Gabriela Cavazos

Professor Nelson

WGS Capstone

15 April 2020

Protecting Pregnancy in Prisons

Over the past twenty years, the number of women in "state and federal prisons has increased more than 6 times and is growing at a faster rate than male counterparts"[1] and about 5-6% of this population is pregnant and many are already mothers when entering jail or prison. As of 2014, there were more than 200,000 women in jails and prisons all over the country [2] and that number has only increased since. The sharp increase of women in state and federal prisons is alarming and the need for reproductive health care in prisons is growing in importance.

Most women today are incarcerated for non-violent crimes like drug offenses or sex-work related crimes[3], which are significantly more common in low-income communities and among women of color. It is important to note the huge racial disparities in female prisons and jails, because there is a significant difference between women of color who are incarcerated versus women who are white. As of 2014, "the imprisonment rate was 109 per 100,000 Black women, compared to 64 per 100,000 Hispanic women, and 53 per 100,000 white women."[4] These are key statistics in trying to understand the criminal justice system and the increasingly high numbers of women incarcerated over the last few years. "Racially targeted law enforcement, disproportionate access to legal representation, and prosecutorial discretion that

[1] Ferszt, G., & Clarke, J. Health care of pregnant women in U.S. state prisons. P. 557.

[2] Shlafer, R., Gerrity, E., & Duwe, G. Pregnancy and Parenting Support for Incarcerated Women: Lessons Learned. P. 371.

[3] Ferszt, G., & Clarke, J. P. 558.

[4] Shlafer, R., Hardeman, R., & Carlson, E. (2019). Reproductive justice for incarcerated mothers and advocacy for their infants and young children. P. 727.

disproportionately impact low-income women and women of color"[5] all help to explain the huge statistical difference in how many more women of color are incarcerated.

As the female population is increasing in prisons and jails, the racial disparities and the unfair conditions and poor pregnancy outcomes for pregnant incarcerated women all over the country has started to come into the public eye, but it is still an area that has not gained a lot of attention, because resources based on growing research are very limited for discussing this issue. There have only been a few consistent authors and researchers that have really looked in depth on this issue, which indicates it is not a heavily explored area.

The high number of incarcerated women ultimately has a huge impact on children all over country. Studies have shown the children that grow up with incarcerated parents are "at increased risk for negative outcomes such as social, emotional, and behavior disorders, delinquency, and substance use as well as cognitive delays and academic challenges".[6] In addition, children under the age of six with a mother incarcerated are "at particular risk of attachment disturbances"[7] because the early caregiver-child relationships have a huge impact on health and development. Children are growing up without their mothers in these many cases, so attention needs to be brought to not only the mistreatment of pregnant women and incarcerated mothers, but to the wider community that is impacted by not having community program options and more.

---

[5] Shlafer, R., Hardeman, R., & Carlson, E. (2019). Reproductive justice for incarcerated mothers and advocacy for their infants and young children. P. 727.

[6] Ibid, P. 732.

[7] Ibid, P. 732.

With the number of women being incarcerated yearly significantly going up, pregnant women have become known as a really "high-risk group" among the prison and jail populations.[8] Being pregnant in jail or prison has repeatedly been described as "being controlled by a system that is conspired against them,"[9] because of their mistreatment which goes as far as shackling during labor but starts as small as delaying important medical paperwork or not getting enough nutritious food during pregnancy. Childbirth and pregnancy in prisons and jails is often approached as humiliating, degrading, and dehumanizing experience that is often justified by prison officials as a way of maintaining a safe environment and protecting the safety of officers and the public.[10] Some of the unnecessary acts that contribute to these degrading and humiliating experiences for example are being frisked by male and female officers with the possibility of strip searches before a doctor visit or even while being transferred as a woman is going into labor, the biggest issue of shackling during labor, and the lack of information and resources provided to the women when they ask for it.

These women do not have much access or knowledge of their rights and respect while being pregnant and incarcerated which has led to one of the biggest issues being the shackling of pregnant women while giving birth and or being in labor. The shackling of pregnant incarcerated women began several decades ago and is still allowed in at least 36 states today.[11] Many facilities report the use of handcuffs or shackling during prenatal visits or labor, and several other facilities report the use of shackling hands and ankles during labor.[12] Women are often handcuffed while holding their children or nursing, and many children are removed from women less than 24 hours

---

[8] Ferszt, G., & Clarke, J. Health care of pregnant women in U.S. state prisons. P. 558.

