MOTHERS BEHIND BARS:

A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children

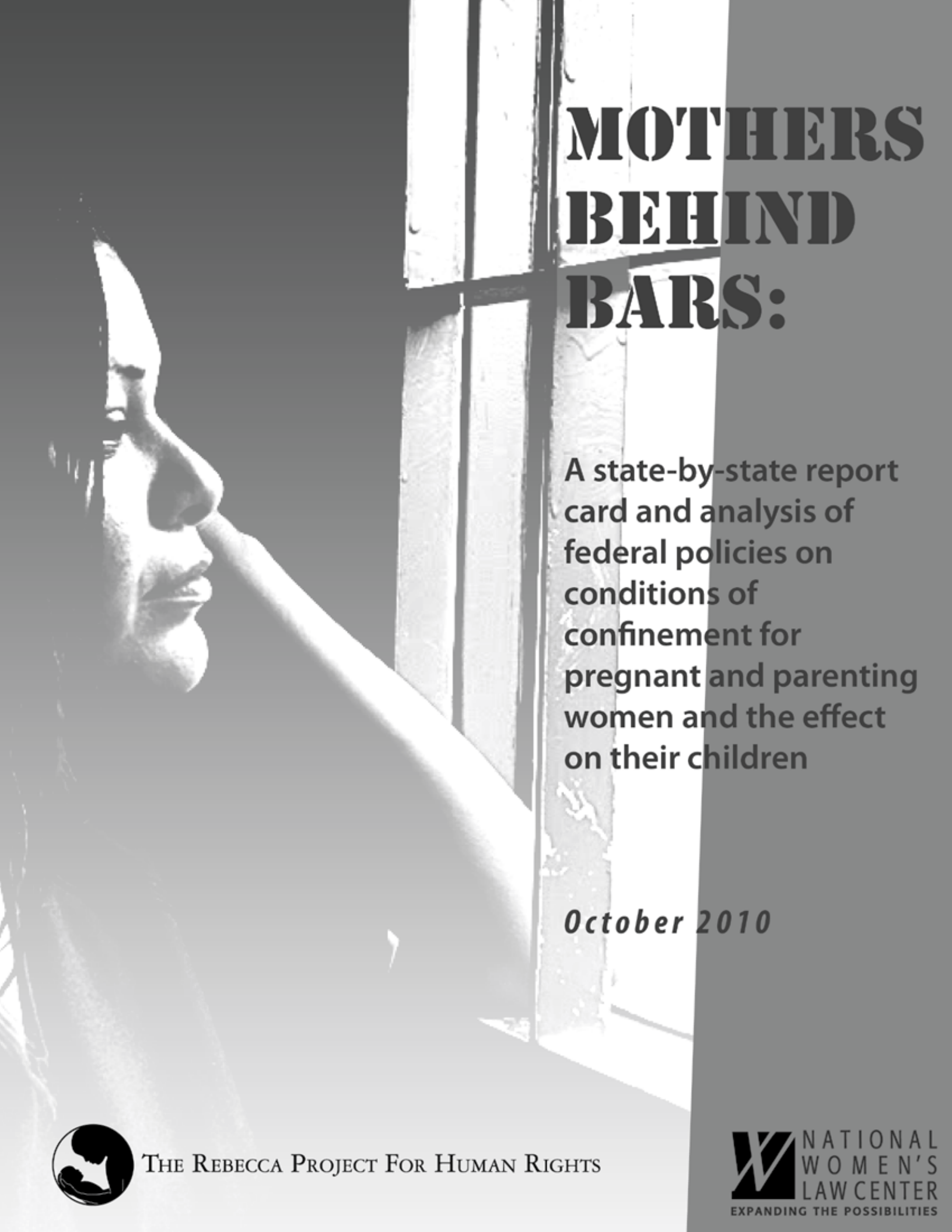
THE REBECCA PROJECT FOR HUMAN RIGHTS

NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

ABOUT THE AUTHORS

The Rebecca Project for Human Rights is a Washington, DC-based nonprofit organization advocating for justice, dignity and policy reform for vulnerable women and girls in the United States and in Africa. We believe that women and girls possess the right to live free of gendered inequity and violence, and that investment in their leadership creates healthy, safe, and strong communities.

The National Women's Law Center is a Washington, DC-based nonprofit organization working to expand opportunities and eliminate barriers for women and their families, with a major emphasis on women's health, education and employment opportunities, and family economic security.



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October 2010

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DISCLAIMER

While text, citations, and data for the indicators are, to the best of the authors' knowledge, current as the Report Card was prepared, there may well be subsequent developments, including recent legislative actions, that could alter the information provided herein. This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own counsel before deciding on a course of action. In addition, this report does not constitute medical advice. Individuals with health problems should consult an appropriate health care provider.

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EXECUTIVE SUMMARY

There are now more women behind bars than at any other point in U.S. 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 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 their families.

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.[2] This effort is intended to help advocates assess their own state's policies affecting these significant phases of pregnancy, labor and delivery, and parenting.[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 recognize 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 regarding their formal laws and policies. 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. Therefore the Report Card does not factor prison nurseries into the states' overall composite grade, although it acknowledges the states which have these programs.

STATE FINDINGS

Overall grades: Averaging the grades for **prenatal care**, **shackling**, and **family-based treatment as an alternative to incarceration**, twenty-one states received either a D or F, both of which are considered failing grades. Twenty-two states received a grade of C, and seven received a B. The highest overall grade of A- was earned by one state—Pennsylvania.

