

# Reproductive Justice in the Prison System

## Incarcerated Women

As of December 2008, there were more than 200,000 women under the jurisdiction or in custody of state or federal prisons or in local jails.<sup>1</sup> In addition, at the end of 2008, at least 836,963 women were on probation or parole.<sup>2</sup> From 2000-07, the number of sentenced women under the jurisdiction of state and federal correctional authorities increased at an average annual rate nearly twice the rate of men.<sup>3</sup> Due in large part to the harsh, mandatory drug sentencing laws of the “War on Drugs,” the number of women serving sentences of more than a year grew by 757% between 1977 and 2004—nearly twice the 388% increase in the male prison population.<sup>4</sup>

- The majority of women in prisons are **single mothers**.<sup>5</sup>
- About 51% of those incarcerated are **women of color**,<sup>6</sup> who make up only 13% of the general population.<sup>7</sup>
- Most incarcerated women were convicted for **non-violent drug, property, or public order offenses**.<sup>8</sup>
- One in three women in state prisons reported committing an offense to support a drug habit.<sup>9</sup>

Many women face abuse as a result of being incarcerated.

- In federal women’s prisons, 70% of prison correctional officers are male.<sup>10</sup> In state operated correctional facilities, approximately 74% of correctional officers are male.<sup>11</sup> The employment of men to guard women is inconsistent with international human rights law.<sup>12</sup>
- Guards often sexually assault, rape, or abuse women under their supervision.<sup>13</sup>
- Guards sometimes coerce women into sexual favors in exchange for personal hygiene products, extra food, or to avoid punishment.<sup>14</sup>

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.<sup>15</sup>
  - Approximately 11% of mothers in prison reported their children were currently being cared for in a foster home or agency, compared to only 2% of fathers.<sup>16</sup>
  - 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.<sup>17</sup>

## Shackling Pregnant Women

Many jails and prisons use restraints—such as leg irons, waist chains, and handcuffs—on sick and pregnant women regardless of whether the woman has a history of violence or escape.<sup>18</sup> Pregnant women are routinely shackled when traveling to medical appointments and court appearances.<sup>19</sup>

- In testimony supporting anti-shackling legislation in California, the American College of Obstetricians and Gynecologists (ACOG) District IX 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.<sup>20</sup>

ACOG also supports federal legislation to prohibit the practice of shackling incarcerated women during labor.<sup>21</sup>
- In June 2010, the American Medical Association adopted a resolution to prohibit the shackling of women during labor, referring to the practice as “barbaric” and “medically hazardous.”<sup>22</sup> The resolution calls for the AMA to support language that no restraints of any kind should be used on an incarcerated woman who is in labor, delivering her baby, or

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during recuperation unless there is a “compelling” reason to believe she poses serious harm to herself or others, is a flight risk, and “cannot be reasonably constrained by other means.”<sup>23</sup>

- Since 2000, eleven states—Illinois, California, Vermont, New Mexico, Texas, New York, Washington, West Virginia, Colorado, Rhode Island, and Pennsylvania—have passed legislation of varying scope to limit the use of restraints on pregnant women in prison.<sup>24</sup> Eight of those laws were enacted in the last two years.<sup>25</sup>
  - Legislative campaigns are underway in other states, including in Georgia.<sup>26</sup>
  - In 2008, the Federal Bureau of Prisons and the U.S. Marshals Service 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.<sup>27</sup>
  - In October 2009, the Eighth Circuit Court of Appeals held that “[e]xisting constitutional protections, . . . have made it sufficiently clear . . . that an inmate in the final stages of labor cannot be shackled absent clear evidence that she is a security or flight risk. Indeed, [t]he obvious cruelty inherent in this practice should have provided [the officer] with some notice that [her] alleged conduct violated [the woman’s] constitutional protection against cruel and unusual punishment.”<sup>28</sup>
  - In May 2010, the Washington State Department of Corrections settled a lawsuit brought by Casandra Brawley, paying the formerly incarcerated woman \$125,000 to settle a claim related to her experience of having been restrained while in labor.<sup>29</sup>