[9] Wismont, J. (2000). The lived pregnancy experience of women in prison. P. 297.

[10] Priscilla A. Ocen. Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners. P. 1256.

[11] Ibid, P. 1255.

[12] Ibid, P. 1256.

after giving birth.[13] The shackling of women has a lot of physical consequences, because it restricts natural movements for women giving birth, and if any emergency procedure is needed on the spot, there is a delay with the unshackling and re-shackling of the women.[14] Shackling of incarcerated pregnant women has many negative impacts on the woman's body and mental health, yet many state facilities still practice this act. This is not the case for the state of California.

In 2005, California became one of the very first states to prohibit the shackling of incarcerated pregnant women during their time in labor, delivery and recovery. In 2012, California legislatures and organizations challenged the law again, and successfully banned the shacking of any pregnant incarcerated women in jail or prison. The use of shackling as form of restraint and "protection" was removed entirely in California for all pregnant incarcerated women.[15] California was one of the first states to start the trend of removing this dangerous restraint for these women in prisons or jail.

California has also worked to build more programs to support and provide resources to pregnant women. Examples of programs for pregnant women have included the California Mother Prisoner Program, which was established in 1980, the Family Foundations Program, established in 1994, and the Doula Program which has been in place since 1999. Currently, all of these programs also exist in other states in the United States. These programs were created as a result of policies proposed to make changes in the prison and jail system that have been long over-due. The California Mother Prisoner Program, the Family Foundations Program, and the

---

[13] Ibid, P. 1257.
[14] Ibid, P. 1257.
[15] ACLU. https://www.aclu.org/blog/prisoners-rights/women-prison/victory-no-more-shackles-pregnant-prisoners

Doula Program, and the removal of the shackling practice have all had some successful outcomes, but they are not widely accepted by everyone in the state.

There are two main California Mother-Infant Programs that exist today. The first one is commonly known as the Community Prisoners Mother Program. The California or Community Prisoners Mother Program was established in 1980 as a result of 1978 legislation. It was pushed by the Legal Services for Prisoners with Children, also known as LSPC. The program is a community program that allows eligible incarcerated women to transfer from California state prisons to a California Prisoners Mother Program facility to serve their sentences in halfway houses where they can live with and care for their children.[16] Most women must apply for this program, and often times they are placed on long waiting lists.

There are currently three Community Prisoner Mother Program locations in California located in Oakland, Pomona, and Bakersfield. These women must start off in prison and apply for the program before being transferred to a CPMP facility. This typically takes up to two years to process. There is not definite reason as to why it takes so long for the application and transfer process, but many women have reported they get their paperwork sent back multiple times asking for new information, requesting them to re-do a paper, or saying their paperwork was lost. The program started out with only about 15 women, because many women coming into prison or jail that were eligible were not informed about this option, so they could only get the information about the program from other prisoners.[17] In 1985, shortly after the passing of the program, LSPC's clients filed a lawsuit called *Rios v. Rowland* which settled in 1990. The lawsuit mandated reform and expansion of the program. One change was women had to be told about the

---

[16] Legal Services for Prisoners with Children. "Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates." P. 43.

[17] Karen Shain, Carol Strickman, Robin Rederford. (2010). "California's Mother-Infant Programs: An investigation." P. 4.

program within one week of entering custody.[18] Incarcerated women started getting information about the program and as a result, the CPMP population and applicants grew, but LSPC did not stop there.

In 1988, LSPC pushed for additional regulations to be passed and they were. CPMP now has to accept applications from pregnant women prior to their delivery and allow women convicted of manslaughter in response to an abusive male partner to be considered for the program.[19] Some women were now in prison for a much shorter amount of time before being transferred to a CPMP facility, and for the first time women convicted of a violent crime were allowed to join the program. Some of the other qualifications to get into the program are if a woman has a child under the age of six or is pregnant, she was the primary caretaker of her child prior to entering prison, she is within six years of her release date, she is not seen as an "unfit" parent in court, and she is not being charged with a violent crime.[20]

The second program that exists for incarcerated pregnant women or mothers in California is the Family Foundations Program. There are currently three locations in California Fresno, Santa Fe Springs, and San Diego. The Family Foundations Program started in 1999 and was a result of 1994 legislation. It varies slightly from the Community Prisoners Mothers Program, because unlike the CPMP, women can be directly sentenced or referred to this program by the judge, so they never have to serve any time in prison. Thus, women who are sentenced or referred to this program by the judge go straight to a Family Foundations Program facility from state jail.[21] In addition, unlike the CPMP, women sent to the Family Foundations Program do not

---

[18] Ibid, P. 4.