Prenatal care: Thirty-eight states received failing grades (D/F) for their failure to institute adequate policies, or any policies at all, 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, or limit at all, the use of restraints on pregnant women during transportation, labor and delivery and postpartum 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 a pregnant woman is placed in restraints for security reasons, eleven states either allow any officer to make the determination or do not have a policy on who determines whether the woman is 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-one 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.

Family-Based Treatment as an Alternative to Incarceration: Seventeen states received a failing grade (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 the option to be sentenced to these programs in lieu of prison, 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.

- Thirty-eight states do not offer any prison nursery programs.
- Of the thirteen states that do offer such programs, only two allow children to stay past the age of two.
- Three of the thirteen programs offer therapeutic services for both 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. Thus, the federal government can play a crucial, if indirect, role in affecting 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 no grade was assigned to the federal policies. First, the federal government stands alone, in contrast to the states, for the purposes of comparison. Second, the data is not currently available 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 twenty-eight 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 developing 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, but 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] To the extent they are thought of at all, they are caricatured as the ultimate bad mother who has violated the basic maternal commitment to care for her children by engaging in wrongful criminal activities. But, in truth, mothers' pathways to incarceration are complex, and often rooted in issues of sexual and physical violence.

Most incarcerated women, including 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, generally begun during girlhood. In the absence of access to mental health services, many of these vulnerable mothers turned to self-medicating with illegal substances.[6] Rather than being treated for trauma, depression, addiction, and the other indelible injuries of violence, 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 women are non-violent, first-time offenders.[10]

This relatively 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, have wreaked havoc on family stability and children's well-being. Most incarcerated mothers have 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 his or her mother.[12]

Prison rules and regulations, harsh and dehumanizing for all who are confined, 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 meet the needs of and

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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 ignore or marginalize the significance of the growing number of incarcerated women, especially those who are parenting.[14] Similarly, the Federal Bureau of Prisons (BOP) and state departments of corrections (DOC) 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 because the system was developed to serve men.

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 and to identify specific steps that can be taken by 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.

It is also critically important to recognize the overwhelming problem of 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.

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 meet the needs of 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 prenatal 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 adopt improved policies of confinement for incarcerated women and mothers and second, to assist advocates for incarcerated women and mothers in identifying what policies are currently in place to meet the unique needs of pregnant and parenting women. 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. For more information on what you can do to improve conditions for pregnant and parenting women behind bars, please contact us at info@rebeccaproject.org.

INDICATOR DESCRIPTIONS

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 at best for men falls even shorter from meeting the basic needs of women. Care for pregnant women is even more dismal, considering their additional health needs.[19]

Moreover, women in prison are less likely than women who have not been incarcerated to have had access to regular health care before entering prison.[20] They often have undiagnosed or untreated chronic conditions such as depression, diabetes, hypertension and asthma that can increase pregnancy risks and contribute to poor birth outcomes. 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, like other women, need 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 women provided inadequate care during their pregnancies, there is also harm to their children. The children may live with life-long health problems that result from their mothers' failure to receive proper nutrition during pregnancy, or to receive treatment for health conditions that contribute to poor pregnancy outcomes.

Shackling Mothers During Labor and Delivery

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. Restraints make it difficult for doctors to adequately assess the condition of the mother and the fetus, and to provide prompt medical intervention when necessary. Restraints also make the process of labor and delivery more painful. [24] The Federal Bureau of Prisons (BOP) in September 2008 ended shackling pregnant inmates as a matter of routine in all federal correctional facilities.[25] State legislatures and departments of corrections have begun to respond to the consensus against shackling. Most recently, California, Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas, Vermont, Washington and West Virginia have enacted laws prohibiting the practice of shackling pregnant women.[26] 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.[27]

Yet some prisons continue to use restraints on women in labor and delivery as a matter of course, regardless of a woman's history of violence, whether she has ever absconded or attempted to escape, or her state of consciousness.[28] As important as whether shackling is allowed is limitations on the type of restraints used on pregnant women. In October 2007, both the BOP and U.S. Marshals agreed to the cessation of "belly shackles" or shackles that constrict the stomach area of pregnant women, regardless of the trimester of pregnancy, unless they can show a legitimate security justification.[29]

Family-Based Treatment as an Alternative to Incarceration

Against the backdrop of the crack epidemic in the 1980s, growing numbers of mothers were turned away from treatment because traditional treatment programs did not allow children on the premises or include children in the delivery of services. In 1992, Congress responded by providing funding to establish residential treatment programs for pregnant and postpartum women and children. The Substance Abuse and Mental Health Services

Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) awarded $241 million over a five-year period between FY 1993-1997 to create fifty family treatment programs. Unfortunately, Congress did not provide funding to sustain these programs. Since FY 2004, funding has been provided to operate an average of fourteen family treatment programs per year.

Data demonstrate that two-thirds of incarcerated women have at least one minor child.[30] When a father is incarcerated, ninety percent of the time his child will live with the mother. Comparatively, when a mother is incarcerated, only twenty-five percent of the time will her child live with the father.[31] Because maternal incarceration is very destabilizing to a family's health and stability, programs that allow mothers with minor children to be sentenced to community-based facilities are far better suited for this population. Studies have long established that women have a lower risk of violence and community harm, thus women are often the ideal prison population for community-based alternative sentencing programs.

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. Family-based treatment programs as a sentencing alternative permit mothers and children to heal together and demonstrate consistently successful outcomes for children's health and stability, family reunification, reduced rates of recidivism, and sustained parental sobriety.[32] 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.

Unlike prison nursery programs, these programs allow mothers to be not only with newborns, but with their other children as well. Some programs allow children to live with their mothers, while others give mothers the opportunity to interact with their children within the context of the community rather than a lock-down facility. Developing the mother-child relationship has shown considerable rehabilitative effects, including improved outcomes for economic independence and lowered recidivism rates.[33]

In 2003, CSAT evaluated family residential treatment programs, and found that, at six months post-treatment:[34]

- 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.[35]

It is important to note that the 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 crimes related to their untreated addiction. They 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 usually placed either 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 as a result of maternal incarceration are vulnerable to suffering significant attachment disorders.[41] They are more likely to become addicted to drugs or alcohol, 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] Only mothers who are convicted of non-violent crimes and do not have a history of child abuse or neglect are allowed to participate.[44] Research demonstrates that these 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]

CONCLUSION

It is the intent of this Report Card to encourage all concerned stakeholders—including federal and state corrections officials, policy makers, and advocates—to take action on behalf of this often forgotten population. Despite the invisibility of these women, it is in society's interest to support policies that advance the health and well-being of pregnant and parenting women who are incarcerated and their children. Compelling evidence shows that programs specifically tailored to address the needs of these vulnerable families can have a tremendous impact on their lives and health. Programs and policies that recognize the unique needs of pregnant and parenting incarcerated women enable them and their families to break the continued cycle of abuse, addiction and incarceration, and instead become valued contributors to their communities.

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

The Illinois Department of Corrections (DOC) 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]

STATE-BY-STATE REPORT CARDS

OVERALL COMPOSITE GRADES

State	Prenatal Care	Shackling Policies	Family-Based Treatment as an Alternative to Incarceration	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+

Note: The prison nursery score is not included in the composite grade, 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

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PRENATAL CARE

State	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)

For more information on how we evaluated these policies, please see pages 23 to 25.

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 use of restraints was unjustified	Raw Score	Grade
	Transportation, labor, delivery, recovery=25; Transportation, labor, delivery ONLY=20; No statute=0	No restraints any time=10; Handcuffs during transportation OR after delivery=6; Handcuffs during transportation AND after delivery=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: **30**

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

For more information on how we evaluated these policies, please see pages 25 to 28.

Additional Notes on Grading

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 suggested that Nevada adopt an official policy.

Ohio

All women are placed in leg irons and waist chains during transport, however, within 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 or chests. Pregnant women are restrained with handcuffs secured in front of their bodies. In the hospital, leg irons are used. During delivery all restraints are removed. When delivery is complete, the restraints are reapplied. Women are never restrained when carrying their infants. Physically immobilizing restraints are only used at the request of the treating physician.

Utah

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

Additional Details on States with Statutes Limiting the Use of Restraints

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 women, or (2) that it technically meets our stated criteria but something about the policy makes it ineffective in meeting its purported goals.

State	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 use of restraints was unjustified
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	-

FAMILY-BASED TREATMENT AS AN ALTERNATIVE TO INCARCERATION

State	State has a family-based treatment center	DOC sentences mothers to family-based treatment programs 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 Family-Based Treatment as an Alternative to Incarceration Total possible points: **10**

A= 10

C= 5

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

For more information on how we evaluated these policies, please see pages 28 to 29.

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=0	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)

For more information on how we evaluated these policies, please see pages 29 to 30.

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.[59] 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 promote healthy child adjustment, prevent problem behavior, and interrupt the cycle of inter-generational incarceration.[60] The curriculum offers interactive skill-building on child and adult development, parenting skills, and effective communication through letters, calls, and visits.[61]

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 non-violent 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.[62]

Photo: ©Mark Allen Johnson

GRADING 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**, **family-based treatment as an alternative to incarceration** and **prison nurseries**, has multiple specific policy components, which are discussed below. The state is awarded varying points based on how close it comes to having a policy which meets the needs of pregnant or parenting women who are incarcerated. These points are totaled for a raw score in each of the four areas. The state's 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 the previous section, beginning on page 15. 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[63]

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.[64] 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 for high-risk pregnancies?

An essential factor in improving birth outcomes is identifying high-risk pregnancies and providing appropriate treatment to mitigate the risks.[65] 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.[66] 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.

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.[73]

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 twenty-three percent;[74] in the program's first two years of operation, only 34 participants returned to Riverside Correctional Facility.[75] 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.[76]

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.[77] Doulas are trained labor attendants who provide support to pregnant women throughout their pregnancy, during birth and postpartum.[78] 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.[79] 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 ended in June 2010.[80] MOMobile was turned down for funding from the Department of Justice under the Second Chance Act.[81] 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.

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.[67] Some women have been sex-workers in order to support their addictions.[68] Studies also show that many, if not most, women in prison have a history of sexual abuse.[69] All 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.[70] Testing also allows the facility to begin HIV prophylaxis to reduce the odds of the baby being born with the virus.[71] States are awarded three points for offering HIV testing.[72]

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 have 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 these statutes can be found in on page 18.

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. When pregnant women are being transported, in labor and delivery, or post-delivery, they are under the constant surveillance of at least one officer. 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 postpartum recovery.[82]

A written policy prohibiting the use of restraints—including handcuffs, leg irons or waist chains during transport, labor, delivery, and post-delivery—receives ten points.[83] 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 six points. States that restrain women with handcuffs at both of these times, but forbid the use of handcuffs during labor and delivery receive four points.

States receiving a score of zero on Question 2 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 zero.

States receiving a score of zero on Question 2 for having an inadequate written policy

Moreover, 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 zero 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 state 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 handling and transport of pregnant women, especially during labor and delivery. Incarcerated pregnant 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 other prison personnel, results demonstrated numerous difficulties in trying to modify prison policies created for men when working with women.[84]

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 corrections need 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—Does the state have a high-level official responsible for determining whether a pregnant woman poses a security risk and needs to be restrained?