## Lack of Adequate Reproductive Healthcare

- Approximately 5% of women incarcerated in jails,<sup>30</sup> 4% of women incarcerated in state prisons, and 3% of women in federal prisons report that they are pregnant at the time of admission.<sup>31</sup>
- Doctor visits for pregnant women in prison are often infrequent.<sup>32</sup> Of the women in state prisons who reported being pregnant at admission, 93% reported having an obstetric exam but only 54% reported receiving some type of additional pregnancy care.<sup>33</sup>
- Women prisoners are at high risk for STIs, HIV, and unintended pregnancies.<sup>34</sup>
- The ACLU identified publicly available pregnancy or reproductive health care correctional policies for 34 states and the District of Columbia.<sup>35</sup>
  - Eight explicitly state that medical examinations shall be included as a component of prenatal care.<sup>36</sup>
  - Seventeen explicitly provide for screening or special treatment for high-risk pregnancies.<sup>37</sup>
  - Four mention HIV testing.<sup>38</sup>

## Abortion

- Women incarcerated in all federal and most state prisons and local jails are denied funding for abortion care. They must provide the money themselves and be taken to an offsite location for the procedure.<sup>39</sup> In addition to the cost of the actual procedure, a woman may also have to pay for the guards’ time and for transportation expenses.<sup>40</sup>
  - Women who participate in work programs in federal prisons earn between 12¢ and 40¢ per hour; those working specifically for UNICOR, the federal prison industries corporation, can earn up to \$1.15 per hour.<sup>41</sup> Therefore, they cannot earn enough to pay for an abortion.
- A woman in prison may have to struggle just to persuade the guards, administrators, and medical staff to let her see a doctor and get the abortion care she needs.<sup>42</sup>
- The 1976 Hyde Amendment bans the use of federal funds for abortions.<sup>43</sup>



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- Women in custody of the Federal Bureau of Prisons are eligible for an abortion paid for by the Bureau if the pregnancy resulted from rape or endangers their life.<sup>44</sup>
- The federal Bureau of Immigration and Customs Enforcement (ICE) will not provide or fund an abortion for a woman in custody, but officials state that it will arrange transportation to an appointment paid for by the woman herself.<sup>45</sup> Given that most women in ICE detention arrive with few personal resources or ties to the surrounding area, this rule generally acts as a complete bar to abortion care.
- The ACLU review of publicly available correctional policies found 21 states with policies that mention both health care for pregnant women planning to carry to term and for those who seek an abortion.<sup>46</sup> Fourteen states have policies that mention prenatal health care but not abortion access,<sup>47</sup> and one state has an administrative regulation on correctional health care that addresses abortion access but not other pregnancy-related health care.<sup>48</sup>
- A complicated web of state correctional policies, both written and unwritten, determines whether an incarcerated woman can access abortion services and if so, who pays. According to a study of abortion policies and information obtained from Departments of Correction:
  - Nine states provide counseling and access to abortion for incarcerated women, at least during the first trimester.<sup>49</sup>
  - Six states and the District of Columbia have prison policies that fund “therapeutic” or “medically necessary” abortions.<sup>50</sup>
  - Nineteen states have prison policies that will only fund abortions to save a woman’s life.<sup>51</sup>
  - One state—Alaska—has a combination of policies that appears to exclude the possibility of abortion for women in prison.<sup>52</sup>
- The lack of written policy in many states means that women may be subject to different practices depending on the prison to which they have been sentenced.<sup>53</sup> One consequence is that women who don’t know they have a right to access abortion services while incarcerated may not seek such care at all.
- Federal and state courts have repeatedly upheld incarcerated women’s right to abortion.<sup>54</sup> In the only case has addressed the question of funding, the Third Circuit Court of Appeals held that if a woman cannot afford an abortion and is unable to raise the money otherwise, the prison or jail must pay.<sup>55</sup>