[19] Ibid, P. 5

[20] Legal Services for Prisoners with Children. "Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates." P. 43

[21] Karen Shain, Carol Strickman, Robin Rederford. (2010). "California's Mother-Infant Programs: An investigation." P. 4-5.

have to serve their full sentence; they can serve up to one year in the program at a facility and then be paroled to one year of "after-care,"[22] so they essentially serve significantly less time, but the qualifications are slightly different as well.

Some of the qualifications for the Family Foundations Program are a woman must have a child under the age of six or be pregnant, she must be sentenced to 36 months of state prison or less, and have an established history of substance abuse. There is no clear evidence or reason as to why a history of substance abuse is required other than it correlates with a lesser crime than a violent one. In this program, women have access to midwives, who help provide any type of healthcare, child assistance, or child birthing assistance, which has proven to be really successful among the women for reasons the Doula Program has been successful. The success comes from improved emotional support for the women, because they feel they get a better understanding of their rights and a sense of motherhood by being with their children. Women feel empowered as a result.

When researchers have looked into both of these programs more closely, they have found that each facility can hold up to 35 women, meaning only 105 women can be enrolled in total for both of these programs, but the California Department of Corrections and Rehabilitation have consistently under-enrolled in both programs ranging between 70-80 women total at a time.[23] These facilities currently hold a very small number of women for the state of California, which is cause for concern when there is a large number of women who could qualify for the programs if they were expanded. The CPMP within the last few years has pushed to include more women, but there have not been any recent updates as to where that push stands today.

---

[22] Ibid, P. 5
[23] Ibid, P. 5.

Additionally, researchers have also found some racial disparities among the programs, because they have found that the Family Foundations Program is filled with mainly white women and the Community Prisoners Mother Program is filled with primarily women of color, which is cause for concern for those studying the programs since "the Family Foundations Program is apparently better funded than the CPMP"[24] and apparently, women generally have more freedom and better access to resources in the Family Foundations Program as well. This has made researchers skeptical about the programs, because when investigating and bringing this issues to the facilities attention, they have received responses like, "the courts send women to the Family Foundations".[25]

The final important program to discuss is the Doula Birth Support Program. The Doula Program started in 2001 at Cook County Jail located in Illinois. The goal was for the Doulas to provide emotional, physical, and informational care to women who were giving birth while incarcerated.[26] Some jails and prisons wanted to start providing a safer and more positive birthing experience for incarcerated women, and they saw a lot of improvement as a result of this program. Doulas are scheduled to meet with their patients at their appointments and are on-call for their delivery as well. They also follow-up with the patient three days after birth and stay in contact most times with the jail, prison, or with social worker on the whereabouts of the newborn to update the women in prison or jail.[27]

Pregnant incarcerated women with a Doula showed significantly greater statistics of improvement than those without one. Women birthing in jail or prison with a Doula showed a "cesarean rate of 4% (compared to a hospital rate of 26.95%) and an epidural rate of 33%

[24] Ibid, p. 6.
[25]Ibid, p. 6.
[26] Hotelling, B. (2008). Perinatal Needs of Pregnant, Incarcerated Women. P. 41.
[27] Schroeder, C., & Bell, J. (2005). Doula Birth Support for Incarcerated Pregnant Women. P. 54-55.

(compared to a hospital rate of about 50%)."[28] Additionally, Doulas have shared their own experiences of this process. Some have expressed that women in prisons or jails have been extremely happy to see them when they come to assist; they form trusting relationships with these women, and they give these women a sense of empowerment, and ultimately normalize their birthing process.[29] As a result, many states have implemented Doula programs for incarcerated pregnant women. States that have done so include Washington, Minnesota, and Alabama. Many states are looking to grow programs similar to those in place already, but the program is not perfect and there is room for improvement.

Doulas have expressed that they have appreciated the experience working with incarcerated women and favorably compare their prison or jail birthing experiences to ones outside of those facilities. But there have been some bumps in the road. Many Doulas have reported a lack of communication and information from the jails or prisons. For example, they are called in because a patient is going into labor, so they show up at the prison just to find out their patient was taken to the hospital or vice versa.[30] There are not many Doula programs in the United States yet, but many states can take the information from the existing ones and work to improve them to continue providing safer and more positive care.

