MOTHERS BEHIND BARS:

A state-by-state report card and federal review on conditions of confinement for pregnant and parenting women

The Rebecca Project For Human Rights

National Women's Law Center
EXPANDING THE POSSIBILITIES

ACKNOWLEDGEMENTS

Mothers behind bars: A state-by-state report card and federal review on conditions of confinement for pregnant and parenting women is a collaborative endeavor that relies upon the work of many individuals. At The Rebecca Project, the primary author of the Report Card - Malika Saada Saar, was greatly assisted by Brittany Bisnott and Faiza Mathon-Mathieu. The Rebecca Project would like to recognize Angela Day. The Rebecca Project would also like to acknowledge Gwen, Michelle, Arnita, Tessa, and Stephanie - mothers who have been shackled during labor and delivery. At the National Women's Law Center, the primary author of the Report Card—Jill C. Morrison, was greatly assisted by Micole Allekotte, Lisa LeMair and Grace Lesser. The authors would also like to thank the ACLU's generous use of information from their report, State Standards for Pregnancy-Related Health Care in Prison (2008).

Support for the Report Card was provided by Ford Foundation. The statements and views expressed herein are solely the responsibility of the Report Card authors, and do not necessarily represent the views or positions of the funders.

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EXECUTIVE SUMMARY

There are now more women behind bars than at any other point in US history. Women have borne a disproportionate burden of the war on drugs, resulting in a monumental increase of women who are facing incarceration for the first time, overwhelmingly for non-violent offenses. This rampant over-incarceration has a devastating impact on families. Most of these women, unseen and largely forgotten, are mothers. Unfortunately, pregnant women, incarcerated women and their children are subject to federal and state correctional policies[1] that fail to recognize their distinct needs or honor family.

The Rebecca Project and the National Women's Law Center collaborated on this Report Card, which analyzes federal and state policies on prenatal care, shackling, and alternative sentencing programs and grades states on whether their policies help or harm incarcerated women in these key areas. This effort is intended to help advocates assess their own state's policies effecting these significant phases of pregnancy, labor and delivery, and parenting. Staff from the Rebecca Project interviewed officials and representatives from state departments of corrections regarding their policies in each of the three areas.[2] Staff from the National Women's Law Center then analyzed the interview responses, created a set of meaningful indicators in each category, and assigned a point system and corresponding grade to each state.[3]

The Report Card also provides an analysis of related federal laws and policies regarding conditions of confinement for women in federal prisons and immigration detention facilities. Additionally, it assesses how the federal government funds state programs that serve incarcerated pregnant or parenting women. For reasons discussed below in the federal findings section, the federal government does not receive a grade. Rather, the Report Card identifies areas where the federal government is making commendable gains in the humane treatment of incarcerated women who are pregnant or parenting and provides specific recommendations for areas that need improvement.

Ultimately, our goal is to encourage federal and state governments to reevaluate policies that fail to protect the interests of this growing at-risk population and adopt policies that recognized the needs of incarcerated pregnant women and mothers, as well as their children. But we also know that good laws and policies are not enough. Just as critical is whether state and federal institutions actually comply with what is required and

whether they punish and correct violations. Just because a state has a high grade in any particular area does not mean that the pregnant and parenting women in that state are benefiting from the good policy. To the contrary, we know that this is often not the case. In addition to encouraging policy-makers to improve upon policies that affect the lives of pregnant and parenting women in prison and their children, we also hope that this Report Card will help advocates identify institutions that are violating Department of Corrections' policies or state law. It is only when we call attention to violations and demand remediation and enforcement that laws and policies actually accomplish their goals: improving the lives, health and future prospects of these vulnerable women and their children.

States that demonstrate a formal commitment to a woman's civil and human rights by having policies that require pregnant women to have access to prenatal care, restrict the use of restraints on pregnant women, and maintain and strengthen the mother-child bond through the use of alternative sentencing receive the highest marks. Grades are provided to allow comparisons between states. An "A" grade does not mean that a state's policy could not be improved to better meet the needs of pregnant and parenting women who are incarcerated.

While the Report Card also examines states' prison nursery programs, it is important to note that such programs are far less desirable than sentencing these mothers to a community based non-institutional setting. The same characteristics that render women eligible for participation in a prison nursery program, including being convicted of a non-violent offense, are very similar to those that would render them eligible for alternative sentencing, if states chose to make such an option available.

State Findings

Overall grades: Averaging the grades for **pre-natal care**, **shackling**, and **alternative sentencing to family based treatment**, twenty-one states received either a D or F. Twenty-two states received a grade of C, and eight received a B. The highest overall grade of A- was earned by Pennsylvania.

Pre-natal care: Thirty-eight states received failing grades (D/F) for their failure to institute adequate policies requiring that incarcerated pregnant women receive adequate prenatal care, despite the fact that many women in prison have higher-risk pregnancies.

- Forty-three states do not require medical examinations as a component of prenatal care.
- Forty-one states do not require prenatal nutrition counseling or the provision of appropriate nutrition to incarcerated pregnant women.
- Thirty-four states do not require screening and treatment for women with high risk pregnancies.
- Forty-eight states do not offer pregnant women screening for HIV.
- Forty-five states do not offer pregnant women advice on activity levels and safety during their pregnancies.
- Forty-four states do not make advance arrangements for deliveries with particular hospitals.
- Forty-nine states fail to report all incarcerated women's pregnancies and their outcomes.

Shackling: Thirty-six states received failing grades (D/F) for their failure to comprehensively limit the use of restraints on pregnant women during transportation, labor and delivery and post-partum recuperation.

There has been a recent increase in states adopting laws that address shackling, now totaling ten. Of the states without laws to address shackling:

- Twenty-two states either have no policy at all addressing when restraints can be used on pregnant women or have a policy which allows for the use of dangerous leg-irons or waist chains.

- When pregnant women are placed in restraints for security reasons, twenty-one states either allow any officer to make the determination or do not have a policy on who determines whether women are a security risk.
- Thirty-one states do not require input from medical staff when determining whether restraints will be used.
- Twenty-four states do not require training for individuals handling and transporting incarcerated persons needing medical care or those dealing with pregnant women specifically, or have no policy on training.
- Thirty states do not have a policy that holds institutions accountable for shackling pregnant women without adequate justification.
- Thirty-four states do not require each incident of the use of restraints to be reported or reviewed by an independent body.

Alternatives to Incarceration-Family Based Treatment: Seventeen states received failing grades (F) for their lack of adequate access to family based treatment programs for non-violent women who are parenting.

- Seventeen states have no family based treatment programs, while thirty-four states make such programs available.
- Of the thirty-four states with family based treatment programs, thirty-two offered women sentencing to these programs, while two did not.

Prison Nurseries: Thirty eight states received failing grades (D/F) for failing to offer prison nurseries to new mothers who are incarcerated. While a far less preferred option than alternative sentencing, prison nursery programs still provide some opportunity for mother/child bonding and attachment.

- There are only thirteen states offering prison nursery programs, and only one of these is community based.
- Eight prison nurseries force children to leave the program by twenty-four months while three programs have policies forcing mothers to part with their children when they are thirty days old.
- Three programs offer therapeutic services for mother and child.

Federal Findings

The vast majority of pregnant and parenting women are confined in state prisons, but the federal government also plays an important role in providing humane treatment to this vulnerable population. In addition to operating facilities for women who are convicted of federal crimes, the federal government also oversees the Immigration and Customs Enforcement agency of the Department of Homeland Security (ICE). ICE detains individuals who are in violation of civil immigration laws pending deportation. While this detention is not incarceration, per se, pregnant and parenting women who are held in ICE custody are totally under the control of the agency. And finally, Congress has the ability to appropriate federal funds to the states, including funds that must be used for programs that serve pregnant and parenting women who are incarcerated. In this way, the federal government plays a crucial, if indirect, role in conditions of confinement for pregnant and parenting women in state custody.

We provide a summary of the findings below and discuss recommendations for improvement in the federal section, but there are several reasons we chose not to grade the federal policies. First, there is no institution to which the federal government can be compared with regard to its scope, ability to provide funding, or other considerations that it must account for in setting nationwide institutional policies. In contrast, states can easily be compared to one another, with the general similarity between prison systems providing a constant marker of the range of laws and policies regarding pregnant and parenting women. Second, it is difficult to accurately assess how many more programs the federal Bureau of Prisons (BOP) should have to adequately serve the population of pregnant and parenting women in its 28 facilities across the nation. Furthermore, there are

valid reasons for the BOP's decision to operate certain programs only within a limited number of facilities. And third, some of the areas examined in the federal section, including funding of state programs and ICE detention policies, have no equivalent on the state side.

Moreover, each of the federal areas we examine is controlled by a different government entity, so having one grade in each of the four areas would not fairly reflect each entity's respective investment in the pregnant and parenting women under its jurisdiction. ICE detention facilities are overseen by the Department of Homeland Security, federal funding to the states is controlled by Congress, and the BOP has oversight of federal prisons. These factors make it difficult to fairly assign a grade to the federal government's range of efforts regarding pregnant and parenting women. Instead, the Report Card provides specific recommendations that would improve the health and well being of pregnant and parenting women under federal jurisdiction and suggestions for funding to the states to do the same.

Federal Bureau of Prisons (BOP)

- While the BOP's prenatal care policy is comprehensive in addressing the unique needs of incarcerated pregnant women, information on the actual care provided is sparse and reports indicate that access to prenatal care is inconsistent.
- The BOP is to be commended for showing leadership in implementing a policy to prohibit the shackling of pregnant women during labor and delivery. There is not yet information regarding the implementation of this policy.
- The BOP has a program called Mothers and Infants Nurturing Together (MINT), which provides alternative community-based sentencing for women who have recently given birth and have less than five years left on their prison terms. Currently MINT serves only a small portion of mothers in federal prison. Access is restricted to newborns where older children would also benefit from the program.
- The federal BOP does not operate any prison nurseries. Rather than initiate prison nurseries, we recommend the expanded use of alternative sentencing within the MINT program, described above.

Immigration and Customs Enforcement (ICE) Detention

- ICE is in the process of revising its policies regarding the confinement of individuals detained for immigration violations, including the health care to be provided to certain detainees.
- There is currently no prohibition on shackling pregnant detainees. ICE officials have been largely unresponsive to advocates' request to implement a policy restricting shackling that mirrors the federal BOP policy.
- Alternatives to ICE detention are available, yet immigration attorneys report inconsistent implementation as well as government resistance to having detainees released into the community; there is little information available regarding the use of community release for pregnant and parenting detainees.
- Conditions for families with children in ICE detention are poor. Included in the above-mentioned overhaul of ICE detention is a plan to better serve the needs of families with children. We look forward to reviewing these changes.

INTRODUCTION

Why a Report Card on Mothers Behind Bars?

Mothers behind bars are invisible to most of us.[4] They exist mostly as caricatures of the ultimate bad mother. They are the mothers who violated the basic maternal commitment to care for their children to engage in wrongful criminal activities. But, in truth, mothers' pathways to incarceration are complex, and rooted in issues of sexual and physical violence.

Most incarcerated women and mothers behind bars were first victims of violence.[5] The shared narrative arc of incarcerated women and mothers behind bars is that of repeated experiences of brutal sexual and physical victimization. Their experiences of sexual and physical victimization generally began during girlhood and, in the absence of access to mental health and trauma-based services, many of these vulnerable mothers turned to self-medicating to the indelible injuries of violence with illegal substances.[6] Rather than be treated for trauma, depression and untreated addiction, within a public health context, these mothers have been displaced into the criminal justice system.

Twenty-five years ago, the presence of women—especially mothers—was an aberration in the criminal justice system.[7] Following the introduction of mandatory sentencing to the federal drug laws in the mid 1980s, the number of women in prison has risen by 400%.[8] The percentage of females incarcerated for drug offenses now surpasses that of males.[9] Most of these mothers are non-violent, first-time offenders.[10]

The recent phenomenon of criminalizing mothers for trauma and addiction, precipitated by the war on drugs and mandatory minimums, as well as the dearth of programs for pregnant and parenting mothers, has wreaked havoc on family stability and child well-being. Most incarcerated women and mothers behind bars are mothers to minor children and were, before their incarceration, the primary caretakers of their children.[11] Maternal incarceration wrongly leaves the child behind, without recognition of a child's fundamental need for her mother.[12]

While incarceration is harsh and dehumanizing for all who are confined, prison rules and regulations were originally developed to serve an overwhelmingly male population

convicted of violent crimes.[13] The system has been largely unresponsive to changes that would better serve and rehabilitate the overwhelmingly non-violent population of incarcerated women, including those who are pregnant and parenting. Unsurprisingly, the system also generally fails to account for the needs of the children left behind.

Unfortunately, discourse on criminal justice policy, review of conditions of confinement, alternative sentencing, and reentry reform tend to either neglect or marginalize the new reality of incarcerated women, especially those who are parenting.[14] Similarly, the Federal Bureau of Prisons (BOP) and state departments of corrections have yet to fully recognize the distinct gender- and family-specific considerations of incarcerating pregnant women and mothers with minor children. There are few prison-based programs specifically designed for pregnant and parenting women. The inadequacy of services for these women is not limited to incarceration settings, but affects women at every point in their involvement with the criminal justice system. Pre-trial diversion and release services, court-sentenced alternatives and re-entry programs for mothers are restricted in number, size, and effectiveness.

