



Reproductive Justice in the Prison System

Incarcerated Women

As of June 2008 state and federal prisons held over 115,000 women.¹ Since 2007, the number of women in prison has increased by 1.2%, while the number of men has increased by 0.7%.²

- The majority of women in prisons are single mothers.³
- About 53% of those incarcerated are women of color.⁴
- Most incarcerated women were convicted for non-violent drug offenses.⁵
- One in three women in state prisons reported committing an offense to support a drug habit.⁶

Many women face abuse as a result of being incarcerated.

- In federal women's prisons, approximately 70% of prison correctional officers are male.⁷
- Guards often sexually assault, rape or abuse women during searches.⁸
- Guards sometimes coerce women into sexual favors in exchange for personal hygiene products, extra food or to avoid punishment.⁹

Incarcerated women often face great difficulties in family life due to their incarceration.

- Most women in prison were primary caretakers of children under the age of 18.¹⁰
 - The federal Adoption and Safe Families Act (ASFA) provides that if a child has been in foster care for at least 15 of the last 22 months the state is required to petition for termination of parental rights.¹¹

Shackling Pregnant Women

Some jails and prisons use restraints, such as leg irons and wrist shackles, on sick and pregnant women regardless of whether the woman has a history of violence.¹²

- Shackling of all prisoners, including pregnant prisoners, was policy in federal prisons and the U.S. Marshal Service until recently and exists in many state prisons.¹³ Shackling during labor may cause complications during delivery such as hemorrhage or decreased fetal heart rate. If a Cesarean section is needed, a delay of even five minutes may result in permanent brain damage to the baby.¹⁴
- The American College of Obstetricians and Gynecologists stated:

Physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be; thus, overall putting the health and lives of the women and unborn children at risk.¹⁵
- Since 2000, four states - California, Illinois, Vermont and New Mexico - have passed legislation restricting the unnecessary use of restraints on pregnant women in prison.¹⁶
 - In May 2009, the New York Senate and Assembly passed the "Anti Shackling Bill,"¹⁷ prohibiting the shackling of women in labor. It awaits the governor's signature.¹⁸
 - On June 19, 2009, Texas Governor Rick Perry signed HB 3653, which prohibits shackling or restraining women during labor or delivery.¹⁹
 - In 2008, the Federal Bureau of Prisons changed their policy to prohibit the shackling or use of restraints on pregnant women while they are in labor, unless it is reasonable to believe they are an immediate threat to the safety of themselves or others.²⁰

Lack of Adequate Reproductive Healthcare

- 25% of women are pregnant at the time of arrest or have given birth in the preceding year.²¹
- Doctor visits for pregnant women in prison are often infrequent.²²
- Rates of STIs are much higher in prisons than the general population.²³
- Women prisoners are at a high risk for STIs, HIV, and unintended pregnancies.²⁴



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Abortion

- Women incarcerated in all federal and most state prisons and jails are generally denied funding for abortion care. They must procure the money themselves and travel to an offsite location for the procedure.²⁵
- In addition to the cost of the actual procedure, a woman may also have to pay her escorting guards' wages and transportation expenses.²⁶
- A woman in prison may have to struggle just to persuade the guards to let her see a doctor and get the abortion care she needs.²⁷
- Due to the 1976 Hyde Amendment banning the use of federal funds for abortions, federal prisons may not allocate resources for women who need abortions.²⁸
- Thirty-two states and D. C. provide state funding for abortions in cases of life endangerment, rape, and incest.²⁹
- One state provides abortion only in cases of life endangerment in violation of the federal standard.³⁰
- Seventeen states use state funds to provide all or most medically necessary abortions.³¹
 - Four of these states do so voluntarily.³²
 - Thirteen do so pursuant to a court order.³³

Sexual Orientation and Gender Variance in the Prison System

- A 1998 survey of U.S. jurors found that perceived sexual orientation was the most likely characteristic to bias a juror against a defendant (3 times more likely to bias a juror than a defendant's race).³⁴
- In a 1998 survey of transgender people, 25% of respondents reported experiencing discrimination based on their gender identity in interactions with police officers.³⁵
- Some penal institutions will place transgender women in administrative segregation, an act generally used as a punishment for dangerous and violent inmates.³⁶ This segregation also results in a loss of many basic rights such as interaction with other people, access to jobs or treatment services, and restrictions to privileges such as using the phone.³⁷
- Although healthcare in prison systems is problematic for the entire population, it poses particular problems for transgender inmates who require lifelong hormone treatment. Hormone access is one of the prominent challenges faced by transgender inmates and causes many medical and emotional complications to inmates who are not able to continue their hormone replacement therapy.³⁸
- DiMarco, an intersex prisoner, was put in solitary confinement for 14 months because she was intersex.³⁹ In *Estate of DiMarco v. Wyoming Dept. of Corrections, Div. of Prisons*,⁴⁰ the 10th Circuit Court of Appeals found that this was not a violation of her due process rights.⁴¹

¹ U.S. Dep't. of Justice, Bureau of Justice Statistics, Prison Statistics, <http://www.ojp.usdoj.gov/bjs/prisons.htm> (last visited June 29, 2009).

² *Id.*

³ CHRISTOPHER J. MUMOLA, U.S. DEPT. OF JUSTICE, INCARCERATED PARENTS AND THEIR CHILDREN 3 (2000), <http://www.ojp.gov/bjs/pub/pdf/iptc.pdf>.

⁴ Corr. Assoc. of N.Y., Women in Prison Fact Sheet, Mar. 2008, available at http://www.correctionalassociation.org/publications/download/wipp/factsheets/Women_in_Prison_Fact_Sheet_2008.pdf.

⁵ Barbara Owen, Women in Prison, (1998) available at <http://www.drugpolicy.org/communities/women/womeninpriso/>.

⁶ Corr. Inst. of N.Y., *supra* note 4.

⁷ Id.

⁸ Id.

⁹ Corr. Inst. of N.Y., *supra* note 4.

¹⁰ ACLU, Women in Prison: An Overview, <http://www.aclu.org/womensrights/violence/25829res20060612.html> (last visited Apr. 23, 2009).

¹¹ Mark Hardin, Impact of the Adoption and Safe Families Act, American Bar Association Center on Children and the Law (1998), available at <http://www.abanet.org/child/impact.shtml>.

¹² Amnesty Int'l USA, Women in Prison (2008) available at <http://www.amnestyusa.org/violence-against-women/abuse-of-women-in-custody/women-in-prison/page.do?id=1108246>.

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ Velmanette Montgomery, Legislators and Human Rights Activists Hail End of Shackling Incarcerated Pregnant Women, (May 20, 2009), <http://www.nysenate.gov/press-release/legislators-and-human-rights-activists-hail-end-shackling-incarcerated-pregnant-women>.

¹⁷ S.1290- A/A.3373-A (N.Y. Jan.-June 2009), available at <http://open.nysenate.gov/openleg/api/html/bill/S1290A>.

¹⁸ Montgomery, *supra* note 16.

¹⁹ H.B. 3653, 81(R) Leg. Sess., (Tx. 2009), available at <http://www.legis.state.tx.us/billlookup/History.aspx?LegSess=81R&Bill=HB3653>.

²⁰ US Dept. of Justice Federal Bureau of Prisons, Escorted Trips (Oct. 6, 2008), available at http://www.aclu.org/pdfs/prison/bop_policy_escorted_trips_p5538_05.pdf.

²¹ Corr. Assoc. Of N.Y., Why Focus on Incarcerated Women?, Mar. 2008, available at http://www.correctionalassociation.org/publications/download/wipp/factsheets/Women_Focus_2006.pdf.

²² Jennifer G. Clarke, et. al., Reproductive Health Care and Family Planning Needs Among Incarcerated Women, 96 AM. J. OF PUB.HEALTH 834, 834 (2006), available at <http://www.ajph.org/cgi/reprint/96/5/834.pdf>.

²³ Id.

²⁴ Id.

²⁵ Rachel Roth, Reproductive Rights in Theory and Practice: The Meaning of Roe v. Wade for Women in Prison, CENTER FOR AMERICAN PROGRESS, Jan. 20, 2006, <http://www.americanprogress.org/issues/2006/01/b1363953.html>.

²⁶ Id.

²⁷ Id.

²⁸ Susan Schewel, The Hyde Amendment's Prohibition on Federal Funding for Abortion, THE WOMEN'S HEALTH ACTIVIST (Sept./Oct. 2006), available at <http://www.hyde30years.nnaf.org/documents/NWHNSchewelarticle.pdf>.

²⁹ State Funding of Abortion Under Medicaid, STATE POLICIES IN BRIEF (The Guttmacher Institute, New York, N.Y.), Mar. 1, 2009, http://www.guttmacher.org/statecenter/spibs/spib_SFAM.pdf.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Amnesty Int'l USA, *supra* note 12.

³⁵ Shannon Minter & Christopher Daley, Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Community 21 (National Center for Lesbian Rights & Transgender Law Center 2003).

³⁶ Id. at 26.

³⁷ Letter from Christopher Daley, Director, Transgender Law Center, to the National Prison Rape Elimination Commission (August 15, 2005) available at <http://transgenderlawcenter.org/pdf/prisonrape.pdf>.

³⁸ Minter & Daley, *supra* note 37, at 26.

³⁹ Cheryl Chase, Federal Judge Finds Wyoming Prison Violated Constitutional Rights of Intersexual Prisoner, Jun. 24, 2004, available at <http://www.isna.org/dimarco>.

⁴⁰ 473 F.3d 1334 (2007).

⁴¹ Id. at 1345.