These three programs have done fairly well over the last twenty plus years. Community programs for incarcerated women with children support "the development of mother-infant relationships and aims to prevent children from entering foster care".[31] As discussed specifically with the Doula program, it has been clear the emotional health of incarcerated women in these

---

[28] Hotelling, B. (2008). Perinatal Needs of Pregnant, Incarcerated Women. P. 41.

[29] Shlafer, R., Hellerstedt, W., Secor-Turner, M., Gerrity, E., & Baker, R. (2015). Doulas' Perspectives about Providing Support to Incarcerated Women: A Feasibility Study. P. 321.

[30] Ibid, p. 320.

[31] Shlafer, R., Hardeman, R., & Carlson, E. (2019). Reproductive justice for incarcerated mothers and advocacy for their infants and young children. P. 736.

programs is significantly improved. Women have a sense of motherhood while following their sentencing and probation which is proving to be beneficial. “Community-based programs with nurse-midwives are feasible”[32] because the programs are seeing less positive drug test outcomes, healthy pregnancies and deliveries all while maintaining the familial bond between a mother and her children. Although, the programs seem to be doing well, not everyone is a fan of them.

The most recent effort to help parents in the prison system as passed last year. In 2019, a senate bill 394 was passed and it went into effect this year. The bill allowed for the diversion of a defendant who is the primary caregiver for a child under the age of 18, meaning it allowed for an alternative option for a defendant. The bill applies only to those “who are charged with a misdemeanor or a non-serious, nonviolent felony, and who are not being placed into diversion for a crime alleged to have been committed against a person for whom the defendant is the primary caregiver.”[33] The bill would also require the defendant to take classes relating to parenting, anger management, financial literacy, and allow the defendant to receive services like “housing, employment, drug, alcohol, and mental health treatment and more”[34] This is another really new and recent option for women and men to continue their care for their children and have access to resources to help them maintain their lives and rights. As of now this bill has only been in place for about four months, so there is little to no research on how impactful this has been just yet.

Many people criticize these programs, because they are not actually “prison” for the women in them. The women in these programs have more freedom and access to resources than women actually serving their sentence in prison, which may frustrate those who feel that people

[32] Barkauskas, V., Low, L., & Pimlott, S. (2002). Health outcomes of incarcerated pregnant women and their infants in a community-based program. P. 378.

[33] California Legislative Information. SB-394 Criminal Procedure: diversion for primary caregivers of minor children.

[34] Ibid.

need to serve their sentence, locked up, without no freedom, and away from society. A crime was committed, critics argue, and those convicted of a crime lose their rights. Other critics of these programs express concern about children being around women who have committed a crime of some sort, and what kind of influence or experience that is for them. How could it be good for innocent children to grow up in a prison program away from their normal lives or society? These are reasonable concerns and may play a factor in why the number of women allowed in the programs is so low. These concerns also lead to some really solid recommendations for the three programs based on research.

Researchers have expressed important recommendations for the two current California programs for incarcerated pregnant women or women with children. Some of the most important ones are to publicize the Family Foundations to public defenders, private attorneys, probation departments and the courts to increase access for women of color and increase total enrollment, increase funding of CPMPs to be comparable to Family Foundations Programs, expedite the processing of CPMP applications, allow the mothers and children to live in child-friendly quarters, by allowing wall decorations, toys, children's furniture, etc, and allow outside contact with legal organizations and other social services agencies without harassment.[35] These recommendations stood out the most when researching, because they are recommendations that start at the base of the problem, which once improved can work to improve every level of the programs.

Both programs need to be heavily publicized to all women who are eligible and for all legal professionals involved in any eligible cases, because being notified of a program one week after being taken into custody is not justifiable when it should be immediate. This would speed

[35] Karen Shain, Carol Strickman, Robin Rederford. (2010). "California's Mother-Infant Programs: An investigation." P. 21-22.

up the application process for CPMP, because women would have the ability to apply as soon as possible. Women can apply sooner if they know about the program sooner therefore speeding up the process of getting in. Women in these programs should also be able to communicate with any legal organizations or social service agencies, because this would help improve their lives faster and give these women more knowledge as to what their rights are. Women in prisons and jails in general should have this ability without the harassment of a bunch of paperwork, long processes, and being misinformed, because why would anyone want to deny someone access to information and help if the system is not doing anything wrong to them?