State departments of corrections need 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 determining 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,[85] 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.[86]

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 a zero.

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 warden/director is not medically trained to evaluate what is best for the pregnant woman. The policy should therefore require that a qualified medical professional (internal or external) provide a medical assessment regarding what restraints to use to minimize the risk of harm to a woman and her fetus, given her stage of gestation.[87] 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.[88]

Question 6—Does the state require each incident where restraints are used 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 DOC 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.

Inmates go to court to stop inhumane practices

Early in 2009, 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.[89] 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.[90] 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 pregnant inmates.[91]

Over the last few years, inmates across the country have filed lawsuits against Prison Health Services related to the denial of medical care.[92] Courts across the country are holding prisons and jails accountable for their inhumane practices. The 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.[93] Other inmates have settled their lawsuits with Prison Health Services for millions of dollars in damages based on the facility's of failure to provide medical care to pregnant women, including women who were forced to give birth over a prison cell toilet and fetal deaths caused by delayed medical attention in prisons.[94]

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

There should be prescribed consequences for individuals and/or institutions 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 ensure that any violations are handled in the same manner, every time. Here, any state that has established consequences for policy violations receives one point.

FAMILY-BASED TREATMENT AS AN ALTERNATIVE TO INCARCERATION

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.[95] 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 allow mothers to be sentenced to family-based treatment programs as an alternative to incarceration?

States have the option to allow mothers to be sentenced to family-based treatment programs as alternative to incarceration. 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. 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 and job training. Children also benefit from interacting with 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.

Tamar Village Program Provides Comprehensive Family-Based Treatment[96]

Started in October 2007, the SHIELDS for Families' Tamar Village Program provides comprehensive family-centered substance-abuse treatment services to mothers reentering 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, 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 a.m. to 5:00 p.m. 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 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 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.

PRISON NURSERY PROGRAMS

Question 1—Does the state 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 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 child-rearing 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.[97]

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.[98] A state with a prison nursery program receives one point.

Question 2—Does the state have a community-based prison nursery program?

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, as compared to a program that is located within a prison.[99] If a state has a prison nursery program which is community-based, it receives one point.

Question 3—Does the state allow the child to remain in the prison nursery program for a reasonable period of time?

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.[100] 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.[101] 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 underlying 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.[102] A prison nursery program should do more than let a mother and her child reside together; it should place a focus on developing their relationship. A state receives one point if its prison nursery program focuses on improving the relationship between mother and child.

Bedford Hills, New York: Setting the Standard for Prison Nurseries

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 twelve to eighteen 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 twenty-nine mothers and their babies.[103]

While there is little reason for these non-violent women to be imprisoned at all, this program nonetheless should be commended for providing 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,[104] and access to a GED-preparation program designed specifically for mothers and pregnant women.[105] 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.[106]


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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 13,746 women in Federal BOP custody as of June 2009, according to the most recent data available.[109] Approximately 56% of these women have children.[110] Because there are only twenty-eight 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 prisons 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, we provide some recommendations for improvements in each of these areas.

PRENATAL CARE

Federal Bureau of Prisons

Federal regulations require that a pregnant woman 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 information 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 experience 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 other 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 (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 report to Congress on the use of physical restraints on pregnant prisoners by agencies within the Department of Justice (DOJ).[127] The Bureau of Prisons is an agency within DOJ, 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 has not been responsive to advocates' request that ICE clarify existing procedures and develop and implement consistent guidelines on the use of restraints. Advocates will continue to urge 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 shackling 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 departments 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 the 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 4,328 women eligible for alternative sentencing in 2007, eighty-seven percent 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 incarceration alternatives 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 program's 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 ten percent 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 fifty-nine 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 the detainee's 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 an 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 to remain in the community.[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 her 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 [immigration attorneys'] 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 in Taylor, Texas, 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 the Department of Homeland Security (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] ICE 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 the U.S. Department of Health & Human Services.[162] The substantial investments made in this type of "wrap-around" care are paying off. The prison had a recidivism rate of just eight percent after the program had been in effect for three years,[163] as compared to a rate of thirty-nine percent 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. Furthermore, Section 243 of the Second Chance Act authorizes the Attorney General to identify best practices within state departments of corrections that support the relationship between incarcerated parents and their children. Any report on best practices should place an emphasis on community-based sentencing for non-violent offenders, and highlight the special importance of family relationships in reducing recidivism among women in the criminal justice system.

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, Family-Based Treatment as an Alternative 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 issued by the National Commission on Correctional Health Care and the American Public Health Association.[165] The Shackling, Alternative 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 and the National Women's Law Center.

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 person who answered Rebecca Project staff's calls, staff was then either transferred or given the telephone number of 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 the 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, 2009.

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, as explained for each policy.[166] Each state is assigned 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.

Unfortunately, for unknown reasons, many states did not respond. 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 Alternative 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 thirty-seven GSBB programs across the country.[171] 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 eighteen,[172] a demographic that has become the fastest growing segment of the juvenile justice population, despite an overall drop in juvenile crime.[173] 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.[174]

The Alternative to Incarceration data was collected through March and April of 2010 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."

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 on page 18.

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.

We encourage any state department of corrections official, legislator or other person with direct knowledge of the policies examined in this report with additional or contradictory information to please contact us. We welcome broad input and will issue an addendum reflecting any updated or additional policy information 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 women may place their children for adoption, they 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 Inst. 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 (Corr. Ass'n of N.Y. Women in Prison Project 2006).

7 Lawrence A. Greenfeld and Tracy L. Snell, NCJ 175688, *Women Offenders* 1 (Bureau of Justice Statistics 1999).

8 *Id.*

9 *Id.*

10 Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* 1 (Nat'l Inst. of Corr. 2003).

11 Jocelyn 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., Civil Research Inst. 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 (Corr. Ass'n of N.Y. Women in Prison Project ed., 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 Corr. 2003).

14 *See generally* Barbara Bloom, Barbara Owen & Stephanie Covington, *Gender Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* 23 (Nat'l Inst. of Corr. 2003).

15 William J. Sabol, Heather C. West and Matthew Cooper, NCJ 228417, *Prisoners in 2008* 1 (Bureau of Justice Statistics 2009); King's College London, World Prison Brief, Highest to Lowest Rates,1 (Sept. 2009), *available at* http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/.

16 *See Nelson v. Corr. Medical Serv.*, 583 F.3d 522, 525-26 (8th Cir. 2009) (pregnant woman shackled in final stages of labor and until moment of delivery despite prison policy requiring security risk assessment before the use of restraints on inmates).

17 *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that "deliberate indifference" to the serious medical needs of the incarcerated constitutes "cruel and unusual punishment" prohibited under the Eight Amendment to 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 Corr. 2003).

19 *See, e.g., Flynn v. Doyle*, 672 F.Supp.2d 858, 877 (E.D. Wis. 2009) (defendants, state corrections officials, conceded that incarcerated men have more comprehensive mental health services than incarcerated women because of the "historically small number of female prisoners" in the state).

20 Nat'l Comm'n on Corr. Health Care, *Position Statements, Women's Health Care in Correctional Settings* (rev. 2005), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html.

21 Nicholas Freudenberg, *Adverse Effects of U.S. Jail and Prison Policies on the Health and Well-Being of Women of Color*, 92 Am. J. of Public Health 1895, 1896 (2002).

22 M. Knight & E. Plugge, *The Outcomes of Pregnancy Among Imprisoned Women: A Systematic Review*, 112 BJOG: An Int'l J. of Obstetrics & Gynecology 1467, 1473 (2005) (indicating better pregnancy outcomes for incarcerated women, as compared to similarly disadvantaged women not incarcerated; noting that this result 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." Findings 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).

23 Nat'l Comm'n on Corr. Health Care, *Position Statements, Women's Health Care in Correctional Settings* (rev. 2005), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html.

24 Letter from Ralph Hale, Executive Vice President, American Coll. Of Obstetricians and Gynecologists, to Malika Saada Saar, Executive Director, The Rebecca Project for Human Rights (June 12, 2007) (on file with author) (calling for an end to the practice of shackling women in labor and delivery due to the potential harm posed to the woman and unborn child), *available at* http://www.acog.org/departments/underserved/20070612SaarLTR.pdf.

25 Fed. Bureau of Prisons, No. 5538.05, *Program Statement, Escorted Trips* (2008), *available at* http://www.bop.gov/policy/progstat/5538_005.pdf.

26 Cal. Penal. Code § 3423 (West 2009); An Act Concerning the Safe Treatment of Pregnant Persons in Custody, 2010 Colo. S.B. 193; 55 Ill. Comp. Stat. Ann. 5/3-15003.6 (West 2010); 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; Vt. Stat. Ann. Tit. 28, § 801a (2010); 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).

27 Laura M. Maruschak, *Medical Problems of Prisoners* tbl.10 (Bureau of Justice Statistics 2008).

28 Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, N.Y. Times, Mar. 2, 2006, at A16, *available at* http://www.nytimes.com/2006/03/02/national/02shackles.html.

29 U.S. Marshals Service, USMS Directive 901 §D(3)(e)-(h) (revised policy on shackling pregnant offenders); Letter from Joyce Conley, Assistant Director, Fed. Bureau of Prisons, to Richard Durbin, U.S. Senator (Oct. 17, 2007) (on file with The Rebecca Project for Human Rights).

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

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

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

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

34 Ctr. for Substance Abuse Treatment, *RWC/PPW Cross-site Evaluation*, *Factsheet 9, Client Outcomes* (Caliber Assocs. 2003).

35 *Id.* at 1-2.

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 (Russ Immargieon ed., Civic Research Inst. 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 (Corr. 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 (Corr. 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 Corr. 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 (Corr. Ass'n of N.Y. Women in Prison Project 2006).

41 Jocelyn 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., Civil Research Inst. 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 (Corr. 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., Civil Research Inst. 2006).

44 *Id.* at 20-3 to -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. of Offender Rehabilitation 271, 275 (2009).

48 Ill. Dep't of Corr. Overview, Women and Family Serv., http://www.idoc.state.il.us/subsections/dept_overview/dept_overview.shtml.

49 Press Release, Ill. Dep't of Corr., Ten-Year Anniversary of IDOC's Women and Family Services Division Focuses On Best Practices As Well As Gender Responsive Services and Reentry Management for the Female Offender (May 12, 2009) (on file with author).

50 *Id.*

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

52 Press Release, Ill. Dep't of Corr., IDOC Officially Opens Moms and Babies Program at Decatur Correctional Center (May 10, 2007) (on file with author) (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/ (follow "DOC Press Archive" hyperlink; then follow "2007" drop down; then follow "May 10, 2007" hyperlink).

53 *Moms and Babies—First Anniversary*, Jan. 2009 Newsletter (Ass'n on Program for Female Offenders, Chicago, Ill.) Jan. 2009, *available at* http://www.apfonews.org/page_three.htm.

54 *Id.*

55 *Id.*

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

57 Press Release, Ill. Dep't of Corr., Ten-Year Anniversary of IDOC's Women and Family Services Division Focuses On Best Practices As Well As Gender Responsive Services and Reentry Management for the Female Offender (May 12, 2009) (on file with author).

58 *Id.*

59 Dep't of Corr., *Children of Incarcerated Parents Project*, http://www.oregon.gov/DOC/TRANS/PROGMS/oam_children.shtml.

60 Parenting Inside Out, *Curriculum*, http://www.parentinginsideout.org/curriculum (last visited Jan. 15, 2010).

61 J. Mark Eddy et al., *Development of a Multisystematic Parent Management Training Intervention for Incarcerated Parents, Their Children, and Families*, 12 No. 3 Clinical Psychologist 86 (2008).

62 E-mail from Mindy Clark, Director of Marketing & Communications, Children's Justice Alliance, to Grace Lesser, Health & Reproductive Rights Program Assistant, National Women's Law Center (Jan. 14, 2010, 5:45 EST) (on file with the National Women's Law Center).

63 This section of the Report Card is based on data from the ACLU Report, State *Standards for Pregnancy-Related Health Care in Prison* (2008), *available at* http://www.aclu.org/reproductiverights/gen/pregnancycareinprison.html. While ACLU's data is used with the organization's permission and ACLU staff has assisted 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 report.

The ACLU report also includes information on state's policies regarding counseling women on their pregnancy options. Since 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.

64 March of Dimes, *Prenatal Care*, http://www.marchofdimes.com/pnhec/159_513.asp.

65 *Id*.

66 March of Dimes, *Nutrition Today Matters Tomorrow* (*March of Dimes Task Force on Nutrition and Optimal Development* ed., 2002), *available at* http://www.marchofdimes.com/professionals/1926.asp.

67 Nat'l Comm'n on Corr. Health Care, *Position Statements, Women's Health Care in Correctional Settings* (rev. 2005), *available at* http://www.ncchc.org/resources/statements/womenshealth2005.html.

68 *Id*.

69 *Id*.

70 We were unable to obtain specific state-by-state information on the provision of HIV treatment. Despite the Eighth Amendment guarantee of medical care for serious medical conditions, *see infra* p.#, the prison setting poses serious barriers to all medical care, including the prompt, confidential delivery of time sensitive antiretrovirals used to control viral loads in those with HIV. Segregating prisoners with HIV was one 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, http://www.thebody.com/content/art46432.html.

71 "Data indicate that when appropriate antiretroviral medications are given during pregnancy, labor, and delivery and after birth, the risk of transmission can be reduced no less than two percent compared with approximately twenty-five percent when no interventions are given." Centers for Disease Control and Prevention, Perinatal HIV Transmission, http://www.cdc.gov/hiv/topics/perinatal/overview_partner.htm#transmission.

72 HIV testing should not be mandatory because of 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. Dep't. of Corr., MSRM-140145-01, *Management of Pregnancy* (2008), *available at* http://www.doc.state.ok.us/treatment/medical/msrm/140145-01.pdf.

73 Maternity Care Coal., *Riverside MOMobile* (2009) (on file with the National Women's Law Center).

74 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. Since the program is only three years old, this measure includes women who have no yet been released for two full 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); 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).

75 Maternity Care Coal., *Riverside MOMobile* (2009) (on file with the National Women's Law Center); 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).

76 *Id*.

77 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).

78 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." Press Release, Health Resources and Services Administration, HRSA Awards $6.3 Million to Launch New Parents Initiative, "Doulas" Training (Oct. 3, 2008) (on file with author).

79 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).

80 Maternity Care Coal., *Riverside MOMobile* (2009) (on file with the National Women's Law Center); 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).

81 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).

82 Fed. Bureau of Prisons, No. 5538.05, *Program Statement, Escorted Trips* (2008), *available at* http://www.bop.gov/policy/progstat/5538_005.pdf.

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

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

85 Meaning whatever office has oversight of the entire prison.

86 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.

87 Letter from Ralph Hale, Executive Vice President, American Coll. Of Obstetricians and Gynecologists, to Malika Saada Saar, Executive Director, The Rebecca Project for Human Rights (June 12, 2007) (on file with author) (discussing the health risks faced by both mothers and unborn children when pregnant women and shackled), *available at* http://www.acog.org/departments/underserved/20070612SaarLTR.pdf.

88 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 type of restrains 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 the 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.

89 Aisling Swift, *Inmate Who Lost Baby in Collier Jail: I Want Them to Make Changes*, Naples News, Feb. 14, 2009.

90 *Id.*; Aisling Swift, *ACLU Probes Collier Jail's Policies on Pregnant Inmates*, Naples News, Mar. 1, 2009.

91 Aisling Swift, *ACLU Probes Collier Jail's Policies on Pregnant Inmates*, Naples News, Mar. 1, 2009.

92 Aisling Swift, *Inmate Who Lost Baby in Collier Jail: I Want Them to Make Changes*, Naples News, Feb. 14, 2009.

93 *See Nelson v. Corr. Medical Serv.*, 583 F.3d 522 (8th Cir. 2009).

94 Aisling Swift, *Inmate Who Lost Baby in Collier Jail: I Want Them to Make Changes*, Naples News, Feb. 14, 2009.

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

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

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

98 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 21 (Women's Prison Ass'n & Home 2009).

99 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 Inst. 2006).

100 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., Civil Research Inst. 2006).

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

102 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., Civil Research Inst. 2006).

103 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 10 (Women's Prison Ass'n & Home 2009).

104 Amy L. Lindemuth, *Designing Therapeutic Environments for Inmates and Prison Staff in the United States: Precedents and Contemporary Applications*, 8 J. of Mediterranean Ecology 87, 91 (2007).

105 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 10 (Women's Prison Ass'n & Home 2009).

106 PowerPoint: Mary W. Byrne, *Responsive Parenting Support During the Prison Nursery and Reentry Years: Highlights from a Study in Progress: Maternal and Child Outcomes of a Prison Nursery Program* (Nov. 6, 2006), *available at* http://www.drugabuse.gov/whatsnew/meetings/children_at_risk/powerpoint/Byrne.ppt.

107 Anti Drug-Abuse Act of 1986, Pub. L. No. 99-570, 100 Stat. 3207 (1986).

108 *Women Offenders and Their Children*, Special Needs Offenders Bulletin (Federal Judicial Center, Washington, DC), Sept. 2001, at 6.

109 William J. Sabol & Heather C. West, NCJ 230113, *Prison Inmates at Midyear 2009-Statistical Tables*, Table 4 (Bureau of Justice Statistics 2010), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/pim09st.pdf.

110 Lauren E. Glaze & Laura M. Maruschak, NCJ 222984, *Parents in Prison and Their Minor Children* 2 (Bureau of Justice Statistics rev. 2009), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf.

111 *See* Bureau of Prisons, *Institutions Housing Female Offenders*, http://www.bop.gov/locations/female_facilities.jsp (last visited Sept. 16, 2009).

112 Homeland Security Act of 2002, Pub. L. No. 107-296, 82 Stat. 1226 (2002).

113 Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 2 (2009).

114 Dora Schriro, *Immigration Detention Overview and Recommendations* 27 (Immigration and Customs Enforcement 2009), *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

115 Women's Comm'n for Refugee Women and Children & Lutheran Immigration and Refugee Service, *Locking Up Family Values: The Detention of Immigrant Families* 8 (2007), *available at* http://www.womensrefugeecommission.org/docs/famdeten.pdf.

116 *See generally* Dora Schriro, *Immigration Detention Overview and Recommendations* (Immigration and Customs Enforcement 2009), *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

117 28 C.F.R. § 551.22(a)-(c) (2010).

118 28 C.F.R. § 551.24(c) (2010).

119 Nat'l Ass'n of Women Judges, *Priorities for Dealing with Incarcerated Women* 3 (2009) (on file with The Rebecca Project for Human Rights).

120 Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 53 (2009).

121 Southwest Inst. for Research on Women, Univ. of Ariz. Coll. of Soc. and Behavioral Sci. & Bacon Immigration Law and Policy Program, Univ. of Ariz. James E. Rogers Coll. of Law, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* 22 (Univ. of Ariz. 2009).

122 Women's Comm'n for Refugee Women and Children & Lutheran Immigration and Refugee Serv., *Locking Up Family Values: The Detention of Immigrant Families* 1 (2007), *available at* http://www.womensrefugeecommission.org/docs/famdeten.pdf.

123 Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 52 (2009).

124 Rachel Roth, *Searching for the State: Who Governs Prisoners' Reproductive Rights?*, 11 Soc. Pol. 411, 419 (2004).

125 This report was put forth by the American Bar Association, Criminal Justice Section, Report to the House of Delegates (Aug. 2007).

126 Fed. Bureau of Prisons, No. 5538.05, *Program Statement, Escorted Trips* (2008), *available at* http://www.bop.gov/policy/progstat/5538_005.pdf.

127 The Second Chance Act, Pub. L. No. 110-199, 122 Stat. 657 (2008) (requiring 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 and medical necessity of restraining the detainee ICE/DRO Detention Standard, Use of Force and Restraints, § 5.F1, *available at* http://www.ice.gov/doclib/PBNDS/pdf/use_of_force_and_restraints.pdf.

129 Kevin Sieff, *Access Denied*, Tex. Observer, Feb. 20, 2009 (citing *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona, supra* note 121).

130 Southwest Inst. for Research on Women, Univ. of Ariz. Coll. of Soc. and Behavioral Sci. & Bacon Immigration Law and Policy Program, Univ. of Ariz. James E. Rogers Coll. of Law, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* 22 (Univ. of Ariz. 2009).

131 *See generally* Dora Schriro, *Immigration Detention Overview and Recommendations* (Immigration and Customs Enforcement 2009), *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

132 H.R. 1593, 110th Cong. §232 (2007).

133 42 U.S.C. §1997c (a)-(b) (requiring the Department of Justice to first seek to negotiate resolution of conditions that violate the constitutional rights of prisoners).

134 Shackling during labor and delivery has been declared a violation of international human rights standards, including the United National Standard Minimum Rules for the Treatment of Prisoners, the Convention Against Torture and the International Covenant on Civil and Political Rights. *See* Amnesty International, *Not Part of My Sentence: Violations of the Human Rights of Women in Custody* 3-5 (1999).

135 *See Nelson v. Corr. Medical Serv.*, 583 F.3d 522, 532-34 (8th Cir. 2009) (citing *Women Prisoners of D.C. v. District of Columbia*, 877 F.Supp. 634, 669 (D.D.C. 1994)).

136 U.S. Sentencing Comm'n, Guidelines Manual, §5C1.1(e) (2009).

137 U.S. Sentencing Comm'n, *Alternative Sentencing in the Federal Criminal Justice System* 11 (2009), *available at* http://www.ussc.gov/general/20090206_Alternatives.pdf.

138 U.S. Sentencing Comm'n, *Alternative Sentencing in the Federal Criminal Justice System* 12 (2009), *available at* http://www.ussc.gov/general/20090206_Alternatives.pdf.

139 Almost ninety-two percent of those convicted of drug offenses are sentenced to prison. *Id*. at 9.

140 U.S. Sentencing Comm'n, Guidelines Manual, §1B1.13 (2009) (referring to application notes).

141 U.S. Sentencing Comm'n, Guidelines Manual, §5H1.6 (2009).

142 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 14 (Women's Prison Ass'n & Home 2009).

143 *Id*.

144 *Id*.

145 Joann B. Morton & Deborah M. Williams, *Mother-Child Bonding: Incarcerated Women Struggle to Maintain Meaningful Relationships With Their Children*, 60 Corrections Today [original pagination unavailable] (1998); Elizabeth Friar Williams, *A Tie That Binds: Fostering the Mother-Child Bond in a Correctional Setting*, 58 Corrections Today [original pagination unavailable] (1996).

146 Tex. House Research Org., *Requiring Residential Infant Care Programs for Mothers in Prison, Bill Analysis of HB 1992* (2007).

147 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* 34 (Women's Prison Ass'n & Home 2009).

148 U.S. Immigration and Customs Enforcement, ICE Office of Detention and Removal, http://www.ice.gov/PI/NEWS/FACTSHEETS/DRO110206.HTM.

149 Additionally, ICE detainees are denied the benefit of protection that those charged with criminal offenses have, such as a right to representation. Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 2.

150 Dora Schriro, *Immigration Detention Overview and Recommendations* 20 (Immigration and Customs Enforcement 2009), *available at* http://www.ice.gov/doclib/091005_ice_detention_report-final.pdf.

151 Women's Comm'n for Refugee Women and Children & Lutheran Immigration and Refugee Serv., *Locking Up Family Values: The Detention of Immigrant Families* 2-3 (2007) (citing UNHCR Report on Alternatives to Detention of Asylum Seekers and Refugees), *available at* http://www.womensrefugeecommission.org/docs/famdeten.pdf.

152 Human Rights Watch, *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention* 2 (2009).

153 *Id.* at 55.

154 Southwest Inst. for Research on Women, Univ. of Ariz. Coll. of Soc. and Behavioral Sci. & Bacon Immigration Law and Policy Program, Univ. of Ariz. James E. Rogers Coll. of Law, *Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona* 21 (Univ. of Ariz. 2009).

155 But women who are detained for immigration violations are routinely separated from the U.S. citizen children. *Id.* at 44.

156 H.R. Rep. No. 109-79, at 38 (2005). For a comprehensive history of family detention policies, *see* Women's Commission for Refugee Women and Children, *supra* note 151.

157 Press Release, American Civil Liberties Union, ACLU Strikes Deal to Continue Humane Condition at Hutto Detention Center (Aug. 7, 2009) (on file with author), *available at* http://www.aclu.org/immigrants-rights/aclu-strikes-deal-continue-humane-conditions-hutto-detention-center.

158 H.R. Rep. No. 111-157, at 55 (2010).

159 *Id.*

160 Indiana received the National Commission on Correctional Health Care's Program of the Year award in 2003. Jaime Shimkus, *Faculty Profile: One Size Does Not Fit All at Indiana Women's Prison,* Nat'l Comm'n on Corr. Health Care, http://www.ncchc.org/pubs/CC/profiles/18-2.html.

161 Eighty percent of children of incarcerated mothers are placed with family members or friends, while twenty percent are in foster care. Less than one percent are adopted by other families. Jane Schadee, *Passport to Healthy Families, Indiana Women's Prison*, Corrections Today 1 (June 2003).

162 Maternal and Child Health Services Title V Block Grant, State Narrative for Indiana (2009), *available at* https://perfdata.hrsa.gov/MCHB/TVISReports/Documents/2010/Narratives/IN-Narratives.pdf.

163 Jaime Shimkus, *Faculty Profile: One Size Does Not Fit All at Indiana Women's Prison,* Nat'l Comm'n on Corr. Health Care, http://www.ncchc.org/pubs/CC/profiles/18-2.html.

164 Patrick A. Langan & David J. Levin, *Recidivism of Prisoners Released in 1994* tbl.8 (Bureau of Justice Statistics 2002), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf.

165 American Civil Liberties Union, *State Standards for Pregnancy-Related Health Care in Prison* (2008), *available at* http://www.aclu.org/reproductiverights/gen/pregnancycareinprison.html. While ACLU's data is used with the organization's permission and ACLU staff has assisted 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 report. The ACLU report also includes information on state's policies regarding counseling inmates on their pregnancy options. Since the scope of this report is limited to policies regarding inmates who choose to continue their pregnancies, we did nto include the ACLU's information regarding state policies on inmate's legally protected right to terminate a pregnancy.

166 See Indicator Descriptions for more information on points awarded for each indicator.

167 *See, e.g.*, David Badertscher, *What's Happening in Your State Related to Legislation Regarding the Use of Restraints on Pregnant Women*, Criminal Law Library Blog, Sept. 2, 2009, http://www.criminallawlibraryblog.com/2009/09/whats_happening_in_your_state_1.html.

168 Chandra Kring Villanueva et al., *Mothers, Infants, and Imprisonment: A National Look at Prison Nurseries and Community-Based Alternatives* (Women's Prison Ass'n & Home 2009).

169 We recognize that policies may be obtained through Freedom of Information Act (FOIA) requests. However, as states were also graded on the ease with which policies could be accessed, we chose not to pursue FOIA requests.

170 Rachel Roth, *Searching for the State: Who Governs Prisoners' Reproductive Rights?*, 11 Soc. Pol. 411, 418-19 (2004).

171 Girl Scouts Behind Bars and Girl Scouting in Detention Centers: Supporting Girls, Connecting Families, Brochure 4 (Girl Scouts USA, New York, N.Y. 2007).

172 *Id.* at 5.

173 *Id.* at 9.

174 *Id.* at 4.

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