Goals and Limitations of this Report Card

The purpose of this report card is to expose the conditions of confinement for pregnant and parenting women, but it is just as critically important to recognize the overwhelming problem of the rampant over-incarceration. The U.S. has over one and a half million people incarcerated, a higher per capita incarceration rate than any other nation in the world.[15] Very little attention has been paid to the costs of confinement on the dignity and humanity of the now more than two million people who are imprisoned in the United States.

The report card focuses on policies affecting the conditions of confinement for pregnant women and mothers, but we encourage states and the federal government to take a serious look at the types of investments in social services, education, mental health care and drug treatment and addiction prevention to stem the tide of over-incarceration. It is clear that incarceration has both financial and human costs. Redirecting the massive resources currently devoted to imprisonment will save far more than money; it will strengthen families, improve the quality of lives, and help millions escape the indignities that are inherent in imprisonment.

Our report card is an effort to shine the light on the hidden lives of mothers behind bars, and encourage policy-makers and advocates to improve conditions for these women and their children. It is an effort to unearth how incarcerated women and mothers are treated by federal and state correctional facilities during the significant phases of pregnancy, labor and delivery, and parenting.

At the outset, it is important to note that the mere existence of a good policy, and correspondingly good grade, says nothing about the actual implementation of the policies.[16] Laws and policies that are intended to protect incarcerated women and mothers are only meaningful if those who are responsible for effectuating them are properly educated and trained, and if serious repercussions are in place if they fail to follow the laws and policies. We know that simply because it is written somewhere that an incarcerated woman is entitled to receive pre-natal care does not mean that every pregnant woman actually receives it. We know that despite laws and policies to the contrary, mothers are shackled without corrections officers following the legally-mandated procedures.

Indeed, the goal of this report card is two-fold: first, to identify how states and the federal government can improve policies of confinement for incarcerated women and mothers and second, to assist advocates for incarcerated women and mothers in identifying what protective policies are currently in place. It is our hope that advocates around the nation will use this information to identify institutions that are violating state law or their own DOC policies and demand better implementation of policies intended to protect pregnant women and preserve the sacred bond between mothers and their children.

Prenatal Care

The inadequacy of health care for all people in U.S. prisons has been well documented, despite the Supreme Court's ruling that people who are incarcerated are entitled to health care under the Eighth Amendment of the U.S. Constitution.[17] As with other facets of prison life, the prison health care system was originally established to serve a predominately male prison population.[18] For this reason, while most health care in a prison setting could be described as barely adequate, care that meets the unique needs of women is even worse.[19] Add to that the special needs of a pregnant woman, and the deficiencies and their consequences become even greater.

Women in prison are less likely to have had access to regular health care before entering prison,[20] and therefore often have undiagnosed or untreated chronic conditions that can increase pregnancy risks and contribute to poor birth outcomes such as depression, diabetes, hypertension and asthma. Certain conditions that increase pregnancy risks, including drug addiction, hepatitis, and STDs, are also more prevalent in women who are imprisoned.[21]

Pregnant women who are imprisoned deserve high quality health care.[22] Failure to comport with nationally-recognized standards for prenatal care results in poor health outcomes for children born to women who are imprisoned.[23] In addition to the immediate and long term harms to a woman provided inadequate care during her pregnancy, there is also harm to the child. The child lives with the life-long health problems that result when a state prison system fails to institute policies that require pregnant mothers to receive proper nutrition, or to receive treatment for health conditions that contribute to poor pregnancy outcomes.

Shackling Mothers During Labor and Delivery

Presently, some prisons use restraints on women in labor and delivery as a matter of course, regardless of whether a woman has a history of violence, regardless of whether she has ever absconded or attempted to escape, and regardless of her state of consciousness.[24] While there is no systematic documentation at the state or federal level of how many women give birth while incarcerated, in 2007, the Bureau of Justice Statistics stated that, on average, five percent of women who enter into state prisons are pregnant and six percent of women in jails are pregnant.[25]

The dangerous practice of shackling pregnant women is being reconsidered and in many cases prohibited due to both proven and potential harm to the mother and child.[26] The Federal Bureau of Prisons (BOP) in September 2008 ended shackling pregnant inmates as a matter of routine course in all federal correctional facilities.[27] State legislatures and Departments of Correction have begun to respond to the consensus against shackling. Most recently, Colorado, New Mexico, New York, Pennsylvania, Texas, and Washington have enacted laws prohibiting the practice of shackling pregnant women.[28]

Of equal significance are BOP and the US Marshals' reform of the type of restraints used on pregnant women. In October 2007, both the BOP and US Marshals agreed to the cessation of "belly shackles" or shackles that constrict the stomach area of pregnant women, regardless of the trimester of pregnancy.[29] Any exception to the rule must be justified by a legitimate security concern.

The federal and state by state report card's calibration of state DOCs' use of restraints on pregnant women reflects the progressive shifts in shackling polices. States that have formally, through statute, ended the routine use of restraints are afforded the highest grades. Other state practices that prohibit use of belly shackles and leg chains or have established DOC procedures for prohibiting the routine use of shackles are also given recognition for falling in line with the overall federal reforms.

Alternative to Incarceration: Family Based Treatment

Against the backdrop of the crack epidemic in the 1980's, and the growing numbers of mothers turned away from treatment because traditional treatment programs did not allow children on the premises or include children in the delivery of services, President George H. Bush and Senators Hatch and Kennedy urged for the pioneering of a new, family-based treatment model. In 1992, Congress responded authorizing P.L 102-321, PHS Act Section 510, to fund additional new residential women and children (RWC) grants, as well as to establish a residential treatment grant program for pregnant and postpartum women and children (PPW).

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) awarded $241,000,000 over a five year period between FY 1993-1997 to create and expand family treatment under the Residential Women and Children and Pregnant and Postpartum Women Demonstration Program. A total of fifty family treatment programs received funding under the RWC/PPW. Unfortunately, after the demonstration grants expired Congress did not renew its commitment to family-based treatment programs. Consequently, funding for the RWC/PPW programs dropped to 10.7 million and by the year 2000 the RWC/PPW authorization received no appropriated funding at all. Some of the family treatment programs did however receive very limited funding through CSAT treatment capacity expansion (TCE) funding. The Rebecca Project reopened the PPW funding stream in FY 2004, and since then PPW has received an average of $12 million each year, funding an average of 14 family treatment programs.

Data demonstrates that approximately 70 percent of women under correctional supervision have at least one child under the age of 18, and two-thirds of incarcerated women have at least one minor child.[30] When a father is incarcerated, 90 percent of the time his child will live with the mother. Comparatively, when a mother is incarcerated, only 25 percent of the time will her child live with the father.[31] Maternal incarceration is therefore very destabilizing to a family's health and stability. Alternatives to maternal incarceration, however, allow mothers with minor children to be sentenced to community-based facilities. Studies have long established that women have a lower risk of violence and community harm, thus women are often the ideal prison population for alternative sentencing to community-based programs.

Community-based alternative sentencing programs are generally implemented by non-profit organizations that collaborate or contract with local departments of corrections. And, unlike prison nursery programs, a mother can be not only with her newborn, but with her other children as well. Even if the program does not allow children to live with their mothers, mothers are still given the opportunity to reunite with their children within the context of the community rather than a lock-down facility. Alternative sentencing programs facilitate a mother's return to the community and attachment to her child within the community. Developing the mother/child relationship has shown considerable rehabilitative effects, including outcomes for economic independence and lowered recidivism rates.[32]

The Report Card places special emphasis on states that provide alternative sentencing to comprehensive, family-based substance abuse treatment programs. These are programs that permit mothers and their children to live together while the entire family receives therapeutic treatment to recover from addiction. These programs allow families to maintain their within the normal and healthy functions of a community and neighborhood, rather than in a correctional setting. Such programs also allow mothers and their children to receive therapeutic and supportive services as a whole family.

In 2003, the Center for Substance Abuse Treatment ("CSAT") evaluated its Pregnant and Postpartum Women and Their Infants Program, which provides comprehensive, family-based treatment for substance abusing mothers and their children.[33] Major findings of this study, at six months post treatment, include:

- 60% of the mothers remained completely clean and sober.
- Criminal arrests declined by 43%.
- 44% of the children were returned from foster care.

- 88% of the children treated in the programs with their mothers remained stabilized, six months after discharge.
- Employment rose from 7% before treatment to 37% post-treatment.
- Enrollment in educational and vocational training increased from 2% prior to treatment to 19% post-treatment.[34]

As these findings make clear, in order to maximize the success of women sentenced to community-based programs, it is critical for the programs to include comprehensive services, including therapy, parenting classes, and substance abuse treatment. These mothers require a therapeutic approach in order to heal from addiction and attend to their children's needs within a culture of support, health, and healing.

States that contracted with community-based, family treatment programs achieved the highest grades since family treatment programs as a sentencing alternative permits mothers and children to heal together and demonstrates consistently successful outcomes for child health and stability, family reunification, reduced rates of recidivism, and sustained parental sobriety.[35] Moreover, it is less costly than incarceration and achieves better outcomes than those achieved by maternal incarceration and a child's placement in foster care.

It is important to note that our Report Card focuses on alternative sentencing only for mothers who are non-violent offenders suffering with an untreated addiction. The uptick in maternal incarceration is directly related to the war on drugs and the criminalization of untreated addiction. Most mothers behind bars are there for untreated addiction and continue to struggle with addiction during and after their incarceration, and recidivate because of their untreated addiction. These mothers constitute the majority of women behind bars—and represent this new phenomenon of maternal incarceration—such that it only makes sense to propose alternative sentencing to family treatment programs for this specific population.

Prison Nurseries

When mothers are incarcerated, their children are either placed in foster or kinship care.[36] During the period of incarceration, it is a struggle for incarcerated mothers to maintain an abiding connection to their children.[37] Women's prisons are often located in rural areas far from the cities in which the majority of incarcerated women live, making it difficult to maintain contact with their children and jeopardizing the prospects of successful reunification.[38] More than half of mothers never receive visits from their children during the time they are incarcerated.[39] Incarcerated mothers with children in foster care are often unable to meet court-mandated family reunification requirements for contact and visitation with their children, and consequently lose their parental rights.[40]

Studies show that the children left behind from maternal incarceration are vulnerable to suffering significant attachment disorders.[41] They are more likely to become addicts, engage in criminal activity, manifest sexually promiscuous behavior, and dangerously lag behind in educational development and achievement.[42] Children of incarcerated mothers labor under their own sentences, their own punishment of having their mothers taken from them.

Prison nurseries are far from ideal. Considering that most women are convicted of non-violent crimes, we urge federal and state policy-makers to seriously reconsider whether a new mother needs to be imprisoned at all. Reports from mothers with children in prison nurseries indicate that their babies' close proximity allows prison staff to coerce and manipulate a mother by threatening to deny her access to her baby. The far better option is alternative sentencing, which, as described above, allows a woman to parent her children, receive the services she needs to reduce her future chances of incarceration, and enter society as a productive, healthy, whole individual.

Nonetheless prison nursery programs, while far less desirable than alternative sentencing, provide a way to keep mothers and children together during a crucial period of child development.[43] Currently, there are only nine prison nursery programs in the United States. Only mothers who are convicted of non-violent crimes and do not possess a history of past child abuse or neglect are allowed to participate.[44] The prison nursery programs vary in capacity and duration of time that a mother and her child can participate.

Research demonstrates that prison nursery programs can yield effective outcomes for mothers and their children.[45] Mothers who participate in prison nursery programs show lower rates of recidivism.[46] Moreover, the mother-child bond is preserved during a formative and critical time in an infant's development, and the emotional and financial costs of foster care involvement are avoided.[47]

Illinois Department of Corrections: Focusing on the Needs of Pregnant and Parenting Inmates

The Illinois Department of Corrections has implemented many reforms focusing on the needs of pregnant and parenting inmates. Recognizing that there are distinct differences in dealing with women, in 1999 Illinois centralized all decision regarding their care within the office of Women and Family Services, headed by Deputy Director Debbie Denning.[48] Both the National Institute of Corrections and the American Correctional Association have acknowledged Illinois' leadership in establishing a separate division within its Department of Corrections.[49] This Division addresses the care of female inmates "in the areas of trauma, abuse, assertiveness, medical and mental health care, substance abuse, parenting and child reunification."[50]

Unfortunately, in 2009 a new corrections director reorganized the Department, giving less authority to the Division and merging it under the function of the Chief of Programs and Support Services. There has been some progress toward restoring attention to women's services in 2010.

The Illinois DOC runs several programs for female inmates and their children, in recognition of the numerous studies showing that healthy family relationships are an integral part of women's rehabilitation and successful reentry into their communities.[51] Children also benefit from developing nurturing attachments to their mothers, so these programs also reduce the chances of these children one day entering the criminal justice system.[52] A prison nursery program initiated in 2007 at the Decatur Correctional Center called "Moms and Babies" provides mothers the opportunity to bond with their newborns.[53] The Moms and Babies Program can accommodate five mothers and their babies, but has the long-term goal of being able to accommodate up to twenty pairs.[54] The program includes an Infant Development Center, which provides daycare while participating mothers attend their prison jobs or classes.[55] Additionally, each of the five prisons for women in Illinois includes a child-friendly visitation area where mothers can read with their children, watch videos or play on the floor.[56] Family activities range from day camps, video visiting, and holiday activities for mothers and children.[57] Parenting programs are offered to all inmates, no matter their security level.[58]

Photo credit

HOW WE GRADE THE STATE LAWS AND DEPARTMENTS OF CORRECTION POLICIES

This section provides detailed descriptions of the specific laws and policies on which we evaluated the states. Each of the four areas, **prenatal care**, **shackling**, **alternative sentencing** and **prison nurseries**, has multiple specific policy components. The state is awarded varying points based on how close it comes to having a policy which protects pregnant or parenting women who are incarcerated. These points are totaled for a raw score in each of the four areas. The states grade in each of the four areas is based on the state's total raw score compared to both the total number of possible points and the raw scores of the other states.

The state's total score for each indicator and its composite grade, the average of its scores in prenatal care, shackling and alternative sentencing, are provided in Section [ ]. The prison nursery score is not included, as it is a far less desirable policy than alternative sentencing, and serves the same population of non-violent women who are being convicted of their first offense.

Prenatal Care[59]

Question #1—Does the state provide medical examinations as a component of prenatal care?

It is important for pregnant women to receive medical examinations from a health care provider in order to identify and presumably treat any problems with the pregnancy as soon as possible, and therefore improve maternal and child health outcomes.[60] States are awarded five points for specifying that pregnant women receive medical examinations, meaning examinations conducted by a professional with some expertise in the treatment of pregnancy conditions.

Question #2—Does the state screen and provide treatment of high risk pregnancies?

An essential factor in improving birth outcomes is identifying high-risk pregnancies and providing appropriate treatment to mitigate the risks.[61] Because women who are imprisoned are more likely to have conditions that render their pregnancies high-risk, this is an especially critical component of their care. States that provide screening and treatment receive three points.

Question #3—Does the state address the nutritional needs of pregnant women?

Proper nutrition is known to reduce the incidence of certain birth defects, premature birth and low birth-weight.[62] States are awarded three points for requiring that appropriate nutrition be provided. Some states provide information about nutrition, but do not ensure a means of access to appropriate nutrition. These states do not get full credit, because a woman's food selection may be entirely limited by what the facility makes available in some cases. These states get one point, however, since they at least recognize the importance of nutrition to pregnancy outcomes.

Question #4—Does the state offer HIV Testing to pregnant women?

Women entering prison have a higher likelihood of being drug users than the general population.[63] Some women have been sex-workers in order to support their addictions.[64] Studies also show that many, if not most, women in prison have a history of sexual abuse.[65] All

Pennsylvania Maternity Care Coalition's MOMobile

Since 2006, the Maternity Care Coalition's MOMobile program has been demonstrating what services for incarcerated mothers within the prison walls coupled with case management during transition to community life can achieve. MOMobile works within Philadelphia's Riverside Correctional Facility, where it delivers the education and support women need to prepare for reintegration with their families and communities. The in-prison component is coupled with individual case management for up to one year after release, helping newly-released parents form strong ties to their communities and positive relationships with their children.[69]

In only three years of operation, the MOMobile program has shown results: stronger relationships and increased parenting and community skills have resulted in a recidivism rate of just 23%;[70] in the program's first two years of operation, only 34 participants returned to Riverside Correctional Facility.[71] Not only does MOMobile reduce recidivism among the mothers it serves, it also educates mothers to improve the health and welfare of their children. More than two-thirds of MOMobile participants improved their knowledge of prenatal, postpartum, and child-related issues as a result of the program.[72]

MOMobile works to improve maternal and prenatal health, as well as the birthing experience. MOMobile staff has attended 34 births since the start of a doula program in May 2008.[73] Doulas are trained labor attendants who provide support to pregnant women throughout their pregnancy, during birth and postpartum.[74] The program teaches parenting skills, mother child bonding, and positive discipline skills, which has the potential to result in substantial community wide benefits if expanded to serve a greater percentage of incarcerated mothers. MOMobile also provides support for the caregivers of children born to incarcerated mothers, including assisting with placement when family members are not available.

MOMobile has achieved great success, having served more than 300 women.[75] The program was started with the support of a four year, $113,000 matching grant from Robert Wood Johnson Foundation Local Funding Partnerships, but this grant ends in June 2010.[76] MOMobile was turned down for funding from the Department of Justice under the Second Chance Act.[77] Unfortunately, with its limited funding, the program has been able to serve only a fraction of the mothers in Riverside, and similar programs do not exist for most incarcerated mothers and pregnant women across the country. By stabilizing the lives of incarcerated mothers before and after release, this program has shown early successes in reducing recidivism and has the potential to have far reaching impact on not only incarcerated women, but their children and communities as well.

of these factors place women in prison at heightened risk of having been exposed to HIV. A pregnant woman who chooses to be tested and tests positive can begin treatment to allow her a longer and healthier life.[66] Testing also allows the facility to begin HIV prophylaxis to reduce the odds of the baby being born with the virus.[67] States are awarded three points for offering HIV testing.[68]

Question #5—Does the state provide a preexisting arrangement for deliveries?

Having a preexisting arrangement to have the babies of incarcerated women delivered at a local hospital reduces confusion and uncertainty when a woman goes into labor. Having an arrangement also allows prisons to educate hospitals on any unwarranted security concerns that hospital staff may have and provide an opportunity to address any concerns. States are given one point for making advance arrangements for deliveries with local hospitals.

Question #6—Does the state provide advice on activity levels and safety?

Informing women of appropriate activity levels during the various stages of their pregnancy allows women to request different work assignments, if necessary. Counseling on activity also provides administrative support for women requesting any accommodation in their work schedules. Conversely, women who are pregnant should not be unduly restricted in their ability to take certain work assignments if such restrictions are not medically necessary or are made arbitrarily. States are awarded one point for providing advice on activity levels.

Question #7—Does the state require prisons to report all pregnancies and their outcomes?

States that require prisons to report their pregnancy outcomes are taking an important step in insuring that prisons are accountable. Collecting such data also helps a state indentify any systemic lapses in providing appropriate prenatal care to pregnant women and taking steps to ensure that they have safe and healthy deliveries. States that require such reporting receive one point.

Shackling During Labor and Delivery

Question # 1—Does the state have a statute that explicitly restricts the Department of Corrections' routine use of restraints during labor and delivery?

Only six states have demonstrated a formal commitment to a woman's civil and human rights by passing laws that prohibit the routine use of restraints during labor and delivery. If any actor within the Department of Corrections violates the law, women are afforded legal recourse and the opportunity to hold the state accountable for its misconduct. These states are awarded 20 points, and receive a grade of B. States with laws that extend the prohibition of restraints to labor, delivery, and post-delivery receive 25 points and a grade of A-. None of the states with statutes indicated having every one of the components we grade below in questions three through seven: training, reporting on the use of restraints, uniform determination of security risk by the warden, medical staff input, and consequences for improper use of restraints. This is because most of the statutes were enacted fairly recently, so specific regulations and procedures addressing these issues may not have yet been adopted. Information on the statutes can be found in Appendix [ ].

Question #2—If the state does not have a statute, does the department of corrections have a written policy that adequately limits the use of restraints on pregnant women?

Women who are being transported to the hospital to give birth pose little, if any risk of escaping. They are barely able to walk, let alone run or attempt escape routes. There is no security justification for the routine use of restraints on a pregnant woman at any time during her transportation to the hospital, or during her labor, delivery, and post-partum recovery.[78] When pregnant women are being transported, in labor and delivery, or post-delivery, they are under the constant surveillance of at least one officer.

A written policy prohibiting the use of restraints including handcuffs, leg irons or waist-chains during transport, labor, delivery, and post-partum receives ten points.[79] Only Wisconsin and the District of Columbia have written policies prohibiting the use of restraints during transport, labor, delivery and post-delivery.

Other states with written policies limiting restraints also receive points for their efforts at reducing risks to pregnant women. These states at least recognize that it is unnecessary to place women in danger by restraining them in certain ways at various times during the birthing process. Handcuffs pose a lesser risk to a pregnant woman, so the use of handcuffs either during transportation or postpartum better reflects the important health concerns of dealing with a pregnant woman. States that restrain women with handcuffs during one of these two times, but forbid the use of handcuffs during labor and delivery receive 6 points. States that restrain women with handcuffs at both of these times, but forbid the use of handcuffs during labor and delivery receive 4 points.

States receiving a score of zero on Question 1 for not having a written policy

Each state should have a written and publicly accessible policy that limits the use of restraints on pregnant women. Using restraints, including handcuffs, leg-irons and waist-chains, possibly endangers both a pregnant woman and her unborn baby. It is therefore imperative for states to have formalized policies and procedures in place to address under what limited circumstances restraints can be used when a woman is pregnant. When policies are in writing, every member of the prison staff is more likely to possess knowledge of the policy. A shared knowledge of formal policy contributes to uniformity in practices and procedures. Written policies may also be referenced for clarification by prison officials and staff when there is a dispute. While some states have expressed that they have an informal protocol regarding the use of restraints on pregnant women, without a documented policy implemented statewide, there is little to ensure proper adherence to procedures that minimize the risks to pregnant women. If a state does not have a written policy, it receives a score of zero.

States receiving a score of zero on Question 1for having an inadequate written policy

Merely having a written policy on the use of restraints is not adequate. If the policy does not provide any guidance as to when the use of restraints should be limited, the policy is wholly ineffective in advancing the health of the pregnant woman and her unborn child. There are several types of DOC policies that restrict the use of restraints but are nonetheless graded with a 0 for this question

If a state allows a pregnant woman to be restrained, there are certain times that pose an unacceptable threat to the well-being of the woman and her unborn child. At no time, should restraints be used during labor or delivery because of the serious and potentially deadly consequences to the woman and her baby. States with policies that allow any type of restraint to remain on during labor and/or delivery receive a zero.

In examining the types of restraints used, restraints must not constrict a pregnant woman, especially in her abdomen area, nor hinder her ability to appropriately labor. For these reasons, waist chains and leg irons should never be used on a pregnant woman during labor and delivery. Since leg-irons and waist chains can be very dangerous for women when they are adjusting to the additional weight and different center of gravity that come with pregnancy, such restraints must also not be used during transport or post-delivery recuperation. State policies that allow the use of these especially dangerous restraints on pregnant women at any time receive a zero.

Question #3—Does the DOC require training for individuals handling and transporting incarcerated persons needing medical care or those dealing with pregnant women specifically?

Each state should have specialized training for correctional officers responsible for the handle and transport of pregnant women, especially during labor and delivery. Incarcerated women pose specific challenges and correctional officers should have specialized training to effectively and appropriately deal with the range of scenarios that arise during pregnancy and the birthing process. In a survey conducted by the National

Institute of Corrections (NIC), in focus group interviews with managers and line staffers of prisons, results demonstrated numerous difficulties in trying to modify policies created for men when working with women who are incarcerated.[80]

An officer that has not been trained in working with pregnant women may panic in an emergency because he or she is unfamiliar with what is to be expected. Conversely, an untrained officer may fail to recognize and respond to what could be a serious health-related emergency. State Departments of Correction ought to provide training for correctional officers to address the challenges of dealing with and transporting pregnant women and women who have just given birth. If a state requires such training, it receives one point.

Question #4—Who determines whether a pregnant woman poses a security risk and needs to be restrained?

State departments of corrections ought to uniformly apply policies regarding the use of restraints. Many of the policies examined permit the use of restraints on a pregnant woman if she seems to pose a substantial risk to herself, her child, or others around her. It is most desirable to have one person, preferably at the highest level of authority, responsible for making the determination of whether a woman is a security risk to ensure uniformity, consistency, and accountability. The best person to decide when a pregnant woman is a security risk is the warden or director.[81]

However, the warden/director is not medically certified to evaluate what is best for the health of the pregnant woman and child and should not make the decision without the input of medically trained professionals. Nonetheless, the initial decision regarding a pregnant woman's security risk should be made by the warden to ensure uniformity and review by the highest authority within the prison. States that require the warden or director to determine that restraints are necessary due to the security risk posed by a pregnant woman receive two points. Full credit is also given to states that make an assessment of a woman's security risk at the time she enters the facility, and bases the use of restraints on that assessment.[82]

A far less appropriate person to discern whether a pregnant woman poses a security risk is a captain or shift supervisor. Although a captain or shift supervisor is relatively high in the chain of command, because there are multiple captains and shift supervisors, there is less uniformity and consistency when this is the person responsible for determining whether a pregnant woman presents a security risk. States that leave the determination to captains and shift supervisor receive one point. Some states allow any officer to make the decision regarding the use of restraints on pregnant women. Since the use of restraints poses a potential danger to the life and health of the pregnant woman and her unborn child, there must be uniformity and accountability for the decision. This cannot be ensured if any officer has the authority to deem a woman a security risk. If a state falls into this category, it receives no points

Question #5-Does medical staff have input on the decision to use restraints and/or what type of restraints are used?

Even if a pregnant woman is deemed to be a security risk, the policy should require that a qualified medical professional (internal or external) provide a medical assessment regarding what restraints to impose to minimize the risk of harm to a woman and her fetus, given her stage of gestation.[83] No other prison official can make an educated determination regarding the proper balance of protecting the woman, others around her, and the unborn child. If a state requires prison authorities to seek input from medical staff when making the decision to use restraints on a pregnant woman the state is awarded two points.[84]

Question #6– Does the DOC require each incident in the use of restraints to be reported and reviewed by an independent body?

Incidents involving the use of restraints on pregnant women should be reviewed by an impartial third party, commission, or taskforce. Third party oversight is necessary to ensure that restraints are used in accordance

with the written policies. If a pregnant woman is restrained, there should be a mechanism for review to ensure that state policy was followed. The review should ensure that the use of restraints was appropriate, and that the least restrictive restraints required by the situation were used.

Moreover, this review should not be limited to instances where there was the use of force. If the use of force is required for an incident to be reviewed, then many cases involving the impermissible use of restraints might escape review. If a state requires independent review of all cases where restraints are used the state is awarded one point.

Question #7—Does the DOC policy include consequences for individuals and/or institutions who are found to be in violation of state policy regarding the use of restraints?

There should be prescribed consequences for individuals and/or institutions that are found to have violated state policy regarding the use of restraints on pregnant women. If it is determined that the use of restraints was not justified, or that the level of restraint was not the least restrictive required for the situation, violators should be subject to repercussions, including reprimands, warnings, demerits, or mandatory training. This also increases the likelihood that individuals and institutions will use more caution when deciding whether and which restraints are warranted, and, once again, ensures the uniform application of policies. Consequences for violating the policy regarding the use of restraints should be clearly outlined to affirm that any violations are handled in the same manner, every time. Here, any state that has established consequences for policy violations will receive one point.

Inmates go to court to stop inhumane practices

Early in 2010, 22-year-old, Joan Laurel Small, was an inmate of Collier County Jail located in Naples, Florida. Small complained for nearly two weeks that she was leaking amniotic fluid, but was ignored by Prison Health Services. The fetus died when its skull collapsed while in utero.[85] The prison also failed to promptly arrange to have the fetus removed from Small, placing her at risk for infection, infertility and even death. This incident exposed a whole host alarming health conditions for women imprisoned at the Collier County Jail: inmates shackled to hospital beds during labor; a pregnant woman with gestational diabetes going weeks without testing and treatment; and an inmate forced to deliver in a prison drop-off area after law enforcement ignored the woman's complaints of labor contractions for hours.[86]

The American Civil Liberties Union of Florida has requested that Collier County Jail disclose how many inmates have reported miscarriages and stillborn babies as well as the facility's policies for jail pregnancies.[87] Over the last few years, inmates across the country have filed lawsuits against Prison Health Services related to the denial of medical care.[88] Courts across the country are holding prisons and jails accountable for their inhumane practices.

Federal Court of Appeals for the Eighth Circuit recently condemned the practice of shackling in a case involving the civil rights of a pregnant inmate who was shackled to a bed during hours of contractions.[89] Other inmates have settled their lawsuits with Prison Health Services millions of dollars in damages based on allegations of failure to provide medical care to pregnant women, women who were forced to give birth over a prison cell toilet and fetal deaths caused by delayed medical attention in prisons.[90]

Alternatives to Incarceration: Family Based Treatment

Question #1—Does the state have a Family Based Treatment Program?

Family based treatment allows mothers and children to stay together in a healthy and healing therapeutic community. Documented outcomes include improved family stability, developmental progress among the

children, and lowered maternal recidivism rates.[91] Mothers and children are given a safe environment in which to address and heal addiction issues, such as domestic violence and neglect that have a harmful influence on the mother-child relationship. A state that has a family based treatment program receives five points.

Question #2—Does the state offer alternative sentencing to family based drug treatment which allows mothers and children to be together.

States have the option to craft alternative sentencing programs between the Department of Corrections and family-based treatment programs. Examples of such state directed collaborative efforts between DOCs and family treatment programs have been supported by state and federal funding streams. These alternative sentencing programs allow mothes to remain in a supervised and structured community instead of being incarcerated in a prison. Because mothers who are incarcerated are far more likely to be convicted of non-violent crimes, their sentencing to a community-based facility poses little danger to the public. Women are better able to integrate into the community, learn how to live on their own, and gain skills such as financial management or job training. Children also benefit from having their mothers in a community setting rather than in a prison. They can visit in an environment that is far more conducive to family life. States that allow mothers to participate in family based treatment programs in lieu of going to prison receive five points.

Prison Nursery Programs

Question #1—Does the DOC offer mothers access to a prison nursery program?

While presenting a far less desirable option than alternative sentencing, which allows mothers to avoid incarceration altogether, prison nurseries still present an opportunity for mothers and children to be together, and are therefore at least worth mentioning among state's efforts to meet the needs of parenting women. Prison nurseries allow incarcerated mothers the option to give birth and bond with their children in ways that are not possible solely through visitation. In these

California SHIELDS for Families: Tamar Village Program Comprehensive Family Based Treatment for Mothers at Reentry.[92]

Funded in October 2007, the SHIELDS for Families' Tamar Village Program provides comprehensive family-centered substance abuse treatment services to mothers re-entering the community from the criminal justice system. Tamar Village grants these mothers the opportunity to be reunited with their children post-incarceration, and to care for their children's needs while obtaining important follow-up and social services at an on-site apartment complex. The apartment complex, equipped with office space dedicated for treatment and other services, also acts as transitional housing for the mothers when they have completed treatment.

The Tamar Village program is designed to provide treatment that will achieve safety, permanency and well-being for the children and mothers served as well as enhance service capacity in the community. Based on an existing evidence based model, clients of Tamar Village attend services Monday through Friday from 8:30 am to 5:00pm. These services include educational groups (health and nutrition, HIV/AIDS, life skills, relapse prevention for addiction), parenting and child development classes, and therapeutic groups (trauma, grief and loss, domestic violence, sexual abuse, women's issues and relationships). There is also an on-site child development center for children ages 0-5 and a youth program for children ages 6-18.

Part of what helps make Tamar Village successful is its regional partnership with the Los Angeles County Department of Children and Family Services, the Los Angeles Sheriff's Department, the Los Angeles County Public Defender's Office, the Los Angeles County Alcohol and Drug Program Administration and the Corporation for Supportive Housing. Through these collaborative partnerships, Tamar's Village ensures that mothers successfully return to their communities post- incarceration, and reunite with their children in the context of a healthy and stable family-centered treatment environment. As a result, mothers are less likely to return to prison or lose their children to the foster care system.

programs, mothers are given the opportunity to nurse their children, and enjoy the beginning of their babies' lives. Mothers also take classes and attend programs that improve their childrearing skills in anticipation of their eventual release from prison. Studies have shown that a mother's participation in a prison nursery program greatly improves her chances of rehabilitation once she is released from prison.[93]

At the same time, prison nursery programs improve children's outcomes. Babies born into prison nursery programs are permitted the time and space to form close bonds with their mothers, so they do not suffer from attachment disorders or other developmental difficulties caused by early separation from a caregiver. These programs help children fulfill important developmental and emotional milestones.[94] A state with a prison nursery program will receive one point.

Question #2—Is the prison nursery program community-based?

A community-based nursery program allows mothers to have the benefits of bonding with their children while not having this occur behind prison walls. These programs are similar to half-way houses, but they specifically serve women and their newborns, and women may still be returned to prison to finish their sentences once they leave the program. Although these women are still under correctional supervision, a community-based program is far better situated to serve the unique physical and emotional needs of a mother and her child, rather than a program that is located within a prison.[95] If a state has a prison nursery program which is community based, it receives one point.

Question #3—Must the child leave the prison nursery program after a certain amount of time or once they reach a certain age?

The longer the length of time a mother and child can spend together, the more significant the bond and the better the outcome for the relationship.[96] In longer prison nursery programs, a mother has the time to experience more developmental stages and nurture her child's maturation. If a state's nursery program allows a child and mother to stay together for more than two years, the state receives three points. If a child can stay for one to twenty-four months, the state receives two points. If a state allows a child to stay for up to thirty days, it receives one point.

Question #4—Does the prison nursery program provide therapeutic services for mother? For child?

Many mothers in prison have histories of abuse and trauma, and are at risk of continuing the cycles of abuse and trauma with their children.[97] An effective prison nursery program facilitates the health and healing of both the mother and child. Intervention services offered might range from treating substance abuse, mental health disorders, or domestic violence. Therapeutic services for the child can include an assessment for developmental delays, therapeutic play, and intensive counseling. These therapeutic services are provided with the underlining goal of healing and improving the relationship between a mother and her child. A state receives one point if its prison nursery program provides therapeutic services for the mother or the child. A state receives two points for providing services to both mother and child.

Question #5– Does the program place any focus on improving the mother-child relationship?

An effective prison nursery program should seek to improve the relationship between mothers and their children, hence improving outcomes for family well being and stability.[98] A prison nursery program should do more than let a mother and her child reside together; it should place a focus on developing the relationship between a mother and her child. A state receives a point if its prison nursery program focuses on improving the relationship between mother and child.

Bedford Hills, New York

The Bedford Hills Correctional Facility for women includes the longest standing continuous prison nursery in the country. This nursery has served as a model for many other prison nursery programs. In 1930, Governor Franklin D. Roosevelt signed a bill into law that allowed women in New York Prisons and reformatories to keep their babies with them for 12-18 months following birth. The Bedford Hills nursery program has operated within the medium and maximum security prison since that time, and now has the capacity to support 29 mothers and their babies.[99]

There is little reason to confine the non-violent women who qualify for participation in the program, but this program nonetheless provides an opportunity for bonding between mothers and their children during an important time in babies' development. After their first year in the nursery, babies are placed with relatives or foster parents. Bedford Hills provides women with a continuum of physical, mental, and emotional support through its prenatal care, parenting center, infant day care center, child advocacy office,[100] and access to LEAP, a GED-preparation program designed specifically for mothers and pregnant women.[101] The prison nursery program is also associated with the Bedford Hills Children's Center, which supports distance parenting through various programs, including a developmentally appropriate visiting area.[102]

STATE-BY-STATE REPORT CARDS

Overall Composite Grades

State	Pre-Natal Care	Shackling Policies	Alternatives to Incarceration: Family-Based Treatment	Composite Grade
Alabama	F	D	A	C-
Alaska	D	D	C	D+
Arizona	F	D	A	C-
Arkansas	F	D	A	C-
California	C	B	A	B
Colorado	D	A-	A	B-
Connecticut	D	D	C	D+
Delaware	C	F	F	D-
District of Columbia	D	C	F	D
Florida	C	F	A	C
Georgia	F	F	A	D+
Hawaii	F	D	A	C-
Idaho	D	D	F	D-
Illinois	D	B	A	B-
Indiana	D	D	F	D-
Iowa	F	D	A	C-
Kansas	D	D	F	D-
Kentucky	F	D	A	C-
Louisiana	F	F	A	D+
Maine	F	D	F	F+
Maryland	F	D	A	C-
Massachusetts	C	F	A	C
Michigan	F	D	A	C-
Minnesota	F	C	A	C
Mississippi	F	D	F	F+
Missouri	F	D	A	C-
Montana	F	F	A	D+
Nebraska	D	D	A	C
Nevada	F	D	F	F+
New Hampshire	C	D	F	D
New Jersey	D	D	F	D-
New Mexico	C	A-	A	B+
New York	C	A-	A	B+
North Carolina	B	F	F	D
North Dakota	F	D	A	C-
Ohio	D	D	A	C
Oklahoma	B	C	A	B
Oregon	C	D	A	C+
Pennsylvania	B	A-	A	A-
Rhode Island	F	D	A	C-
South Carolina	F	D	F	F+
South Dakota	F	C	F	D-
Tennessee	F	D	A	C-
Texas	C	A-	A	B+
Utah	F	D	A	C-
Vermont	F	A-	F	D+
Virginia	F	D	F	F+
Washington	C	A-	F	C-
West Virginia	F	B	A	C+
Wisconsin	F	C	A	C
Wyoming	F	D	F	F+


Photo credit

Prenatal Care

State	Requires medical examinations as a component of prenatal care	Screening of and treatment for high risk pregnancies	Prenatal nutrition counseling or the provision of appropriate nutrition	Offers HIV Testing	Preexisting arrangement for deliveries	Advice on activity levels and safety	Report of all Pregnancies and their outcomes	Raw Score	Grade
	Yes=5; No =0	Yes=3; No=0	Required=3; Mentioned=1; No=0	Yes=3; No=0	Yes=1; No=0	Yes=1; No=0	Yes=1; No=0		
Alabama	-	-	-	-	-	-	-	-	F
Alaska	0	3	0	0	0	0	0	3	D
Arizona	-	-	-	-	-	-	-	-	F
Arkansas	-	-	-	-	-	-	-	-	F
California	5	0	3	3	0	0	0	11	C
Colorado	0	3	0	0	0	0	0	3	D
Connecticut	0	0	3	0	1	0	0	4	D
Delaware	0	3	1	0	1	1	1	7	C
District of Columbia	0	3	0	0	0	0	0	3	D
Florida	0	3	3	0	0	0	0	6	C
Georgia	-	-	-	-	-	-	-	-	F
Hawaii	-	-	-	-	-	-	-	-	F
Idaho	0	3	1	0	0	0	0	4	D
Illinois	-	-	-	-	-	-	-	-	D
Indiana	0	0	0	0	1	0	0	1	D
Iowa	-	-	-	-	-	-	-	-	F
Kansas	0	3	1	0	0	0	0	4	D
Kentucky	-	-	-	-	-	-	-	-	F
Louisiana	-	-	-	-	-	-	-	-	F
Maine	-	-	-	-	-	-	-	-	F
Maryland	-	-	-	-	-	-	-	-	F
Massachusetts	5	3	1	0	0	1	0	10	C
Michigan	-	-	-	-	-	-	-	-	F
Minnesota	-	-	-	-	-	-	-	-	F
Mississippi	-	-	-	-	-	-	-	-	F
Missouri	-	-	-	-	-	-	-	-	F
Montana	-	-	-	-	-	-	-	-	F
Nebraska	0	3	1	0	0	0	0	4	D
Nevada	-	-	-	-	-	-	-	-	F
New Hampshire	5	3	3	0	0	0	0	11	C
New Jersey	0	0	3	0	1	1	0	5	D
New Mexico	0	3	3	0	0	0	0	6	C
New York	5	0	1	0	0	1	0	7	C
North Carolina	5	3	3	0	1	0	0	12	B
North Dakota	-	-	-	-	-	-	-	-	F
Ohio	0	3	1	0	0	0	0	4	D
Oklahoma	5	3	3	0	1	1	0	13	B
Oregon	0	3	1	0	0	1	1	6	C
Pennsylvania	5	3	3	3	1	0	0	15	B
Rhode Island	-	-	-	-	-	-	-	-	F
South Carolina	-	-	-	-	-	-	-	-	F
South Dakota	-	-	-	-	-	-	-	-	F
Tennessee	-	-	-	-	-	-	-	-	F
Texas	5	0	1	3	0	0	0	9	C
Utah	-	-	-	-	-	-	-	-	F
Vermont	-	-	-	-	-	-	-	-	F
Virginia	-	-	-	-	-	-	-	-	F
Washington	0	3	3	0	0	0	0	6	C
West Virginia	-	-	-	-	-	-	-	-	F
Wisconsin	-	-	-	-	-	-	-	-	F
Wyoming	-	-	-	-	-	-	-	-	F

Grading Key for Prenatal Care — **Total possible points: 17**

A=16-17

B=12-15

C=6-11

D=1-5

F=0 or – (could not find any information on policies)

Shackling Policies

State	State has a statute prohibiting the use of restraints	DOC has a policy limiting the use of restraints	DOC requires training for individuals handling/ transporting incarcerated persons needing medical care or those dealing with pregnant women specifically	DOC requires each incident of use of restraints to be reported and reviewed by an independent body	Person who determines whether a woman qualifies as a security risk	Medical staff input considered when applying restraints	DOC policy includes consequences for individuals and/or institutions when shackling was unjustified	Raw Score	Grade
	Transportation, labor, delivery, recovery=25; Transportation, labor, delivery ONLY=20	No restraints any time=10; Handcuffs during transportation or postpartum=6; Handcuffs during transportation and postpartum=4; No limits when restraints are used, or leg-irons and waist chains are allowed, or no policy=0	Yes=1; No=0	Yes=1; No=0	Warden/Director=2; Captain/Shift Supervisor/Matrix=1; Any Officer=0	Yes=2; No=0	Yes=1; No=0		
Alabama	0	0	0	0	1	0	0	1	D
Alaska	0	4	0	0	1	0	0	5	D
Arizona	0	0	0	0	2	2	1	5	D
Arkansas	0	0	0	0	1	0	-	1	D
California	20	*	*	*	*	*	*	20	B
Colorado	25	*	*	*	*	*	*	25	A-
Connecticut	0	4	1	1	1	0	1	8	D
Delaware	0	-	-	-	-	-	-	-	F
District of Columbia	0	10	1	0	1	0	0	12	C
Florida	0	0	0	0	0	0	0	0	F
Georgia	0	-	-	-	-	-	-	-	F
Hawaii	0	0	1	0	0	0	0	1	D
Idaho	0	0	1	0	1	0	0	2	D
Illinois	20	*	*	*	*	*	*	20	B
Indiana	0	0	0	0	0	0	1	1	D
Iowa	0	-	-	1	2	0	-	4	D
Kansas	0	0	1	1	1	0	1	4	D
Kentucky	0	0	-	1	1	2	-	4	D
Louisiana	0	-	-	-	-	-	-	-	F
Maine	0	6	0	0	1	0	0	7	D
Maryland	0	0	1	0	1	0	0	2	D
Massachusetts	0	0	0	0	0	0	0	0	F
Michigan	0	0	1	0	1	0	1	3	D
Minnesota	0	10	0	0	1	0	0	11	C
Mississippi	0	0	1	0	1	0	0	2	D
Missouri	0	4	-	0	1	0	0	5	D
Montana	0	-	-	-	-	-	-	-	F
Nebraska	0	0	0	0	1	0	0	1	D
Nevada	0	0	1	1	2*	2*	0	6	D
New Hampshire	0	0	0	0	1	0	0	1	D
New Jersey	0	0	1	0	0	2	0	3	D
New Mexico	25	*	*	*	*	*	*	25	A-
New York	25	*	*	*	*	*	*	25	A-
North Carolina	0	-	-	-	-	-	-	-	F
North Dakota	0	0	0	0	1	0	1	2	D
Ohio	0	4	1	0	0	2*	-	9	D
Oklahoma	0	6	0	0	1	2	1	10	C
Oregon	0	0	-	0	1	2	1	4	D
Pennsylvania	25	*	*	*	*	*	*	25	A-
Rhode Island	0	6	1	0	1	0	0	8	D
South Carolina	0	0	1	0	2	2	1	6	D
South Dakota	0	6	1	0	2	0	1	10	C
Tennessee	0	0	1	1	2	0	0	4	D
Texas	25	*	*	*	*	*	*	25	A-
Utah	0	4	1	0	2	2	0	9	D
Vermont	25	*	*	*	*	*	*	25	A-
Virginia	0	0	0	1	1	2	0	4	D
Washington	25	*	*	*	*	*	*	25	A-
West Virginia	20	*	*	*	*	*	*	20	B
Wisconsin	0	10	-	-	1	0	-	11	C
Wyoming	0	6	1	0	1	0	0	8	D

See over for grading key and explanatory notes

Grading Key for Shackling Policies Total possible points: ??

A=30
A-=25)
B=20
C=10-17
D=1-9
F= 0 or – (could not find any information on policies)

Shackling Outliers and * Explanations

Nevada

Nevada does not have a written policy on the use of restraints on pregnant women and their grade is reflective of that. However, it should be noted that reporting is done by the minute in Nevada prisons, there is gender-specific training for transportation, and pregnant women are not housed in the general population. Once it is determined that a woman is pregnant, she is then housed in the infirmary under the supervision of doctors and nurses. It is this aspect that should be modeled in other states. Nonetheless, it is highly suggested that Nevada adopt an official policy to ensure that the use of restraints on pregnant women.

Ohio

All women are placed in leg and belly chains during transport, however, in the facility handcuffs are usually used. While physically immobilizing restraints are used in severe situations, pregnant women are never restrained to beds by their arms, legs and chest. Pregnant women are restrained with handcuffs secured in front of their bodies. In the hospital, leg irons are used. In delivery all restraints are removed. When delivery is complete the restraints are reapplied. Women are never restrained when carrying the infant. Physically immobilizing restraints are only used at the request of the physician.

Utah

Whenever a woman is determined to be a security risk, the determination is always made by medical personnel and not an officer.

States with Statutes Breakdown of Categories (A/A- Determination)

State	Training	Reporting	Security Risk	Medical Input	Consequences
California	Yes	No (absent an event)	Yes	Yes	Yes
Colorado	-	-	Yes	Yes	-
Illinois	Yes	Yes	Yes	No	Yes
New Mexico	Yes	Yes	No	No	Yes
New York	-	Yes	-	-	-
Pennsylvania	No	Yes	Yes	Yes	Yes
Texas	No	No	Yes	No	No
Vermont	No	No	Yes	Yes	No
Washington	-	-	-	-	-
West Virginia	-	-	Yes	Yes	-

Alternatives to Incarceration: Family-Based Treatment

State	State has a family based treatment center	DOC sentences mothers to family-based treatement centers as an alternative to prison	Raw Score	Grade
	Yes=5; No =0	Yes=5; No=0		
Alabama	5	5	10	A
Alaska	5	-	5	C
Arizona	5	5	10	A
Arkansas	5	5	10	A
California	5	5	10	A
Colorado	5	5	10	A
Connecticut	5	0	5	C
Delaware	0	0	0	F
District of Columbia	0	0	0	F
Florida	5	5	10	A
Georgia	5	5	10	A
Hawaii	5	5	10	A
Idaho	0	0	0	F
Illinois	5	5	10	A
Indiana	0	0	0	F
Iowa	5	5	10	A
Kansas	0	0	0	F
Kentucky	5	5	10	A
Louisiana	5	5	10	A
Maine	0	0	0	F
Maryland	5	5	10	A
Massachusetts	5	5	10	A
Michigan	5	5	10	A
Minnesota	5	5	10	A
Mississippi	0	0	0	F
Missouri	5	5	10	A
Montana	5	5	10	A
Nebraska	5	5	10	A
Nevada	0	0	0	F
New Hampshire	0	0	0	F
New Jersey	0	0	0	F
New Mexico	5	5	10	A
New York	5	5	10	A
North Carolina	0	0	0	F
North Dakota	5	5	10	A
Ohio	5	5	10	A
Oklahoma	5	5	10	A
Oregon	5	5	10	A
Pennsylvania	5	5	10	A
Rhode Island	5	5	10	A
South Carolina	0	0	0	F
South Dakota	0	0	0	F
Tennessee	5	5	10	A
Texas	5	5	10	A
Utah	5	5	10	A
Vermont	0	0	0	F
Virginia	0	0	0	F
Washington	0	0	0	F
West Virginia	5	5	10	A
Wisconsin	5	5	10	A
Wyoming	0	0	0	F

Grading Key for Alternatives to Incarceration: Family Based Treatment Total possible points: **??**

A= 10 (State has family based treatment program and allows mothers to participate)

C= 5 (State has family based treatment program, but does not make it a sentencing option for mothers)

F= 0 (State has no family based treatment program)

Prison Nurseries

State	DOC offers mothers access to a prison nursery program	Program is community-based	Age at which the child must leave the program	Program provides therapeutic services for mother and/or child	Program places focus on improving the mother-child relationship	Raw Score	Grade
	Yes=1; No =0	Yes=1; No=0	2+ years=3; 1-24 months=2; 0-30 days=1	Both=2; Mother or Child=1; Neither=00	Yes=1; No=0		
Alabama	-	-	-	-	-	-	F
Alaska	-	-	-	-	-	-	F
Arizona	-	-	-	-	-	-	F
Arkansas	-	-	-	-	-	-	F
California	1	0	2	0	1	4	C
Colorado	-	-	-	-	-	-	F
Connecticut	0	0	0	0	0	0	F
Delaware	-	-	-	-	-	-	F
District of Columbia	-	-	-	-	-	-	F
Florida	-	-	-	-	-	-	F
Georgia	-	-	-	-	-	-	F
Hawaii	-	-	-	-	-	-	F
Idaho	1	0	1	0	1	3	C
Illinois	1	0	2	2	1	6	B
Indiana	1	0	2	1	1	5	B
Iowa	-	-	-	-	-	-	F
Kansas	-	-	-	-	-	-	F
Kentucky	-	-	-	-	-	-	F
Louisiana	-	-	-	-	-	-	F
Maine	-	-	-	-	-	-	F
Maryland	-	-	-	-	-	-	F
Massachusetts	1	1	2	2	1	7	A
Michigan	-	-	-	-	-	-	F
Minnesota	-	-	-	-	-	-	F
Mississippi	-	-	-	-	-	-	F
Missouri	-	-	-	-	-	-	F
Montana	-	-	-	-	-	-	F
Nebraska	1	0	2	1	1	5	B
Nevada	-	-	-	-	-	-	F
New Hampshire	-	-	-	-	-	-	F
New Jersey	-	-	-	-	-	-	F
New Mexico	-	-	-	-	-	-	F
New York	1	0	2	1	1	5	B
North Carolina	-	-	-	-	-	-	F
North Dakota	-	-	-	-	-	-	F
Ohio	1	0	2	2	1	6	B
Oklahoma	-	-	-	-	-	-	F
Oregon	-	-	-	-	-	-	F
Pennsylvania	-	-	-	-	-	-	F
Rhode Island	-	-	-	-	-	-	F
South Carolina	-	-	-	-	-	-	F
South Dakota	1	0	1	1	1	4	C
Tennessee	1	0	3	1	1	6	B
Texas	1	0	1	0	0	2	D
Utah	-	-	-	-	-	-	F
Vermont	-	-	-	-	-	-	F
Virginia	-	-	-	-	-	-	F
Washington	1	-	3	-	-	4	C
West Virginia	1	-	2	-	-	3	C
Wisconsin	-	-	-	-	-	-	F
Wyoming	-	-	-	-	-	-	F

Grading Key for Prison Nurseries Total possible points: **8**

A=7-8

B=5-6

C=3-4

D=1-2

F-0 or – (could not find any information on policies)

Oregon's Children of Incarcerated Prisoner's Project: Parenting Inside Out

The Coffee Creek Correctional Facility Parenting Inside Out (PIO) program is a parenting skills curriculum designed to address the challenges that inmates experience while parenting in prison and in planning to transition back into the family upon release.[103] The curriculum, designed by a team from the Oregon Department of Corrections and the Oregon Social Learning Center (OSLC), is an evidence-based, cognitive-behavioral training program designed to help parents promise healthy child adjustment, prevent child problem behavior, and interrupt the cycle of inter-generational criminality.[104] The curriculum offers interactive skill-building on child and adult development, parenting skills, and effective communication through letters, calls, and visits.[105]

Parents accepted into the twelve week course receive regular instruction and attend several visits with their children under the supervision of a family therapist, during which they cultivate specific skills such as positive reinforcement and nonviolent discipline. Preliminary outcomes from a five-year longitudinal study of PIO found that the program had a significant positive impact on factors related to parental stress and depression, level of interaction with children, ease of inmate-caregiver relationship and use of non-violent discipline, along with a positive impact on re-arrest and employment rates for parents at six months post release.[106]

FEDERAL POLICIES AND RECOMMENDATIONS FOR IMPROVEMENT

While the majority of women who are imprisoned are in state facilities, there are also a significant number of women in federal custody. This includes both federal prisons and Immigration and Customs Enforcement (ICE) detention for those who have been charged with violating immigration laws.

Largely due to mandatory sentencing for those convicted of drug offenses,[107] the number of women incarcerated in the Federal Bureau of Prisons (BOP) system increased from 1,400 to over 9,000 between 1980 and 1998.[108] There were 11,602 women in Federal BOP custody as of March 2008, according to the most recent data available.[109] Approximately 56% of these women have children.[110] Because there are only 28 Federal facilities for women, most women are too far from their families to receive regular visits.[111]

The number of people being held in detention for violation of immigration laws has also increased dramatically, primarily due to the Homeland Security Act of 2002.[112] Passed in response to the terrorist attacks of September 11, 2001, the law abolished the Immigration and Naturalization Service, and created the Department of Homeland Security. The Act also strengthened federal authority to detain and deport those found to be in the country illegally, and created ICE to carry out this function. The number of individuals detained rose almost 50% between 2005 and 2008.[113] As of September 1, 2009, women comprised about 9% of the 31,075 individuals in detention.[114] As one report noted, the current standards governing ICE facilities are not actual statutes or regulations, making it difficult for those working on behalf of detainees to demand accountability for upholding the standards.[115] Advocates are urging the Department of Homeland Security to provide further protections for detainees in its planned overhaul of the detention system.[116]

It appears that the federal government has made minimal efforts to meet the needs of pregnant and parenting women who are incarcerated or detained in federally-operated facilities. Far more remains to be done to protect the rights and ensure the health and well being of these vulnerable populations.

Furthermore, the federal government plays an important role in making funds available to states. States can apply for federal funding to adopt programs that they may not otherwise initiate on their own. The federal

government can also exercise its authority over states by withholding funding when the states do not meet certain federal requirements regarding prison conditions or programs.

This section summarizes some of the federal laws, regulations and policies that play an important role in protecting the health and lives of pregnant and parenting women in custody in both federal and ICE facilities, and provides an assessment of how the Federal government is currently meeting the needs of these vulnerable populations. This section also examines some policy efforts the Federal government has made to improve conditions in state facilities as well. Finally, the Report provides some recommendations for improvements in each of these areas.

PRENATAL CARE

Federal Bureau of Prisons

Federal Regulations require that a pregnant women be provided with "medical, case management, and counseling services" and that the facility make arrangements for her to give birth in a hospital.[117] Regulations also require that pregnant women be given access to resources to facilitate the placement of their newborns "in appropriate homes."[118] While on the actually delivery of health care to pregnant women who are imprisoned is sparse, a report by the National Association of Women Judges reveals that health care for women in federal prisons, including pregnant women, is "unacceptable."[119] The report specifically cites problems with access to prenatal care.

Immigration and Customs Enforcement Detention

The ICE policy regarding pregnancy states "female detainees shall have access to pregnancy testing and pregnancy management services that include routine prenatal care, addiction management, comprehensive counseling and assistance, nutritional, and postpartum follow-up."

It appears that every woman is given a pregnancy test when she enters detention, but while some detainees report prompt pregnancy care, others face bureaucratic hurdles to receiving the most basic services and substantial delays in access to prenatal care.[120] For example, a detainee reported difficulty in getting access to prenatal vitamins, or proper monitoring of an ovarian cyst that could have posed serious pregnancy complications.[121] A detainee who was seven months pregnant reported that she could not feed her children and eat her own meals within the twenty minutes allotted, and she was not allowed to take food with her.[122]

According to a recent report by Human Rights Watch (hereinafter HRW),[123] ICE has taken significant steps to improve policies regarding pregnancy-related care, but problems remain with consistent implementation of the policies. Serious lapses in policy also remain. Because ICE contracts with private companies or local jails, often detainees are not afforded the benefits of good ICE policies.[124]

Improving State Policies

The federal government does not provide funds to the states to improve health care for pregnant and parenting women in state custody, nor is it using its funding powers to encourage states to enhance access to high quality health services for women who are pregnant.

One way to enhance access to health care for pregnant women in custody would be for Congress to repeal the "inmate exception" to the Social Security Act.[125] This section of the Social Security Act, 42 U.S.C. §1396d(a), forbids states from receiving matching funds for services provided to incarcerated persons who are otherwise-eligible recipients of Medicaid. Allowing states to receive federal matching funds for services provided to

incarcerated pregnant women would provide an incentive for states to provide prenatal care, and would improve pregnancy outcomes among this vulnerable population.

SHACKLING

Federal Bureau of Prisons

In October 2008, the Federal Bureau of Prisons revised its policy regarding the shackling of pregnant women in their custody.[126] The policy states in relevant part:

> Restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, is delivering her baby, or is in immediate post-delivery recuperation.
> . . .
> If a pregnant prisoner is restrained, the restraints used must be the least restrictive necessary to ensure safety and security. Any restraints used must not physically constrict the direct area of the pregnancy.

In addition to this policy, Section 232 of the Second Chance Act also requires the attorney general to submit a report to Congress on agencies within the Department of Justice regarding the use of physical restraints on pregnant women.[127]

The Bureau of Prisons is an agency within the Department of Justice, and would thus be required to report data regarding the use of restraints to the Attorney General. Data collection will be an important component of enforcement of the BOP's policy on the use of restraints on pregnant women.

Immigration and Customs Enforcement Detention

ICE allows restraints to be used on pregnant detainees, but requires that detention officers consult with medical staff "before deciding the situation is grave enough to warrant the use of physical force."[128] Despite a policy that should protect pregnant detainees, advocates have received reports indicating that pregnant women are shacked in violation of these guidelines and without adequate justification. There are reports of a detainee who was six months pregnant being shackled while on her way to and from prenatal visits, despite the fact that she posed no risk of danger or escape.[129] Shackles are also routinely used on pregnant women during transport.[130]

The U.S. Department of Homeland Security under the previous administration was not responsive to advocates' request that ICE clarify existing procedures and develop and implement consistent guidelines on the use of restraints. We urge the current administration to provide a clarification of this policy, although the current set of recommendations does not address the use of force and restraints.[131]

The Second Chance Act requires ICE to report on its use of restraints to the Department of Justice, which will hopefully spur the agency to clarify its policies.[132]

Improving State Policies

At this time, the federal government is not using its funding powers to encourage states to restrict the use of shacking of imprisoned women who are in labor or delivery, or requiring states to report their use of restraints.

BOP could recommend that its policy be adopted by all state bureaus of corrections. Although this recommendation would not have the force of law, it would encourage states to treat pregnant women who are incarcerated humanely, and assuage concerns that limiting the use of restraints poses security risks.

Furthermore, DOJ could prosecute the improper restraint of pregnant women as a violation of the Civil Rights of Institutionalized Persons Act (CRIPA). CRIPA allows the Attorney General to bring civil suits challenging state prison conditions that violate the constitutional rights of people who are incarcerated.[133] The Department of Justice could also issue a statement reminding states that shackling during labor and delivery is a violation of the Eighth Amendment right not to be subjected to cruel and inhumane punishment, indicating both its jurisdiction and willingness to prosecute states for offenses.[134] A federal court has also declared that prison officials may be found to have violated the Eighth Amendment when, without a sufficient safety justification, they act with "deliberate indifference to the inmate's health and safety," or take actions that cause "unnecessary suffering" lending further support to DOJ action on the issue.[135]

ALTERNATIVES TO INCARCERATION

Federal Bureau of Prisons

The Federal criminal justice system makes alternative sentencing available based on they type of crime and characteristics of the person being sentenced. Federal alternative sentencing consists of three options: a combination of prison and community confinement (a treatment center of halfway house or other supervised residential facility), community confinement with probation, or probation only.[136] Of the 4328 women eligible for alternative sentencing in 2007, 87% received a sentence other than prison only.[137] These high rates of alternative sentencing indicate that judges recognize female offenders pose no threat to their communities.

Nonetheless, because people convicted of crimes carrying mandatory minimums, including many drug offenses, are ineligible for alternative sentencing,[138] many non-violent women facing their first conviction are sentenced to prison.[139]

Judges are also permitted to reduce prison sentences based on "extraordinary and compelling reasons" including the need to care for minor children.[140] The sentencing guidelines, however, explicitly state that family ties and responsibilities do not warrant a departure from the sentencing guidelines.[141]

In addition to alternatives to incarceration programs that are generally available, the Community Corrections Branch of the Bureau of Prisons established the pilot program Mother and Infant Nurturing Together (MINT) in 1990.[142] The programs' goals are to promote bonding and provide parenting skills to women who will eventually have custody of their children when their prison terms are over. MINT allows women who are in their last trimester of pregnancy to live in a community-based facility that contracts with the BOP. The usual length of participation is three months after giving birth, though some programs allow mothers more time to bond with their children.[143] Before entering the program, women must arrange for a caretaker for their children. A woman who enters the program close to the end of her sentence may be released to a halfway house instead of returned to the BOP facility.

Most programs require that women have less than five years left on their sentences, though some programs allow women with longer sentences to participate.[144] Women are evaluated for participation based on their health, behavior record and risk to the community in which they are placed. After a successful pilot program in Fort Worth, Texas, the program was expanded.[145] One study of programs in New York City and St. Louis showed that only 10% of those who successfully completed the program returned to prison.[146] While there are now seven MINT sites around the country, with the capacity for only 59 mother/infant pairs,[147] more women within the BOP system should have the opportunity to establish bonds with their newborns. The success of the program was established in the initial pilot program, and provides ample evidence as to why it should be expanded further to accommodate more mothers.

Immigration and Customs Enforcement Detention

While those charged with violating immigration laws are civil, and not criminal, detainees[148] their detention in an ICE facility closely resembles criminal confinement.[149] ICE operates three programs allowing for alternatives to detention, with varying restrictions and supervision depending on flight risk and danger to the community. Conditions of release may include electronic monitoring, telephone check-ins, periodic meetings with ICE officials and employment verification.[150] There is no available information on how often this alternative is currently granted to pregnant or parenting women, or how parental status is evaluated in determining eligibility.

A 2007 report reviewing conditions in family detention centers and ICE policies noted "Although there is precedent in the adult detention system for the use of alternatives to detention and other pre-hearing release systems, ICE has unfortunately made no effort to expand these programs to include families."[151]

The recent review of ICE detention includes a recommendation for developing a assessment of flight risk and danger to the community to better identify candidates for alternatives to detention. While pregnancy or parenting status are not specifically included as factors, they would certainly be relevant in assessing a detainee's suitability for assignment to an alternatives to detention program.[152] A pregnant woman may be deemed to have a reduced "propensity for violence" based on her physical limitations. Likewise, a detainee might be less likely to flee based on strong bonds with minor children.

Human Rights Watch notes that ICE changed its policy to encourage its offices to parole all nursing mothers who were statutorily eligible and did not pose risks to national security.[153] Nonetheless, ICE has not managed to implement this policy consistently, and HRW identified nursing mothers who were in fact detained. Another investigation of ICE practices revealed that the "government routinely fights their efforts to get pregnant detainees released on bond."[154]

Improving State Policies

The Second Chance Act allows states to apply for federal funding for states, tribal or local prosecutors to establish or expand demonstration programs to reduce recidivism and improve reentry into the community for those who are returning from prison. These funds can be used for alternative sentencing programs, which allow mothers to remain in the community and be given an opportunity to develop a relationship with their children.

While no state, tribal or local entity is required to apply for the funds or enact a program, given states' tight budgets, there is clearly an incentive for states to supplement their budgets with any available federal funds. The Bureau of Justice Assistance, the agency that administers the Second Chance Act, could conduct some low-cost outreach by highlighting grantee successes, reminding states of available funding and providing technical assistance with states' applications.

PRISON NURSERIES

Federal Bureau of Prisons

The BOP does not operate prison nurseries. Given that many mothers are not dangerous to their communities and are better able to bond with their children while in community placement, we encourage the BOP to expand the MINT program, rather than establish prison nurseries.

Immigration and Customs Enforcement Detention

Parents and children who are detained are kept together,[155] a major shift in policy resulting from Congressional action in 2005.[156] While immigration detention is not supposed to be imprisonment, conditions of confinement have been described as "prison like" even in facilities specifically intended to serve families. In August 2007, the ACLU settled a lawsuit against the T. Don Hutto Family Detention Center resulting in improved privacy, increased freedom of movement, better health care and food, and more toys and books.[157] The ACLU continued to publicly advocate with DHS and Congress for Hutto's closure. In August 2009, just weeks before the expiration of the settlement, DHS announced that it would close the family facility. No family remained at Hutto after September 2009.

The House Committee on Homeland Security noted that the "Department of Homeland Security does not routinely make Alternatives to Detention available to families it takes into custody."[158] While commending ICE for implementing standards for family detention, the Committee expressed concern that those standards were modeled on prison standards.[159] The Obama Administration has recently announced plans to overhaul the detention system, including how the system treats the minor children of detainees.

Indiana Women's Prison: Family Preservation Program

This award-winning program[160] began in 1996 as a collaboration between the Indiana Women's Prison, the Indiana Department of Health's Maternal Child Health Services and the Division of Family and Social Services. The Program provides extensive support for mothers to maintain their relationships with their children despite the barriers imposed by incarceration. Recognizing that almost all incarcerated women will one day be reunited with their children, families receive the tools they need for a successful post-incarceration relationship.[161] The program added a nursery in 2008.

The Family Preservation Program includes individual and family counseling to begin healing trauma caused by histories of addiction, poverty, and mental, physical and sexual abuse. Women who typically came to prison from underserved communities—lacking access to adequate housing, education or health care—are provided with the information they need to access such services as they prepare to leave prison and reunite with their families.

The Program is funded through both public and private donations, including substantial funding from the Maternal and Child Health Bureau of the Health Resources and Services Administration of HHS.[162] The substantial investments made in this type of "wrap-around" care are paying off. The prison had a recidivism rate of just 8% after the program had been in effect for three years,[163] as compared to a rate of 39% among a nation-wide sampling.[164]

Improving State Policies

Given that many mothers are not dangerous to their communities and are better able to bond with their children while in community placement, the federal government should not use its funding powers to encourage states to expand prison nursery programs. The federal government should continue to provide funding to states to expand Community-Based Sentencing, including increased funding under the Second Chance Act.

METHODOLOGY

The primary goal of this State by State Report Card is to shed light on the current conditions faced by pregnant women in prisons across the country. In order to better assess such conditions, the report card delves into state policies relating to: Prenatal Care, Shackling, Alternatives to Incarceration and Prison Nurseries.

The Prenatal Care section reviews policies regarding health care for pregnant inmates. This information is derived from a report by the ACLU, which compares state policies to nationally-recognized standards on health care for imprisoned pregnant women.[165] The Shackling, Alternatives to Incarceration, and Prison Nursery portions compile information gathered from each state's Department of Corrections' ("DOC") response to a series of questions developed by the Rebecca Project.

In order to obtain questionnaire responses, each state's DOC was first contacted via telephone starting on June 8, 2009 by staff at the Rebecca Project. Initial contact was made by calling the provided number to the state DOC as listed on the state's website. In speaking to the operator or secretary who answered Rebecca Project staff's calls, staff was then either transferred or given the telephone number to someone who could answer questions about "policy in prisons for female inmates." Upon transfer, or when making the next call to the person with direct knowledge on the issues to be covered by the questionnaire, staff introduced themselves and their reason for calling by providing their name, affiliation with the Rebecca Project for Human Rights, and stating "I was wondering if you could answer a few questions about policies in your prisons for female inmates?"

When asked about the purpose for our research, every state was told that the Rebecca Project was compiling research on state policies in order to create a State Report Card to compare the policies of each state. The questionnaire was then delivered either over the phone or submitted for completion via email throughout the months of June, July and August.

When approximately fifty percent of states had completed the questionnaire, the initial grading scale was created.[166] Points for each indicator within the four areas were given based on the relative importance of the

particular policy to improving health outcomes and the overall well-being of pregnant and parenting women and their children. Each state is assessed a final letter grade based on its total points as compared to the highest possible score for that indicator and its performance relative to the other states' performance in that category.

A number of states did not respond to multiple phone calls while others did not return the questionnaire altogether, even though all had been contacted by phone before the end of June. Unfortunately, for unknown reasons, many states did not respond to the multiple phone messages left for multiple different officials within the Departments of Correction. As a result of the lack of responses from a number of states, additional research was conducted in order to gather more comprehensive information on state policies.[167] Specifically, in the Alternatives to Incarceration and Prison Nursery sections, information was gathered from the Women's Prison Association study "Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives."[168]

Girl Scouts Beyond Bars

Girl Scouts Beyond Bars (GSBB) is a national program that offers girls the opportunity to visit and maintain relationships with their incarcerated mothers. GSBB originated in 1992 through a partnership between the Girl Scout Council of Central Maryland and the U.S. Department of Justice's National Institute of Justice, and has since expanded to over 37 GSBB programs across the country.[171] Approximately 75% of incarcerated women are mothers, and two-thirds have children under 18.[172] GSBB works to diminish the negative effects of parental separation by offering women and girls the chance to build, re-establish, and maintain mother-daughter relationships through regular visits and mentoring.

As part of the GSBB program, mother-daughter Girl Scout troop meetings are held at the correctional facility and girl-only troop meetings also take place in the community. GSBB is based on building leadership and parenting skills among incarcerated mothers, who often lead troop meetings and facilitate discussion about topics relevant to the girls' lives. The program is designed to encourage self-esteem and positive decision-making among girls under the age of 18,[173] a demographic that has become the fastest growing segment of the juvenile justice population, despite an overall drop in juvenile crime.[174] GSBB also facilitates the transition of the mother-daughter relationship once mothers are released into the community by continuing to offer programs and maintaining contact with former participants. This program serves approximately 800 girls and 600 mothers annually.[175]

The Alternative to Incarceration data was collected by telephoning family based treatment centers and asking to speak with a worker "familiar with the center's intake procedures." Once this person was identified, Rebecca Project Staff introduced themselves and described the purpose of the report card. The intake personnel were then asked whether "mothers could be sentenced to the treatment center in lieu of being sentenced to prison." Initial contact began on March 22, 2010. By April 15, 2010 responses from all but three states with family based treatment centers were collected.

Ultimately, scores were based on the information either provided to the Rebecca Project through its contacts with the states, or on information that was publicly available. States are therefore penalized for either failing to respond to our calls and surveys or to make their policies readily available. Incarcerated women represent a highly vulnerable population. It is of critical importance that advocates, prisoners' loved ones, lawmakers and other stakeholders have a way to easily obtain information on the policies that govern these women's day-to-day lives.[169] The existence of formal, written, and publicly available policies furthers institutional accountability.[170]

Some states indicated that they could not disclose certain policies because of security concerns. The very fact that so many other states were willing to disclose information, and saw no apparent threat to security, indicates a lack of transparency on the part of these states without an adequate security justification.

We use an asterisk to indicate when a policy falls outside of the range of possibilities presented by our question. This may mean that either: (1) the policy does not explicitly meet our criteria and we are awarding it points because it meets the needs of pregnant or parenting women and their children, or (2) that it technically meets our stated criteria but something about the policy makes it ineffective in meeting its purported goals. We provide more information on these particular states in the section describing how we evaluate state laws and policies in Section [ ].

Zeros were used when research has shown that the state does not in fact have the specified program or policy. Dashes were used when information could not be found through any of the means pursued: direct conversation through phone or email with the state, independent research on state policies or research by any outside source consulted. Dashes were also used when the official we spoke with could not confirm a particular policy. In these cases, the lack of transparency results in a grade of F for the particular issue.

If you are a state department of corrections official, legislator or other person with direct knowledge of the policies examined in this report, and you dispute its findings, please contact us. We welcome your input and would be happy to issue an addendum reflecting your state's more humane policy regarding the treatment of pregnant and parenting women who are incarcerated.

Endnotes

1 Women may also be confined to jails, which are generally for shorter term sentences. Jails are controlled locally, and are therefore beyond the scope of this report.

2 The report card also includes an analysis of prison nurseries, but for reasons set forth below, did not include these programs in the states' composite grades.

3 For more information on data collection and analysis, please see the Methodology Section.

4 The report card also uses the term mother because these are women who have decided to continue their pregnancies to term and plan to give birth. While some may place their children for adoption, they still remain birth mothers to their children.

5 Maeve McMahon, *Is Assisting Female Offenders an Art or Science?,* in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 2-1, 2-4 (Russ Immargieon ed., Civic Research Institute 2006).

6 Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 4 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

7 Bureau of Justice Statistics., U.S.Dep't of Justice, ncj 175688, Women Offenders 1 (Lawrence A. Greenfield & Tracy L. Snell eds.,1999)

8 *Id.*

9 *Id.*

10 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders (Nat'l Inst. of Corrections 2003).

11 Joycelyn M. Pollack, *A National Survey of Parenting Programs in Women's Prisons in the U.S.*, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 19-1, 19-2 (Russ Immargieon ed., Civic Research Institute 2006).

12 Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 9 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

13 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 75-77 (Nat'l Inst. of Corrections 2003).

14 See generally, Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders (Nat'l Inst. of Corrections 2003).

15 William J. Sabol, Ph.D., Heather C. West, Ph.D., and Matthew Cooper, Prisoners in 2008 (Office of Justice Programs, Bureau of Justice Statistics, 2009); King's College London, World Prison Brief (Sept. 2009), *available at* http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/; King's College London, World Prison Brief (Sept. 2009), *available at* http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/.

16 See Nelson v. Correctional Medical Services, 583 F.3d 522 (8th Cir. 2009) (pregnant woman was shackled in the final stages of labor and up until moment of delivery despite prison policy requiring an assessment of her security risk before the use of restraints).

17 See Estelle v. Gamble, 429 U.S. 97 (1976) (holding that "deliberate indifference" to the serious medical needs of the incarcerated constitutes "cruel and unusual punishment" prohibited under the Eighth Amendment of the Constitution).

18 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 75-77 (Nat'l Inst. of Corrections 2003).

19 See, e.g., Flynn v. Doyle, —F.Supp.2d—, 2009 WL 4262746, *20 (E.D. Wis. 2009) (defendants claimed that incarcerated men had more comprehensive mental health services than incarcerated women because of the "historically small number of female prisoners" in the state).

20 National Commission on Correctional Health Care, Position Statement, Women's Health Care in Correctional Settings (adopted Sept. 25, 1994, rev. Oct. 9 2005), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html.

21 Nicholas Freudenberg, Adverse Effects of US Jail and Prison Policies on the Health and Well-Being of Women of Color, 92 Am. J. of Public Health 1895 (Dec. 2002).

22 A review of studies indicated better pregnancy outcomes for incarcerated women, as compared similarly disadvantaged women who are not incarcerated. This overview noted that this may be because "prison provides food and shelter, moderates the use of drugs and alcohol, prevents strenuous activity, protects women against abusive partners and ensures access to antenatal care." These finding do not reflect the quality of care received by women who are incarcerated, rather, the women's dire circumstances of the non-incarcerated control group. The Outcomes of Pregnancy Among Imprisoned Women: A Systematic Review, 112 BJOG: An International Journal of Obstetrics and Gynaecology 1467 (Nov. 2005).

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24 Adam Liptak, *Prisons often shackle pregnant inmates in labor*, N.Y. Times, March 2, 2006, http://www.nytimes.com/2006/03/02/national/02shackles.html

25 Bureau of Justice Statistics., U.S.Dep't of Justice, Medical Problems of Prisoners (Laura M. Maruschak ed., 2008), Table 10, *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/mpp.pdf.

26 In June 2007, the American College of Obstetricians and Gynecologists (ACOG) released a statement calling for an end to the practice of shackling women in labor and delivery due to the potential harm posed to the woman and her unborn child. American College of Obstetricians and Gynecologists—statement, June 12, 2007, *available at* http://www.acog.org/departments/dept_notice.cfm?recno=18&bulletin=4631

27 U.S. Dept. of Justice, Federal Bureau of Prisons, Program Statement 5538.05, Escorted Trips (2008), *available at* www.bop.gov/policy/progstat/5538_005.pdf.

28 An Act Concerning the Safe Treatment of Pregnant Persons in Custody, 2010 Colo. S.B. 193; N.M. Stat. Ann. § 33-1-4.2 (2010); N.Y. Correction Law § 611 (2010); An Act Amending Title 61 (Penal and Correctional Institutions) of the Pennsylvania Consolidated Statutes, 2009 Pa. Laws 45; An Act Relating to the Use of Restraints to Control the Movement of Pregnant Women and Female Children Confined in Certain Correctional Facilities in this State, 2009 Tex. Gen. Laws 1184; An Act Relating to the Use of Restraints on Pregnant Women or Youth, 2009 Wa. H.B. 2747; W.Va. Code § 25-1-16 (2010).

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30 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 56 (Nat'l Inst. of Corrections 2003).

31 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 7 (Nat'l Inst. of Corrections 2003).

32 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 57 (Nat'l Inst. of Corrections 2003).

33 Caliber Assocs., Ctr. for Substance Abuse Treatment, Fact Sheet, RWC/PPW Cross-Site Evaluation (2003).

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35 Anthony C. Thompson, Releasing Prisoners, Redeeming Communities: Reentry, Race, and Politics 64-65 (NYU Press, 2008).

36 Susan Phillips, *Mother-Child Programs: Connecting Child Welfare and Corrections Agencies*, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 22-1, 22-1 (Russ Immargieon ed., Civic Research Institute 2006); Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 8 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

37 Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 27 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

38 *Id.*

39 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 7 (Nat'l Inst. of Corrections 2003).

40 Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 20 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

41 Joycelyn M. Pollack, *A National Survey of Parenting Programs in Women's Prisons in the U.S.*, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 19-1, 19-4 (Russ Immargieon ed., Civic Research Institute 2006).

42 Julie Kowitz Margolies & Tamar Kraft-Stolar, When "Free" Means Losing Your Mother: The Collision of Child Welfare and the Incarceration of Women in New York State 1, 9 (Correctional Ass'n of N.Y. Women in Prison Project 2006).

43 Kelsey Kauffman, *Prison Nurseries: New Beginnings and Second Chances*, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 20-1, 20-6 (Russ Immargieon ed., Civic Research Institute 2006).

44 *Id.* at 20-3—20-4.

45 *Id.* at 20-6.

46 *Id.*

47 Lorie Smith Goshin & Mary Woods Byrne, *Converging Streams of Opportunity for Prison Nursery Programs in the United States*, 48 J. Offender Rehabilitation 271, 275 (2009).

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49 Illinois Department of Corrections, News, Ten-year Anniversary of IDOC's Women and Family Services Division Focuses on Best Practices, Gender Responsive Services and Reentry Management for the Female Offender, May 12, 2009, *available at* http://www.idoc.state.il.us/subsections/news/default.shtml.

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52 Illinois Department of Corrections, News, IDOC Officially Opens Moms and Babies Program at Decatur Correctional Center, May 10, 2007 (citing May 2004 study by the National Resource Center for Foster Care and Permanency Planning at the Hunter College School of Social work), *available at* http://www.idoc.state.il.us/subsections/news/default.shtml.

53 Brenda Shell, ed., Newsletter, Association on Programs for Female Offenders, Moms and Babies, First Anniversary, Jan. 2009, *available at* http://www.apfonews.org/page_three.htm.

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56 Jeff Kelly Lowenstein and Christiana Schmitz, Not a Priority, The Chicago Reporter, Sept. 2, 2008), *available at* http://www.chicagoreporter.com/index.php/c/Cover_Stories/d/Not_A_Priority.

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59 This section of the report card is based on data from the ACLU's Report, *State Standards for Pregnancy-Related Health Care in Prison* (2008), *available at* http://www.aclu.org/reproductiverights/gen/pregnancycareinprison.html. While the ACLU's data is used with the organization's permission and ACLU staff has assisted us in developing grades, the ACLU's Report did not attempt to assign grades. We have also confirmed that the states receiving an F grade for not reporting data have not made data publicly available since the publication of the ACLU's report.

The ACLU report also includes information on state's policies regarding counseling women on their pregnancy options. Because the scope of this report is limited to policies regarding women in prison who choose to continue their pregnancies, we did not include the ACLU's information regarding state policies on their legally protected right to terminate a pregnancy.

60 March of Dimes, Prenatal Care (May 2008), *available at* http://www.marchofdimes.com/pnhec/159_513.asp.

61 March of Dimes, Prenatal Care (May 2008), *available at* http://www.marchofdimes.com/pnhec/159_513.asp.

62 March of Dimes, Nutrition Today Matters Tomorrow (2002), *available at* http://www.marchofdimes.com/professionals/1926.asp.

63 National Commission on Correctional Health Care, Position Statement, Women's Health Care in Correctional Settings (adopted Sept. 25, 1994, rev. Oct. 9 2005), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html.

64 *Id*.

65 *Id*.

66 We were unable to obtain specific state-by-state information on the provision of HIV treatment. Despite the Eighth Amendment's guarantee of medical care for serious medical conditions, see, infra [ ], the prison setting poses serious barriers to all medical care, including the prompt, confidential delivery of the time sensitive antiretrovirals used to control viral loads in those with HIV. Segregating prisoners with HIV was once thought to advance medical care, with institutions giving little thought to the privacy violation, stigma and danger that segregation might pose to those with HIV. Mary Sylla, HIV Treatment in U.S. Jails and Prisons, The Body (Winter 2008).

67 "Data indicate that when appropriate antiretroviral medications are given during pregnancy, labor and delivery and after birth, the risk of transmission can be reduced to less than 2% compared with approximately 25% when no interventions are given." Centers for Disease Control and Prevention, Perinatal HIV Transmission, *available at* http://www.cdc.gov/hiv/topics/perinatal/overview_partner.htm#transmission (2007).

68 HIV testing should not be mandatory because of the serious privacy and informed consent concerns. States are only credited for offering testing. Oklahoma appears to make the test mandatory, and therefore is not awarded credit. Okla. Dept. of Corrections, MSRM-140145-01, Management of Pregnancy (2008), *available at* http://www.doc.state.ok.us/treatment/medical/msrm/140145-01.pdf.

69 Maternity Care Coal., *Riverside MOMobile* (April 2009) (fact sheet, on file with the National Women's Law Center) (hereinafter *Fact Sheet*).

70 This measures those who are re-incarcerated within two years of release, either as a result of a new offense or violation of parole or probation. Because the program is only three years old, this measure includes women who have not yet been released for the full two years. E-mail from Marjie Mogul, Director of Research, Maternity Care Coalition, to Micole Allekotte, Health Fellow, National Women's Law Center (Sept. 30, 2009, 9:05 EST) (on file with the National Women's Law Center) (hereinafter Outcomes Data Email); E-mail from Marjie Mogul, Director of Research, Maternity Care Coalition, to Micole Allekotte, Health Fellow, National Women's Law Center (Oct. 6, 2009, 11:08 EST) (on file with the National Women's Law Center) (hereinafter Outcomes Clarification Email).

71 *Fact Sheet*, *supra* note 14.

72 *Id*.

73 Outcomes Data Email, *supra* note 15.

74 According to the Federal Health Resources and Services Administration, which has provided grants for doulas to serve communities, "a doula provides culturally sensitive pregnancy, breastfeeding and childbirth education and counseling. They also promote links to health care and social services, labor coaching and parenting skills." Health Resources and Services Administration, Press Release, HRSA Awards $6.3 Million to Launch New Parents Initiative, 'Doulas' Training (Oct. 3 2008).

75 Outcomes Data Email, *supra* note 15.

76 *Fact Sheet*, *supra* note 14; Outcomes Clarification Email, *supra* note 15.

77 Outcomes Data Email, *supra* note 15.

78 Federal Bureau of Prisons Policy 5538.05, Escorted Trips (Oct. 6, 2008), *available at* http://www.bop.gov/DataSource/execute/dsPolicyLoc.

79 It should be noted that just because a state does not have a written policy explicitly restricting the use of restraints does not mean that it does not have such policies regarding other related areas, such as training or transportation, as does Nevada.

80 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders, 11 (Nat'l Inst. of Corrections 2003).

81 Meaning whatever officer has oversight of the entire prison.

82 These states are given two points: Pennsylvania never considers a woman who is being transported to give birth to be a security risk, and therefore no assessment is made. In Utah, pregnant women's levels of security risks are evaluated weekly at the Warden's meeting, attended by the three deputies and medical staff. California has a more comprehensive review process in which a committee made up of the warden and medical personnel assess a woman's security risk status either upon entry into the facility. In Nevada, once it is determined that a woman is pregnant, she is then housed in the infirmary under the supervision of doctors and nurses.

83 Letter from Ralph Hale, M.D., Executive Vice President, American College of Obstetricians and Gynecologists, to Malika Saada Saar, Executive Director, the Rebecca Project for Human Rights (June 12, 2007) (on file with the Rebecca Project for Human Rights) (discussing the health risks faced by both mothers and unborn children when pregnant women are shackled).

84 These states are given two points: Pennsylvania never considers a woman who is being transported to give birth to be a security risk, and therefore no assessment is made of what types of restraints should be used. In Utah, pregnant women's levels of security risks are evaluated weekly at the Warden's meeting, attended by the three deputies and medical staff, so medical staff input is considered. In Ohio, the only time physically immobilizing restraints are used is at the request of a physician. In Nevada, once it is determined that a woman is pregnant, she is then housed in the infirmary under the supervision of doctors and nurses.

85 Swift, Aisling. "Inmate who lost baby in Collier jail: 'I want them to make changes.'" *Naples News*. 14 Feb. 2009. Web. 6 Oct. 2009.

86 Swift, Aisling. "Inmate who lost baby in Collier jail: 'I want them to make changes.'" *Naples News*. 14 Feb. 2009. Web. 6 Oct. 2009. Swift, Aisling. "ACLU Probes Collier Jail's Policies on Pregnant Inmates." *Naples News*. 1 Mar. 2009. Web. 6 Oct. 2009.

87 Swift, Aisling. "ACLU Probes Collier Jail's Policies on Pregnant Inmates." *Naples News*. 1 Mar. 2009. Web. 6 Oct. 2009.

88 Swift, Aisling. "Inmate who lost baby in Collier jail: 'I want them to make changes.'" *Naples News*. 14 Feb. 2009. Web. 6 Oct. 2009.

89 See Nelson v. Correctional Medical Services, 583 F.3d 522 (8th Cir. 2009).

90 Swift, Aisling. "Inmate who lost baby in Collier jail: 'I want them to make changes.'" *Naples News*. 14 Feb. 2009. Web. 6 Oct. 2009.

91 Anthony C. Thompson, Releasing Prisoners, Redeeming Communities: Reentry, Race, and Politics 64-65 (NYU Press, 2008).

92 Kathryn Icenhower, SHIELDS for Families, Inc. Tamar Village Semi-Annual Report (2008).

93 Jenni Vainik, Note, *The Reproductive and Prenatal Rights of Incarcerated Mothers*, 46 Fam. Ct. Rev. 670, 683 (2008).

94 Women's Prison Ass'n, Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives 21 (Women's Prison Association & Home, 2009).

95 Gail T. Smith, Adoption and Safe Families Act of 1997 and Its Impact on Prisoner Mothers and Their Children, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 15-1, 15-6 (Russ Immargieon ed., Civic Research Institute 2006).

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97 Barbara Bloom, Barbara Owen & Stephanie Covington, Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders 5 (Nat'l Inst. of Corrections 2003).

98 Kelsey Kauffman, *Prison Nurseries: New Beginnings and Second Chances*, in Women and Girls in the Criminal Justice System: Policy Issues and Practice Strategies 20-1, 20-6 (Russ Immargieon ed., Civic Research Institute 2006).

99 "Mothers, Infants and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives," Women's Prison Association, Institute on Women and Criminal Justice, May 2009, http://www.wpaonline.org/pdf/Mothers%20Infants%20and%20Imprisonment%202009.pdf (Accessed 10 October 2009).

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104 Children's Justice Alliance, Parenting Inside Out, http://www.parentinginsideout.org/curriculum (Accessed 15 January 2010).

105 Eddy, J. Mark, et al., "Development of a multisystemic parent management training intervention for incarcerated parents, their children and families," *Clinical Psychologist*, Vol. 12, No. 3, Novemeber 2008, pp. 86-98.

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110 Lauren E. Glaze & Laura M. Maruschak, Parents in Prison and Their Minor Children, Bureau of Justice Statistics (Aug. 2008, rev. Jan. 8, 2009), *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/pptmc.pdf.

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112 Homeland Security Act of 2002, Public Law 107-296 (Nov. 25, 2002).

113 *Id.* at 2.

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127 The Second Chance Act of 2007, Public Law 110-199 (Apr. 9, 2008), requires agencies to report on the use of restraints during "pregnancy, labor, delivery of a child, or postdelivery recuperation" and "the reasons for the use of the physical restraints, the length of time that the physical restraints were used, and the security concerns that justified the use of the physical restraints."

128 The Standard specifically states with regard to pregnant detainees:
Medical staff shall determine precautions required to protect the fetus, including:
- Safest method of restraint
- Presence of a medical professional
- Medical necessity of restraining the detainee

ICE/DRO Detention Standard, Use of Force and Restraints, Section 5.F.1 (Dec. 2, 2008) http://www.ice.gov/doclib/PBNDS/pdf/use_of_force_and_restraints.pdf.

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The ACLU report also includes information on state's policies regarding counseling inmates on their pregnancy options. Because the scope of this report is limited to policies regarding inmates who choose to continue their pregnancies, we did not include the ACLU's information regarding state policies on inmates' legally protected right to terminate a pregnancy.

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