Enrollment should be increased and the facilities should be expanded if needed as a result. All women who are eligible should be able to get into one of these programs; there should be no number cap. Ultimately all eligible women should be enrolled. The programs were created to give these women a different kind of opportunity and way of life for a reason and this relates perfectly with the increase funding for CPMP. CPMP and Family Foundations should be equally funded, so all women have the same resources and access to opportunities. There should be no racial disparities comparing one to another, and there should not be an inequality in how the programs are run, money wise and opportunity wise, because they have the same essential goal.

Lastly, if children are involved and around, they should be able to have an environment that feels comfortable to them and their mothers. They should have resources like painting rooms, having toys, and more. If a concern is the impact these programs have on children, this would be a step to ease that concern, because children could have a normal living environment when with their mothers.

Additionally, the Doula Support Program should be a program advertised nationally. The statistics clearly show better outcomes when a Doula is present for incarcerated pregnant women.

Incarcerated pregnant women should have this option especially because of the long, continuing history of them not getting all the information or the full information under their prisons or jail circumstances. Along with this, the communication must be improved in this program. Doulas should have constant and accurate communication with the prisons and jails, so the partnership between the two needs to be cleared up for better response and communications.

These recommendations are small steps in the right direction to give pregnant women and mothers more rights and access to reproductive health care. They may be small, and there is a long way to go before having a perfect system, but researchers can learn from what has been done, what is working, and what is not working. There should be a need and want to improve prison and jail conditions for pregnant women and mothers, because it is just another step in the right direction to giving fair treatment and eliminating the unfair conditions inside prison or jail cells. Incarcerated pregnant women are a high-risk group that have a long history of mistreatment from shackling during labor to not being given information about all their options being pregnant and a mother in jail or prison, so these recommendations could play a significant role in improving their experiences incarcerated. The number of women in prisons and jails is increasing significantly, so the need for reproductive health care in prisons and jails is growing in importance, and is essential to start improving the system for incarcerated pregnant women and mothers.

Bibliography

Ferszt, G., & Clarke, J. (2012). Health care of pregnant women in U.S. state prisons. *Journal of Health Care for the Poor and Underserved*, *23*(2), 557–569. https://doi.org/10.1353/hpu.2012.0048

Shlafer, R., Gerrity, E., & Duwe, G. (2015). Pregnancy and Parenting Support for Incarcerated Women: Lessons Learned. *Progress in Community Health Partnerships : Research, Education, and Action*, *9*(3), 371–378. https://doi.org/10.1353/cpr.2015.0061

Priscilla A. Ocen. (2012). Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners. *California Law Review*, *100*, 1239–1711.

ACLU. https://www.aclu.org/blog/prisoners-rights/women-prison/victory-no-more-shackles-pregnant-prisoners

Wismont, J. (2000). The lived pregnancy experience of women in prison. *Journal of Midwifery and Women's Health*, *45*(4), 292–300. https://doi.org/10.1016/S1526-9523(00)00034-9

Shlafer, R., Hardeman, R., & Carlson, E. (2019). Reproductive justice for incarcerated mothers and advocacy for their infants and young children. *Infant Mental Health Journal*, *40*(5), 725–741. https://doi.org/10.1002/imhj.21810

Legal Services for Prisoners with Children. "Pregnant Women in California Prisons and Jails: A Guide for Prisoners and Legal Advocates." https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf. 2006.

Karen Shain, Carol Strickman, Robin Rederford. (2010). "California's Mother-Infant Programs: An investigation."

Hotelling, B. (2008). Perinatal Needs of Pregnant, Incarcerated Women. *The Journal of Perinatal Education*, *17*(2), 37–44. https://doi.org/10.1624/105812408X298372

Schroeder, C., & Bell, J. (2005). Doula Birth Support for Incarcerated Pregnant Women. *Public Health Nursing*, *22*(1), 53–58. https://doi.org/10.1111/j.0737-1209.2005.22108.x

Shlafer, R., Hellerstedt, W., Secor-Turner, M., Gerrity, E., & Baker, R. (2015). Doulas' Perspectives about Providing Support to Incarcerated Women: A Feasibility Study. *Public Health Nursing (Boston, Mass.)*, *32*(4), 316–326. https://doi.org/10.1111/phn.12137

Barkauskas, V., Low, L., & Pimlott, S. (2002). Health outcomes of incarcerated pregnant women and their infants in a community-based program. *Journal of Midwifery and Women's Health*, *47*(5), 371–379. https://doi.org/10.1016/S1526-9523(02)00279-9

California Legislative Information. SB-394 Criminal Procedure: diversion for primary caregivers of minor children. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB394