional officer to be at the mother's side during delivery, while prohibiting all relatives or companions.³

The smaller size of jails in comparison to prisons should not be a factor in deciding whether or not vulnerable pregnant women deserve adequate health care; health care is a human right.

The unnecessary brutality of shackling prevents medical professionals from adequately addressing the physical needs of the patients during delivery. Moreover, jails don't meet any of their emotional needs during delivery, because many don't allow admittance to anyone other than correctional officers during the process. This is just another example of undue burden and stress towards the mother, and by association, the child.

These practices exemplify the complete lack of research, time, and energy that institutions put into providing for pregnant inmates with even the most basic type of care.



3 Kelsey, C. M., et al. "An examination of care practices of pregnant women incarcerated in jail facilities in the United States." *Maternal and child health journal* 21.6 (2017): 1260-1266.

BSTANCE ABUSE AN FETAL DEVELOPMENT

Polis sible tot tot What threat do drugs pose during pregnancy?

BY MAYA BARAJAS-TAVERA

"Opiate Addiction in Pregnancy - Jonathan Weeks, M.D., DABAM." January 5, 2019.

¹

75% of pregnant women experiencing withdrawal in jails and prisons have opioid treatment available to them, yet the quality of the treatment is subpar and often detrimental.²

What threats do drugs pose during pregnancy?

All drugs, legal and illegal, have the potential to cross the placenta and affect the development of the fetus. However, proper treatment and weaning are crucial to the safety of both the mother and the fetus. The developmental stage of the fetus at which the drug is introduced directly correlates to the severity of potential fetal health risks. In early gestation, many drugs can pose major teratogenic threats including abnormal maturation, alterations in neurotransmitters and their receptors, and brain organization. Habitual cocaine use can interfere with neurotrophic roles of monoaminergic transmitters during brain development, which affects cortical neural development. This can lead to morphological changes in brain structure, including the frontal cortex, which controls memory, arousal, attention and executive functions.³

If drugs affect neurological development of the fetus before homeostatic mechanisms are in place, then the effects can become permanent, as opposed to if the drug is exposed to a mature brain.⁴Thus, cocaine exposure during neuronal development can permanently alter brain structure and development, which can in turn lead to altered responsiveness to environmental and pharmacological stimuli later in life. Inadequate addiction treatment can therefore lead to developmentally stunted progeny, thereby producing a generation that is biologically disadvantaged before they are even born.

Opiate addiction during pregnancy poses significant perinatal danger to both the mother and fetus. Opiate addicts are three times more likely to have a preterm birth, growth restriction, stillbirth, and/or neonatal abstinence syndrome (NAS). Newborns with NAS present symptoms of withdrawal such as sweating, irritability, increased muscle tone and activity, feeding problems, diarrhea, and seizures, can directly impact the child's development and can lead to prolonged hospitalization and lifelong medical issues. Only 15% of opiate addicts use

2 Spampinato, Samantha. "Opioid Withdrawal Post Incarceration: Effects of Methadone and Buprenorphine Treatment During Incarceration." March 5, 2019.

3 Behnke, Marylou, and Vincent C. Smith. "Prenatal Substance Abuse: Short- and Long-term Effects on the Exposed Fetus." *American Academy of Pediatrics*, 2013.

4 Behnke, Marylou, and Vincent C. Smith. "Prenatal Substance Abuse: Short- and Long-term Effects on the Exposed Fetus." *American Academy of Pediatrics*, 2013. proper contraception. As a result, there is an elevated rate of unplanned pregnancy for addicted women, and unplanned pregnancies without the added risk of addiction pose a higher risk of stillbirth than planned pregnancies⁵ Therefore, pregnant opiate addicts require care above that which is afforded to the general inmate population.

What does ineffective addiction treatment look like for incarcerated women?

Addiction treatment for incarcerated pregnant women affects the physical health of both the mother and child. Unfortunately, the inadequate addiction services often provided to incarcerated women has led to greivous consequences such as miscarriage and stillbirth. Generally, the medical community agrees that pregnant addicts should undergo regular health screenings and gradual weaning to protect the developing drug-dependant fetus.6 However, due to a lack of proper information and inconsistency in official protocols, most pregnant incarcerated addicts do not receive a modified addiction treatment to address their high-risk pregnancy^{7 M}ethadone maintenance treatment (MMT) has been deemed a safe and effective long-term treatment for pregnant opiate addicts. As of March 2019, only 30 of the 5,181 U.S. adult prisons and jails provide MMT⁸

Doris M., a heroin addict from Oakland, California, was sentenced to six months in the county jail after the judge insisted she remain in custody for the duration of her pregnancy. Prior to her sentencing, she had sought methadone treatment through a local community-based program. Upon entering the detention facility, she was forced to withdraw "cold turkey" from her addiction and suffered severe symptoms such as vomiting, headaches, abdominal pain, diarrhea, and other traumatic effects. She was detained for six weeks before she was granted her first obstetric examination, to which she received no follow up examinations. Doris's daughter was stillborn and removed by C-section.9

Jesse V., a heroin addict, asked to be placed on a methadone maintenance program during her incarceration. Due to the facility's insufficient knowledge of care

6 Barry, Ellen M. "Pregnant, Addicted and Sentenced: Debunking the Myths of Medical Treatment in Prison." *HeinOnline*.

7 "Toughest Female Prison In America | Prison Documentaries 2017." *YouTube*, 20 June 2017, www.youtube.com/watch?v=VSzDvVecmJY.

8 Spampinato, Samantha. "Opioid Withdrawal Post Incarceration: Effects of Methadone and Buprenorphine Treatment During Incarceration." March 5, 2019.

9 Barry, Ellen M. "Pregnant, Addicted and Sentenced: Debunking the Myths of Medical Treatment in Prison." *HeinOnline*. for addicted pregnant women, she was given an insufficient dose of methadone, and eventually, was taken off all treatment and, like Doris, was forced to withdraw "cold turkey." She was administered only Tylenol to cope with her severe withdrawal symptoms and made to sleep on an inch-thick mattress on the floor. Throughout this timeframe, Jesse only saw an obstetrician once. Jesse suffered a miscarriage in her cell alone.¹⁰

What does effective addiction treatment look like for incarcerated women?

While research is ongoing on the efficacy and safety of addiction treatments for pregnant women, a consensus has been reached that pregnant women require modified treatment to protect the development of the fetus and prevent potential tragedies.

Proper medically-assisted treatment (MAT) is essential in preventing miscarriage and stillbirth. MAT not only decreases the risk of pregnancy complications, but can greatly reduce the risk of recidivism, relapse, contraction of Hepatitis C, and overdose upon release while improving adherence to addiction treatment and proper prenatal care.¹¹

FURTHERMORE, MAT IS CRUCIAL FOR THE RECOVERY OF

women and fetuses with Opioid Use Disorder (OUD). Pregnant women with OUD have heightened risk of retarded fetal growth restriction, placental abruption, preterm labor or fetal death.¹² Proper screening for OUD in pregnant women is critical, as many addicted women cease to menstruate due to habitual drug use.13

Generally, the use of methadone and buprenorphine have been approved for the treatment of pregnant women with OUD. Methadone, an opioid receptor agonist that activates the receptor to produce a similar biological response, lessens symptoms of withdrawal and reduces the effect of other opioids.¹⁴It can be used to wean addicts

10 Barry, Ellen M. "Pregnant, Addicted and Sentenced: Debunking the Myths of Medical Treatment in Prison." *HeinOnline*.

11 Peeler, Mary, Kevin Fiscella, Mishka

Terplan, and Carolyn Sufrin. "Best Practices for Pregnant Incarcerated Women With Opioid Use Disorder." *J Correct Health Care*, January 7, 2020; doi: 10.1177/1078345818819855

12 Peeler, Mary, Kevin Fiscella, Mishka

Terplan, and Carolyn Sufrin. "Best Practices for Pregnant Incarcerated Women With Opioid Use Disorder." *J Correct Health Care*, January 7, 2020; doi: 10.1177/1078345818819855

13 Drug Knight, Kelly Ray. "Addicted Pregnancy and Time." In *Addicted. Pregnant. Poor.*, 68-102. Durham and London: Duke University Press, 2015.

14 Peeler, Mary, Kevin Fiscella, Mishka

Terplan, and Carolyn Sufrin. "Best Practices for Pregnant Incarcerated Women With Opioid Use

^{5 &}quot;Opiate Addiction in Pregnancy - Jonathan Weeks, M.D., DABAM." January 5, 2019.



gradually and is absorbed by the fetus, thereby protecting it from withdrawal.

Buprenorphine, a partial opioid receptor agonist, binds to opioid receptors and produces a weaker effect than methadone.¹⁵ Buprenorphine is generally more accessible than methadone as it can be prescribed though community physicians, thereby increasing access to prescriptions. A 2019 Neonatal Abstinence Syndrome (NAS) study on the efficacy of methadone and buprenorphine found a 57% correlation of NAS with methadone and a 47% correlation with buprenorphine.16

Naltrexone, a full opioid receptor antagonist that blocks the biological response of the receptor, is commonly used to treat women with opioid addiction, but may not be used during pregnancy because of the need to withdraw fully from all opioids before usage. If a correctional facility does not provide addiction services, pregnant inmates may be transported to community treatment centers for daily dosages.¹⁷

If we know what works, why aren't pregnant inmates receiving sufficient treatment?

Unfortunately, many community treatment centers are overwhelmed by the influx of pregnant inmates. Jails and prisons often defer treatment to outside care providers to mitigate liability, causing the outside treatment centers to become inundated, potentially leading to gaps in the care provided.

According to one California drug Disorder." J Correct Health Care, January 7, 2020; doi: 10.1177/1078345818819855

15 Peeler, Mary, Kevin Fiscella, Mishka Terplan, and Carolyn Sufrin. "Best Practices for Pregnant Incarcerated Women With Opioid Use Disorder." *J Correct Health Care*, January 7, 2020; doi: 10.1177/1078345818819855

16 "Opiate Addiction in Pregnancy - Jonathan Weeks, M.D., DABAM." January 5, 2019.

17 Peeler, Mary, Kevin Fiscella, Mishka

Terplan, and Carolyn Sufrin. "Best Practices for Pregnant Incarcerated Women With Opioid Use Disorder." *J Correct Health Care*, January 7, 2020; doi: 10.1177/1078345818819855 treatment provider, "If a pregnant woman is picked up and suspected to be an opiate user, they [the jail] will call [the drug treatment program] right away. They don't want them [the pregnant women]. They don't want them to miscarry or to go into labor [while in custody]. They don't want the liability. We get about half of our women through the jails."¹⁸

Detention centers should instead educate themselves on proper pregnancy healthcare and provide clearly outlined protocols for the treatment of pregnant addicts. These centers have not been held accountable for the undertreatment of their inmates due to the widespread presumption that those who are incarcerated forfeit their right to humane treatment.

However, insufficient treatment for the mother directly puts the fetus at risk. When detention centers deny their pregnant addicts adequate treatment, they assume the responsibility for the developmental deficiencies and lifelong health issues of the unborn child.

Rather than denying treatment to pregnant addicted inmates, our political system must redirect its efforts to address the socio-political structures that put women at risk of addiction. The 286% increase in heroin use in women between 2002-2013 is a testament to the failings of the American government to value the lives of disadvantaged populations.¹⁹ The U.S. government must assume responsibility for these women and their unborn children and prioritize funding thorough and effective addiction treatment in detention facilities.

¹⁸ Drug Knight, Kelly Ray. "Addicted Pregnancy and Time." In *Addicted. Pregnant. Poor.*, 68-102. Durham and London: Duke University Press, 2015.

^{19 &}quot;Opiate Addiction in Pregnancy - Jonathan Weeks, M.D., DABAM." January 5, 2019.

Allostasis and its role in physiological **health**

BY EMMA JANIBEKYAN & KRISTIE-VALERIE HOANG





hackling, exposure to sexual violence and the sheer prison environment. With conditions such as these plaguing correctional facilities nationwide, it's no wonder incarcerated women face high rates of post-traumatic stress disorder after completing their prison sentence.

This stress, however, is a cycle—a symptom of the biological systems regulating human reaction to stress.

The cycle does not break when women enter the prison system. In fact, the prison system only strengthens the stress cycle, plunging women into poor mental health levels from which they cannot escape.

Understanding the effects of mental health on pregnant incarcerated women on a biological scale is critical for designing interventions tailored specifically for this population. Stress, if experienced at normal levels, is not a harmful process. Rather, it is necessary for the functioning of most organisms, humans included.

The Hypothalamic-Pituitary-Adrenal Axis, known as the HPA Axis, is the mechanism by which stress works within the human body. There are three important regions of the human body necessary for the stress response to work; the hypothalamus, the pituitary, and the adrenal glands.¹

When the brain receives a stressful stimulus, a signal is sent to the hypothalamus, which ultimately secretes a variety of releasing hormones, the main example being corticotropin-releasing-hormone (CRH) into the hypothalamic-pituitary circulatory system.

The release of CRH into the pituitary triggers the pituitary gland to release the hormone corticotropin (ACTH) into the bloodstream.

The release of ACTH into the bloodstream triggers the adrenal gland to release glucocorticoids (cortisol) which are hormones heavily involved in mobilizing energy during a stress response, thus facilitating the 'fight or flight' response. Measuring the level of glucocorticoids in the blood is

1 Sapolsky, Robert. *Why Zebras Don't Get Ulcers*. 3rd ed., 2004.

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oftentimes used as a proxy of how much stress a person is enduring. Release of CRH is regulated through a negative feedback system, meaning that if the end product of the HPA axis (cortisol), is excessive, the hypothalamus DECREASES THE RELEASE OF CRH.

Though this system understands the timing at which to lower hormone release through a negative feedback response, excessive activation of the stress response can still easily damage the cycle.

Scientists used to consider the concept of homeostasis as the framework in understanding the state of balance in the human body. However, this concept was flawed, because it assumed that all human beings have the same set point for balance throughout their collective bodies. A better mechanism to understand the nature of balance in the human body is through the concept of allostasis. Allostasis occurs by maintaining a negative feedback loop through short-term activation with the mechanism of acute stress, which results in timely and effective resolutions to immediate threats. Unlike homeostasis, allostasis is the ultimate state of balance within the human body, characterized by a set point of normalcy or health unique to each particular person. In this process, exhibiting a high stress response lowers the CRH released by the hypothalamus, which lowers the ACTH released by the pituitary, ultimately resulting in the adrenal glands secreting lower amounts of cortisol.

However, when the stress-response system experiences a constant stressor, long-term activation occurs, ultimately damaging the individual experiencing it. Longterm activation occurs when the stress response is ongoing or chronic, and the HPA Axis is repetitively activated with no mechanism to stop, as with acute stress.²

One example of chronic stress incarcerated women face is experience with sexual abuse. Sexual abuse is the primary factor linking women to prison, and also the largest predictor in sending women back into prison because of chronic stress. Researchers found that nearly one third of women are subject to sexual abuse prior to their incarceration, occurring often before they are 18 years old.³ Aside from the external consequences women bear as a result of this crime, the subsequent stress felt because of the sexual abuse produces several biological effects.

Experiencing sexual abuse at a young age can adversely affect neuroendocrine, autonomic and neural function. Exposure to such trauma during neural development biologically embeds stress into the brain as it's growing, thus shaping poor neuroendocrine and neural function that can lead to future mental disorders.

Therefore, individuals in debilitating circumstances, such as pregnant incarcerated women, consistently experience chronic stress, and can't respond the way they normally would, to stressful stimuli. Since cortisol levels become high throughout stress, and remain that way during chronic ongoing stress, it becomes more and more difficult for people experiencing these conditions to go back to pre-stress levels.

Therefore, people undergoing chronic stress cannot experience a normal state of allostasis, and instead culminate in allostatic load, which is a build-up of 'wear and tear' on the human body throughout the course of life.

Understanding this mechanism is especially necessary <u>for studying the w</u>ays in which it affects pregnant incarcerated

- 2 Sapolsky, Robert. *Why Zebras Don't Get Ulcers*. 3rd ed., 2004.
- 3 Dumont, D.M; Brockmann B; Dickman, S; et al. (2012). Pub-

lic Health and the Epidemic of Incarceration. Annual Review of Public Health 33:1, 325-339.

"However, when the stress-response system experiences a constant stressor, long-term activation occurs, ultimately damaging the individual experiencing it

women. Pregnant women in prisons definitely experience chronic stress, due to their constant physical and emotional environmental stressors. Living in an environment that does not prioritize their nutritional requirements, that shackles them throughout labor, that does not provide emotional support throughout their pregnancy, and that does not educate them about pregnancy deliberately leaves them vulnerable to experiencing detrimental health effects associated with chronic stress.

One study found that increasing stress levels and overall allostatic load of pregnant women ultimately results in adverse health effects, most prominently preterm birth^{4.} They noted factors such as high levels of stress-related hormones (CRH, ACTH, and cortisol), in addition to lower socioeconomic status, and lower education levels as factors most often coinciding with preterm births. Since women in prisons experience these factors, with the addition of other more debilitating scenarios, they are at higher risk than most women throughout the United States population. Yet, they lack most of the resources that these other, better off women have.

The dysregulation of the HPA-Axis through the cruel and inhumane experiences of pregnant women in prison directly affects both mothers and children physiologically. This translation from psychological damage to physiological damage demonstrates the importance in creating and implementing programs to alleviate this type of stress within these vulnerable populations.



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pregnancy: preterm birth from a biobehavioral perspective." Journal of midwifery & women's health 54.1 (2009): 8-17.

LEGAL CASES WHERE WOMENS' BODIES WERE CONTROLLED

BY CYNTHIA TSANG

ince 2010, known sexual misconduct cases against incarcerated women have sharply increased, which can have two potential causes: increased reporting incited by the #MeToo movement and/or an actual increase in incidents of such violence. Though female inmates are less likely to report sexual violence, approximately half of the reported cases involve guard-on-inmate assault.¹These statistics present a troubling under-documentation of assaults against incarcerated women.

While women make up about 7% of inmates, they disproportionately serve as 33% of staff-on-inmate sexual abuse.² Within the U.S penal system, sexual violence against female prisoners is nearly endemic. But the structure of women's prisons has not adjusted accordingly to these circumstances. Guards are predominantly male and are thus given dangerous authority over female inmates. This hierarchical power dynamic, where female inmates are reliant on male guards for transportation, resources, and safety, is only compounded when considering racial demographics³

Understanding these complex factors that surround staff-on-inmate sexual abuse sheds light on the disincentives of reporting such cases. Even when female victims do report, there is often strong doubt cast onto their stories and they lack any freedom to escape from subsequent repercussions.4 Thus,

1 Kubiak, Sheryl P., et al. "Sexual Misconduct in Prison: What Factors Affect Whether Incarcerated Women Will Report Abuses Committed by Prison Staff?" Law and Human Behavior, vol. 41, no. 4, Educational Publishing Foundation, Aug. 2017, pp. 361–74. ProQuest, doi:http://dx.doi.org/10.1037/lhb0000239.

2 Kubiak, Sheryl P., et al. "Sexual Misconduct in Prison: What Factors Affect Whether Incarcerated Women Will Report Abuses Committed by Prison Staff?" Law and Human Behavior, vol. 41, no. 4, Educational Publishing Foundation, Aug. 2017, pp. 361–74. ProQuest, doi:http://dx.doi.org/10.1037/lhb0000239.

3 Stern, Elana M. Accessing Accountability: Exploring Criminal Prosecution of Male Guards for Sexually Assaulting Female Inmates in U.S. Prisons. p. 42.

4 Struckman-Johnson, Cindy, and David

Struckman-Johnson. "A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison." Journal of Interpersonal Violence, vol. they are at an increased risk for retaliation by officers through threats, harassment, and the withholding of basic rights and privileges.⁵

An ongoing case, for example, involves over five prison guards at the Lackawanna County Prison, where female inmates relate an open culture of sexual assault by guards. Reports of misconduct date back to 1998 and involve guards who have since transferred to other institutions. The plaintiffs describe inmates bartering sex for extra privileges, food, and cigarettes by exposing themselves or providing sexual favors. Refusa of sexual advances often involved prisoners losing shower or recreation privileges. Even upon being released, former inmates reported being threatened to perform sexual acts*

What is especially disturbing about this case is that it was neither isolated temporally nor to a specific guard, but rather included reports spanning 17 years and involved the collaboration of numerous prison guards.7 In fact, a system existed whereby prison guards would click on the locks of cells where sexual acts occurred to warn other guards of approaching supervisors. Additionally, while multiple reports had been made, little action was taken until this case was officially filed, intimating that guards were somehow protected and that this issue may pervade higher within the administration itself

In another case, Tracey Neal and five other female prisoners sued the Michigan

21, no. 12, Sage Publications, Thousand Oaks, CA, 2006, pp. 1591–615. ProQuest, doi:<u>http://dx.doi.org/10.1177/0886260506294240.</u>

5 Stern, Elana M. Accessing Accountability:

Exploring Criminal Prosecution of Male Guards for Sexually Assaulting Female Inmates in U.S. Prisons. p. 42.

6 Struckman-Johnson, Cindy, and David

Struckman-Johnson. "A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison." Journal of Interpersonal Violence, vol. 21, no. 12, Sage Publications, Thousand Oaks, CA, 2006, pp. 1591–615. ProQuest,

7 Struckman-Johnson, Cindy, and David

Struckman-Johnson. "A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison." Journal of Interpersonal Violence, vol. 21, no. 12, Sage Publications, Thousand Oaks, CA, 2006, pp. 1591–615. ProQuest, Department of Corrections (MDOC) male officers for sexual misconduct, harassment, and abuse.⁸ In addition to conducting patdowns, offensive touching, and requesting sexual acts, the plaintiffs claimed that MDOC assigned male officers to supervise the female inmates undress, perform basic bodily functions, and receive gynecological and intimate medical care. The female inmates also reported that male officers coerced sexual acts for educational and rehabilitative opportunities, good credits, and more.⁹

The trial took over 15 years and resulted in the jury favoring the plaintiffs with a fiscal verdict of more than \$30 million in 2007. Additional class action settlements occurred following the conclusion of the trial, which distributed \$100 million for class members and lawyers in 200910. This decade-long case will hopefully establish legal precedence for prosecuting and convicting male guards who sexually harass or assault female inmates. This may also increase the amount of reporting, so more of these instances achieve justice and specific guards are prevented from continuing their behavior.



8 Neal v. Michigan Department of Corrections | Civil Rights Litigation Clearinghouse. https://www.clearinghouse.net/detail.php?id=5550. Accessed 29 Apr. 2020.

Haag, Matthew. "7 Prison Guards in Penn-

sylvania Charged With Sexually Abusing Inmates." The New York Times, 16 Feb. 2018. NYTimes.com, <u>https://</u> www.nytimes.com/2018/02/16/us/pennsylvania-prison-guards-sexual-abuse.html.

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10 Haag, Matthew. "7 Prison Guards in Penn-

sylvania Charged With Sexually Abusing Inmates." The New York Times, 16 Feb. 2018. NYTimes.com, <u>https://</u> www.nytimes.com/2018/02/16/us/pennsylvania-prison-guards-sexual-abuse.html.

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Separation policy forces has lifelong effects

BY EMMA JANIBEKYAN AND HALA BARADI

"I miss her and it feels empty without her. I'm missing a part of me," says one female inmate.¹ Like this woman, many incarcerated women who give birth are separated from their newborns within 24 hours. Incarcerated women are expected to return to prison and complete their sentences while their newborns are either in foster care, with relatives, or put up for adoption.²

This separation policy that forces mother and infant apart can have severe and long-lasting effects. For infants, maternal separation at birth can cause low self-esteem, less fulfilling peer relationships, and difficulty coping with the everyday stresses of life. For the mother, separation can induce particularly stressful psychological effects such as exacerbating existing mental health conditions, increased rates of substance abuse, and increased rates of recidivism.³

Thus, for many women, this separation is a form of trauma.

The mistreatment of pregnant incarcerated women throughout birth extends mental health damage further than just negligence of care during pregnancy.

In order to articulate the psychological effects of forced separation, many theorists use attachment theory. Attachment theory was first developed by John Bowlby to explain why infants became distressed when temporarily separated from their caregivers. From an evolutionary standpoint, Bowlby theorized that infants develop attachments to their attachment figure—usually their biological mother—in order to survive until reproductive age. Human infants, like other mammals, require care and protection for a prolonged amount of

1 "A Brief Overview of Adult Attachment Theory and Research: R. Chris Fraley." *A Brief Overview of Adult Attachment Theory and Research* | *R. Chris Fraley*, labs.psychology.illinois.edu/~rcfraley/attachment.htm.

2 Clarke, Jennifer G., and Rachel E.

Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics* | *American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

3 Clarke, Jennifer G., and Rachel E.

Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics* | *American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09. time before becoming relatively independent. Thus, attachment as a behavioral system evolves through natural selection. This behavioral system was designed to regulate the proximity of the attachment figure⁴

Attachment theory can help us better understand the coping mechanisms of incarcerated women in prison environments by expressing the potential long-term negative consequences of separation on mothers and their children.

Psychologist Ainsworth later developed a way to empirically study the three main types of attachment behaviors in a lab setting. Several 12-month-old infants and their primary caregivers were brought into a lab, and one-by-one, the infant and caregiver were separated. Some infants showed secure attachment behavior. When the caregiver left the room, the infant was distressed. However, when they were reunited the infant sought the affection of their caregiver and was easily comforted by them. These caregivers seem to be sensitive to their infant's needs. However, other infants exhibited anxious-resistant behavior. Before their caregiver left, these infants already appeared ill at ease. Upon the caregiver's return, the infant remained distressed, seemingly "punishing" them for leaving. Finally, Ainsworth identified avoidant behavior in some infants. These infants seem unbothered by the fact their caregiver has left the room. In fact, upon their caregiver's return, the infants avoid eye contact, often turning their attention to toys on the floor. To Ainsworth, this signified that these parents are inattentive to the needs of their child.5

According to classic attachment theorists, mothers who exhibit positive bonding and attachment with their infant are more likely to play a critical role in their wellbeing. Alternatively, those with non-secure attachment are more likely to raise children with long lasting behavioral problems. Forced separation postpartum can have detrimental effects on both mother and infant.⁶

Historically, there have been positive interventions set in place to alleviate the harms of maternal-infant separation. One study evaluating the efficacy of Prison Nursery Programs detailed the effects of separation at birth for children.

The study defines Prison Nursery Programs (PNPs) as programs instituted in prisons allowing a mother to parent her infant for a limited amount of time in a special housing unit within a prison in order to facilitate healthy bonding between mothers and children. Though these programs were

5 Gilad, Michal, and Tal Gat. "US v. my

mommy: Evaluation of prison nurseries as a solution for children of incarcerated women." *NYU Rev. L. & Soc. Change* 37 (2013): 371.

"A Brief Overview of Adult Attachment

Theory and Research: R. Chris Fraley." A Brief Overview of Adult Attachment Theory and Research | R. Chris Fraley, labs.psychology.illinois.edu/~rcfraley/attachment. htm. effective throughout history, the United States ultimately decided on their immediate closure during the 1970s.⁷ Unfortunately, it seems, the promise of this program was ultimately cut short.

This closure resulted in a lack of uniform policy across the United States on the fate of children of inmates, leading to the institution of an immediate separation policy in many prisons and jails.⁸ This resulted in the separation of an overwhelming majority of children from their mothers right after birth. This policy places children under foster parent custody, and oftentimes permanently severs the connection between biological parent and child, thereby harming the mental health of both persons.

This immediate separation policy is not only detrimental for the health of the pregnant inmates in question, but also for the children born to these mothers. Many individuals report that separation of children from their mothers after birth produces adults that lack the ability to sympathize with others later in life, display traits such as aggression or anger, develop attention disorders, and especially, lose a sense of security in their lives.9 At the expense of punishing mothers who are often in the prison system for nonviolent crimes, institutions take children away, and unknowingly punish them too by making them susceptible to the mental and emotional turmoil that is separation.

Therefore, this lack of consistency in the United States separation policy, devastatingly affects families involved in the prison system as a whole. The investment into a societal structure that uses children as a means to punish pregnant women prevents mothers from preparing for postprison life, and traumatizes children by causing instability as early as birth.



7 Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison nurseries as a solution for children of incarcerated women." *NYU Rev. L. & Soc. Change* 37 (2013): 371.

8 Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison nurseries as a solution for children of incarcerated women." *NYU Rev. L. & Soc. Change* 37 (2013): 371.

9 Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison nurseries as a solution for children of incarcerated women." *NYU Rev. L. & Soc. Change* **37** (2013): **371**.

⁴ Clarke, Jennifer G., and Rachel E. Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics* | *American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics. ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

ETHICS

The Ethics of Shackling and the 8th Amendment

BY HALA BARADI

For many women, giving birth is a wonderful—albeit incredibly painful—experience. However, for incarcerated, labor and delivery can be a traumatizing event. Incarcerated women who give birth express feeling humiliated, dehumanized, and re-traumatized.

The practice of shackling pregnant incarcerated women is an ongoing phenomenon. As most correctional facilities do not have obstetric care on hand, women in labor are transported to a clinic. Though practices vary by jurisdiction, women are often shackled during transport, labor, delivery, and post-delivery. They are not merely handcuffed to a hospital bed, though. Women are shackled by their wrists, ankles, and sometimes even their waists.1

The policy was initially stated to protect guards and other personnel, like medical professionals from harm. Shackling also prevents inmates from attempting to escape. The underlying assumption is that most inmates are dangerous and delinquent. However, most women are incarcerated for nonviolent offenses, such as drug use or possession, or property crimes motivated by economic necessity. The continued practice of shackling fails to address the needs of women.2

Shackling incarcerated women in labor seems even more unfounded when considering that most women are convicted for non-violent offenses. It seems that these women do not pose a serious threat to the guards or medical personnel in the room. As for attempting an escape—surely being in active labor precludes one from moving a great distance. Furthermore, shackling incarcerated women during labor and delivery causes emotional and psychological distress. Considering that many incarcerated women are victims of childhood abuse, this practice can re-traumatize women on a day that is meant to be momentous.3

1 Clarke, Jennifer G., and Rachel E. Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics | American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics. ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

2 Clarke, Jennifer G., and Rachel E. Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics* | *American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics. ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

3 Clarke, Jennifer G., and Rachel E. Simon. "Shackling and Separation: Motherhood in Prison."

One woman gave her personal account of being shackled during labor and delivery: "When they shackled me I had two handcuffs, one was on my wrist and the other one was attached to the bed...My leg and my arm were attached to the bed so there was no way for me to move and to try and deal with the labor pains. And the metal, cause when you're swollen, it would just cut into your skin. I had bruises after the fact that stood on me for three weeks. I mean, purple bruises from my ankle and my wrist from them having them shackles and handcuffs on me. Even when I had to get an epidural, they didn't take the shackles and the handcuffs off. I just had to bend over and just pray that I could stay in that position while they were putting that needle in my back through the whole procedure. Not once did he [the correctional officer] try and loosen them. And the doctor asked him, you know, 'Can't you take them off of her? She can't go nowhere. She can't walk. She's not goin' nowhere.' 'It's procedure and policy. Can't do it."4

For many incarcerated pregnant women, being shackled takes a toll on their maternal identity. They wonder: How can someone who is perceived to be a danger, and therefore in chains, be expected to be a good mother? Every competent woman has the right to be a mother to her child, and being incarcerated does not imply incompetence.

The practice of shackling women can also pose serious medical harm to both the mother and the fetus. This is because the shackling can increase the risk of falling. As one doctor explains, "[t]he pregnant uterus shifts a woman's center of gravity. Anything that throws her further off balance or makes walking more difficult can increase her risk of falling. A fall in pregnancy is no small matter, as it can potentially harm the baby as well as the mother, and in serious cases, can cause stillbirth." 5

It is evident that the practice of

Journal of Ethics | American Medical Association, American Medical Association, 1 Sept. 2013, journalofethics. ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

4 Clarke, Jennifer G., and Rachel E. Simon. "Shackling and Separation: Motherhood in Prison." *Journal of Ethics* | *American Medical Association*, American Medical Association, 1 Sept. 2013, journalofethics. ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09.

5 Ocen, A. Priscilla. "Punishing Preg-

nancy: Race, Incarceration, and the Shackling of Pregnant Prisoners." California Law Review, vol 100, no. 5, October 2012, p. 1239-1311. Jstor.

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shackling pregnant incarcerated women is a pervasive abuse of their bodily integrity and reproductive capacities. Medical professionals, anti-shackling advocates, and the inmates themselves view shackling as an unnecessary and inhumane practice.

Why then, does the practice continue to exist?

The Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." However, Priscilla Ocen, a law professor who specializes in the intersection between race, gender, and systems of punishment, does not believe that the Eighth Amendment provides the necessary protection for this population.

Drawing from Black feminist and intersectionality theory, Ocen contends that Black women, who make up a significant demographic of inmates, have been historically constructed as "criminal," "sexually deviant," and "unfit mothers." Such stereotypes were born during times of slavery, where Black women's mind and bodies were explicitly subjugated, commodified, and exploited. A racial and gendered analysis on the unnecessary use of shackles now reveals that these stereotypes have persisted to this day. According to Ocen, a history of dehumanizing women of color has blinded many people - namely policy makers - from seeing the injustice of shackling during labor and delivery. Current understanding of the Eighth Amendment does not account for the racial and gendered approach to punishment. Thus, one reason Ocen believes the Eighth Amendment to be inadequate is that it fails to uproot these structural dynamics.

The Eighth Amendment also fails to protect incarcerated pregnant women in other ways. Current interpretations of the Eighth Amendment place blame on individual actors rather than entire institutions. This can make it difficult for incarcerated women to seek justice for their mistreatment by the penal system.

Nelson vs. Correctional Medical Services was the first Supreme Court case concerning the use of shackles on a pregnant inmate. This case brought an Eighth Amendment challenge against the private medical provider as well as other institutional defendants. Nelson, a Black woman, was six months pregnant at the start of her sentence. She was imprisoned for non-violent offenses, specifically for writing bad checks and credit fraud. When Nelson went into labor, she was transported to the medical facility. Though she experienced pain so severe she could hardly walk, Nelson was still shackled by her wrists and ankles, and accompanied by an armed guard. According to Nelson, "the shackles prevented [me] from moving [my] legs, stretching, or changing positions." The court ultimately ruled that the individual officer that placed restraints on Nelson was guilty. However, the director of the prison was not held responsible for the continued use of shackling. The court's decision to interpret the Eighth Amendment with an individualistic approach can prevent institutional and structural changes.

What is equally problematic is the Estelle vs. Farmer Case. This case ruled that a prisoner's pain and suffering does not necessarily violate the Eighth Amendment. The court insisted that there must be evidence of "deliberate indifference" by an officer when subjecting an inmate to punishment. Consequently, this provides a disincentive for prison officials to keep records of inmate's mistreatment, and at the same time, incentivizes them to ignore potential threats to the health and well-being of inmates. In other words, prison officials who abuse their inmates are often immune to accountability. Estelle vs. Farmer provided more protection for the prison officials than those incarcerated, who are the more vulnerable group.6

Entrenched systems of oppression that allow for the continued abuse of incarcerated pregnant women must be addressed. Society has a moral authority to rectify policies that favor the abuser over the abused. Finally, incarcerated women must be recognized as worthy of motherhood, without treating their reproductive capacities or identities with indignity.



⁶ Ocen, A. Priscilla. "Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners." California Law Review, vol 100, no. 5, October 2012, p. 1239-1311. Jstor.



SOLUTIONS

Policies on the table: INCLUDE WOMEN'S PERSPECTIVES

BY KRISTIE-VALERIE HOANG

Nearly every politician running for office has touted some version of mass incarceration reform.

Some might suggest reducing mandatory minimums or sentencing for nonviolent crimes. Others may propose defunding prisons to invest in better schooling and social services for children in low-income neighborhoods.

According to the Sentencing Project, "ending mass incarceration will require changing sentencing policies and practices, scaling back the collateral consequences of conviction, and addressing racial disparities in the criminal justice system."1

It is an intersectional, political, and social crisis.

But, while policymakers and scholars can debate the merits and efficacy of such programs, much of the discourse surrounding mass incarceration reform has centered on the technical legislative makeup.

This conversation fails to acknowledge the foundation of these policies: who exactly is making them, and why.

Demographics matter. The backgrounds, identities, and perspectives of lawmakers play

1 Porter, Nicole D., and Marc Mauer. "Top Trends in State Criminal Justice Reform, 2019." *The Sentencing Project*, 17 Jan. 2020, www.sentencingproject.org/publications/top-trends-in-state-criminal-justice-reform-2019/.

huge roles in shaping the policy they create.

For example, old white men drafted the Constitution and institutionalized black oppression. It is, after all, the founding fathers who created the 's compromise, deducing the value of a black man to of that of a white man.

We see the very effects of these racial biases today. Thousands across the United States are marching in protest of racial injustice and police brutality—two crimes perpetuated through the police and criminal justice system that negate accountability.

Thus, when we think about incarceration policy, and how this policy affects women's health, it is imperative that women have a seat at the table. According to Carole Pateman's *Sexual Contract*, the best policies proposed would be ones authored by women.2

Women, since the inception of the United States Constitution (and likely before that), have been systematically excluded from political equality. The definition of equality, as written by thinkers John Locke and Jean Jacques-Rousseau, foundationally excludes women.

At its core, the social contract envisioned by Locke and Rousseau contends that governments hold political authority based on the consent of the people—the people voluntarily give up some of their freedoms to the government. Political authority is obtained through the consent of free and equal men.3

However, aside from the fact that the social contract explicitly stated men—and not women, or any other non-binary people—this contract's basic argument fails.

Men have historically retained much political authority over women. Women could not vote in the United States until 1919, nor could they hold property. Rather than a social contract, women are instead held in a sexual contract that undermines the premise of the social agreement.

Women were erased from the definition of freedom and never gave consent for subordination by men, and despite this, men have retained political power.

The very baseline of United States <u>democracy maintains</u> a sexual hierarchy.

2 Pateman, Carole. The Sexual Contract. Stanford University Press. 1 August 1988.

3 Peter, Fabienne. "Political Legitimacy", The Stanford Encyclopedia of Philosophy. 2017 Summer. Edition, Edward N. Zalta. https://plato.stanford.edu/archives/sum2017/ entries/legitimacy/ It's no surprise that three, very old white men conjured this definition. But in order to avoid the oppressive and exclusive frameworks mentioned above, it's necessary to have women at the policymaking table.

When looking at proposed criminal justice reform legislation, that is perhaps the most important criteria that deems the policy's success in liberating women.

The latest criminal justice reform act on the table in Congress is one drafted by both Senator Cory Booker and Congresswoman Bonnie Coleman. The bill, named the "Next Step Act" is the most comprehensive criminal justice reform bill to be presented in Congress in decades.

The bill directly attacks life imprisonment and mandatory minimum sentence through institutionalized pathways for people exiting the prison system and provides better training for law enforcement.4

"The Next Step Act fulfills that promise and builds upon the foundation we laid last year," said Congresswoman Coleman. 5

Specifically, the act reduces mandatory minimums for violent drug offenses and eliminates the disparity between crack and cocaine offenses. It also bans federal employers and contractors from asking an applicant about their criminal history until the final stages of the interview process.

Most importantly, it reinstates the right to vote in federal elections for formerly incarcerated individuals.

The Next Step Act, and other legislation drafted by women means that these laws will have tenets written for women. The Next

4 Booker, Cory A. "Text - S.697 - 116th Congress (2019-2020): Next Step Act of 2019." *Congress.gov*, U.S. Congress, 7 Mar. 2019, www.congress.gov/bill/116th-congress/senate-bill/697/text#:~:text=Introduced%20in%20 Senate%20(03%2F07%2F2019)&text=To%20reform%20sentencing%2C%20prisons%2C%20 re,practices%2C%20and%20for%20 other%20purposes.&text=To%20reform%20 sentencing%2C%20prisons%2C%20rem%2Dentry%20of%20prisoners%2C,practices%2C%20 and%20for%20other%20purposes.

5 Booker, Cory. "Booker, Watson Coleman Introduce Far-Reaching Criminal Justice Legislation: The Next Step Act." *U.S. Senator Cory Booker of New Jersey*, 8 Mar. 2019, www. booker.senate.gov/news/press/booker-watson-coleman-introduce-far-reaching-criminal-justice-legislation-the-next-step-act. Step Act directly targets institutionalized racism imprisoning women of color each year.

Though, this is just one Act proposed out of the hundreds that Congress debates each year.

To this day, there is not a single act proposing healthcare regulations in federal, State nor private prisons. Until this legislation is proposed, equitable criminal justice reform may just be lip service.



"Women, since the inception of the United States Constitution (and likely before that), have been systematically excluded from political equality.

INTERVENTIONS

Doulas can improve incarcerated pregnant women's emotional health

BY EMMA JANIBEKYAN **& HALA BARADI**





remains only part of the injustice they face. More importantly, the prison system damages these women far beyond the superficial level, by instilling deep emotional trauma.

Schroeder, Carole, and Janice Bell. "Doula birth support for incarcerated pregnant women." Public Health Nursing 22.1 (2005): 53-58.

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"Nurses were very supportive in their medical way ... monitoring, seeing I'm breathing, stimulating the baby's heart beat when it dropped... where the doula was holding my hand, telling me it was going to be OK."2

This demonstrates that having someone present to relay jargoned information in layperson terms, having a consistent individual present throughout the birth, and having a single person to confide to, could prove to be beneficial in alleviating chronic stress accumulated by experiencing pregnancy within prison.

Providing these women with even the most basic emotional support that they need clearly proves to provide for healthier, more stress-free birth experiences. Adding an intervention such as a doula program provides not just a safer experience for the mother, but also a healthier delivery for the baby.

However, this program isn't the only one of its kind. One article reporting on the treatment of pregnant inmates discussed the Healthy Moms and Program which worked to offer doula services, like introduction to weekly group classes on pregnancy, childbirth, parenting, and pairing of inmates to doulas.3

The educational aspect of the program is beneficial, because as seen in the previous study, many women in these programs lack proper education, and are expected to give birth without knowledge of the mechanics behind delivery or parenting. While they may be able to receive this type of education in the outside world, they are restricted to prison resources, which are often minimal.

One woman in this article, Brittany Lucas used doula care to keep her spirits up while in jail at three months pregnant. She claimed that while the doulas were supportive, she still felt alone and afraid throughout the process.

"We have gotten really comfortable with the women who visit us," Lucas says. "They offer more support, especially if we have no other option but to deliver in custody."4

This is especially important when considering the circumstances of the woman before having doula support. If women who are provided with doula support still feel alone and afraid throughout their pregnancies, then women who don't have this type of support must especially feel the pain and loneliness that comes from a lack of emotional support. **Prison Nursery Programs**

Another type of intervention that could alleviate stressful circumstances experienced by pregnant incarcerated women is a prison nursery program. A prison nursery program (PNP) is defined as a program allowing a mother to parent or infant for a limited amount of time in a special housing unit, in order to facilitate bonding.5 This study found that, in the United States, separa-

tion policy throughout multiple prisons dictates that children

2 Schroeder, Carole, and Janice Bell. "Doula birth support for

incarcerated pregnant women." Public Health Nursing 22.1 (2005): 53-58.

3 Conway, Sarah. "Chicago Is Making the Case for Releasing

Pregnant Inmates." The Atlantic, 20 Dec. 2019, www.theatlantic.com/health/ archive/2019/12/doulas-county-jail/603730/. Accessed 17 Apr. 2020.

Conway, Sarah. "Chicago Is Making the Case for Releasing

Pregnant Inmates." The Atlantic, 20 Dec. 2019, www.theatlantic.com/health/ archive/2019/12/doulas-county-jail/603730/. Accessed 17 Apr. 2020.

5 Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of

prison nurseries as a solution for children of incarcerated women." NYU Rev. L. 37 (2013): 371. & Soc. Change 37 (2013): 371.

born to incarcerated mothers must be separated immediately upon birth and placed into the care of foster parents, oftentimes ultimately severing the connection between biological parents and children.6 This damage during critical developmental periods of the child's life perpetuates health issues like aggression, anger, anxiety, inability to sympathize or show concern for others, and most prominently, inability to feel a sense of security, in children.

This demonstrates the failure of the prison system to not only adhere to the mother's emotional and mental needs, but also the child's. There is too much of an emphasis on punishment, and not enough of a policy-wide focus on rehabilitation and healing. This study found that PNPs promote treatment programs, training, and educational courses for mothers in order to encourage rehabilitation. Having children spend time with their mothers during the first years of their lives encourages development of trust and security, and remedies attachment disorders. Additionally, studies have found that children are safer in mother-child correctional environments than in low income communities or in foster care.7

This demonstrates that prison nursery program interven-tions not only provide consistent and safe environments for children to grow in, but also facilitate healthy relationships with parents and with people in general. Inclusion of these programs benefit both the mother's and the child's mental and physical health, by providing them with a secure environment to bond with one another for a significant amount of time.

Additionally, though these programs are returning to the United States after a long period of absence, they are still lacking in comparison to other places. For example, while the United States has more female prisoners than all of Europe combined, Europe still has more prison nurseries than the U.S. Specifically, the PNPs in the U.S. only have a capacity for 150 mother-baby pairs, while PNPs in Europe have a capacity for 400 mother-baby pairs, even while having a smaller number of total prisoners.8

This exemplifies the lack of attention that the United States gives to its most vulnerable population. While Europe is lacking in female prisoners, they still prioritize the women who need these programs, unlike the U.S. Even though there are more women who actually need PNPs in the U.S., there are only 13 states that actively have such programs.9 This lack of prioritization perpetuates existing issues in mental, physical, and emotional health in both mothers and children.

Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison

nurseries as a solution for children of incarcerated women." NYU Rev. L. & Soc. Change 37 (2013): 371.

Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison

nurseries as a solution for children of incarcerated women." NYU Rev. L. & Soc. Change 37 (2013): 371.

Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison

nurseries as a solution for children of incarcerated women." NYU Rev. L. & Soc. Change 37 (2013): 371.

Gilad, Michal, and Tal Gat. "US v. my mommy: Evaluation of prison

nurseries as a solution for children of incarcerated women." NYU Rev. L. & Soc. Change

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400 PARS

...except as punishment for a crime

For four-hundred years, Black women were subjugated to the abhorrent system of slavery. Within this system, Black women's health, maternal identity, and very humanity were stripped from them entirely. These women were shack-led, literally and metaphorically, to a state-sanctioned system set on treating them as sub-human.

But has much really changed since slavery's abolition?

The short answer: No.

It is clear that remnants of the institution of slavery, while reconsituted, remain prevalent within modern-day institutions. This is most clear in our Constitution. The Thirteenth Amendment, the very one meant to abolish the system of slavery, lays bare a loophole that has been exploited: slavery was abolished *except as punishment for a crime*.

Slavery did not end in 1865. It evolved.

Black women today remain victims of state-sanctioned abuse. It is not accidental, for instance, that the majority of our nation's prisons and jails are overwhelmingly composed of racially-marginalized populations. As demonstrated throughout this magazine, the precision with which policies and laws have historically targeted a specific subsect of the population to criminalize cannot be underestimated.

Discourse surrounding mass-incarceration has proliferated throughout the nation but, distressingly, women of color are subject to erasure surrounding this discourse. Their invisibility is evident in laws and policies that fail to account for the specific needs of women in the penal system. One example, the shackling policy, forced women to be constrained by the wrists, waists, and ankles during transportation, labor, delivery, and post-delivery. This policy does not reflect the fact that most incarcerated women are nonviolent offenders and, moreover, that shackling pregnant women causes undue physical and psychological harm. In addition to this, other other implications of the shackling policy exist, shedding light on our progress as a country. More than 150 years after the official abolition of slavery, the mere sight of shackles constraining Black and Brown skin might be an unbearable sight, a conscious reminder of our gravest sin. The continued and common-place use of shackles today, portraying them ordinary, speaks volumes that this is not the case.

Since slavery, the United States has continued—via laws, policies, and institutions—to penalize Black women and Black motherhood. One of the most grievous atrocities faced by Black women under slavery was that, at any time, their children could be stolen from them; and with it their right to motherhood. This practice holds true today in a policy that forces the separation of mother and newborn a mere 24 hours after birth. Consequently, Black families are forcibly fragmented as many children are relegated into foster care. The psychological harm from this inflicted upon the mother and child is long-lasting and insurmountable. Like shackles, one would expect that the mere image of separating Black mothers from their children would be an unbearable sight and a stark reminder of America's pitiful past. Again, this is not the case.

Furthermore, the tragic legacies of oppression society has constructed can also induce biological modifications in a woman and her fetus. Incarcerated women are subject to chronic stress due to their adverse environments. Chronic stress dysregulates our body's innate mechanisms and can lead to life-long diseases. Yet, these harms do not end with the mother. Environmental stressors can cross the placenta and induce changes in gene expression within the fetus and even alter brain morphology and functionality.

Thus, it cannot be dismissed that women of color in the penal system and their children, have been failed. Society as a whole is not only to blame for a correctional system that disproportionately targets women of color, but is responsible for producing, and reproducing, generations who are disadvantaged from birth—by both an unjust system to which they fall victim and by a biology altered by this same system.

Sadly, the legacies of oppression transcend the confinements of the U.S. penal system. For example, as presented, women of color are far more likely to be undereducated, impoverished, and have less access to healthcare, than their White



counterparts. Society has constructed a system that has perpetuated conditions so intolerable for women of color, that crime can become a result. Moreover, felony disenfranchisement, stripping many of their right to vote, robs these women of their political voice, rendering them powerless to change the society in which they are victims. Whether these women are pregnant and in the penal system or not, society is guilty of propagating systems of injustice from which they cannot escape.

This point is made more poignant by the recent murders in the U.S. that have sparked international outrage.

George Floyd. Ahmaud Arbery. Breonna Taylor. And countless others...

The names listed above are all victims of a cruel, heavy-handed police state that is the direct descendant of a system of sanctioned slavery, created to oppress Black people.

The question remains: What can be done about a society that systematically devalues Black lives?

For one, it can be reasonably asserted that a society which creates intolerable injustice or unlivable conditions for any members, is one that must be rejected. Furthermore, a society that distributes social goods and opportunities unjustly must be recognized as perpetuating a form of extortion. Thus, to generate conditions that are livable for Black people, to redistribute social goods fairly, and to properly atome for the gravest sin of slavery—which has eluded this society for hundred of years—the first step must be to defund the police.

The police state, which is descriptive of our current culture, has inflicted upon Black pregnant women countless mental, physical, and psychological harms. These harms permeate through to the fetus, engendering long-lasting biological damage before life can begin. By not defunding the police, society is committing to a world that replicates generational trauma and devalues Black motherhood. This begs the question: Why? *Why* does this matter?

The answer: Because Black Lives Matter.

ways to help

Want to make a difference?

Women's Prison Association: "WPA works with women at all stages of criminal justice involvement. WPA promotes alternatives to incarceration and helps women living in the community to avoid arrest or incarceration. Inside prison and jail, WPA is a source of support to women and a resource to them as they plan for release. After incarceration, women come to WPA for help to build the lives they want for themselves and their families in the community." They help children and mothers reunite, help women released from prison get jobs or prepare for interviews, and access addiction, health, and mental services.

• https://www.wpaonline.org/about/what-we-do

Black Lives Matter Movement: An organization built to eradicate white supremacy and ending police brutality. They affirm the value, worth, and importance of all Black lives.

• https://blacklivesmatter.com

in solidarity, hala baradi maya barajas-tavera emma janibekyan kristie-valerie hoang cynthia tsang