## Sexual Orientation and Gender Variance in the Prison System

- Social norms and legal regulations restrict a women’s sexuality, and those women who may not self identify or conform to a heterosexual, hyperfeminine, or passive persona are at risk to be punished “by state authorities in prisons, by the police, as well as private actors such as their family and community.”<sup>56</sup>
- In a 1998 survey of transgender people, 25% of respondents reported experiencing discrimination based on their gender identity in interactions with police officers.<sup>57</sup>
- Some penal institutions will place transgender women in administrative segregation, an act generally used as a punishment for dangerous and violent people.<sup>58</sup> 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.<sup>59</sup>
- Although health care in prison systems is problematic for the entire population, it poses particular problems for transgender individuals who require lifelong hormone treatment. Hormone access is one of the prominent challenges faced by transgender people and the denial of hormone therapy causes many medical and emotional complications.<sup>60</sup>
- Miki Ann DiMarco, an intersex prisoner, was put in solitary confinement for 14 months because she was intersex; uncertain how to treat her after a medical exam revealed her penis, the prison guards held her in the maximum security section of the prison for her own



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“protection,” where she was isolated from human contact, unable to work, and denied the ability to exercise except for brief periods when no other prisoners were around.<sup>61</sup> In *Estate of DiMarco v. Wyoming Dept. of Corrections*, the Tenth Circuit Court of Appeals found that this was not a violation of her due process rights, leaving other intersex prisoners in the jurisdiction vulnerable to the same treatment.<sup>62</sup>

## Girls in the Juvenile Justice System

- Girls account for approximately 15% of those in custody of the juvenile justice system.<sup>63</sup> The number of girls in custody increased 52% from 1991 to 2003,<sup>64</sup> due in significant part to policy changes regarding how family conflicts, schoolyard arguments, and domestic violence incidents are treated by law enforcement.<sup>65</sup> Girls account for a much larger proportion of status offenders (e.g., running away, truancy, underage drinking) than delinquency offenders (40% vs. 14%).<sup>66</sup>
- Up to 92% of incarcerated girls have experienced one or more forms of physical, sexual, and emotional abuse before entering the system.<sup>67</sup> Girls who have experienced physical and sexual abuse often engage in high-risk sexual behavior, leading to higher rates of pregnancy and sexually transmitted infections.<sup>68</sup>
  - Thirty-two percent of girls in detention have current or past sexually transmitted diseases.<sup>69</sup>
  - Studies suggest that approximately 14% of girls are pregnant at the time of detention.<sup>70</sup>
- Most juvenile facilities lack appropriate prenatal or gynecological services for young women.<sup>71</sup>
- In a recent survey, the Bureau of Justice Statistics estimated that 12% of youth in state juvenile facilities and large non-state facilities reported experiencing one or more incidents of sexual victimization by another youth or facility staff in the previous 12 months.<sup>72</sup> The vast majority of incidents involved facility staff, with 10.3% of youths reporting such experiences.<sup>73</sup>

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<sup>1</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, Press release, *Growth in Prison and Jail Populations Slowing: 16 States Reported Declines in the Number of Prisoners* (Mar. 31, 2009) (reporting that an estimated 207,700 women were imprisoned in 2008), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=361>. This includes individuals held in state and federal prison and local jails, as well as those held within facilities operated by and for the military, U.S. territories, Indian country, Immigration and Customs Enforcement (ICE), and juvenile authorities.

<sup>2</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, Bureau of Justice Statistics Bulletin, *Probation and Parole in the United States, 2008*, at app. tbl. 6 & 16, (December 2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus08.pdf>.

<sup>3</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, Bureau of Justice Statistics Bulletin, *Prisoners 2008*, at app. tbls. 6 & 8, (December 2009, Revised 4/1/2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/po8.pdf>.

<sup>4</sup> ACLU, *Women in Prison: An Overview* (June 12, 2006), <http://www.aclu.org/womensrights/violence/25829res20060612.html>.

<sup>5</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *PARENTS IN PRISON AND THEIR MINOR CHILDREN*, at app. tbl. 7 (2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

<sup>6</sup> Corr. Assoc. Of N.Y., *Women in Prison Fact Sheet* (Mar. 2008), available at [http://www.correctionalassociation.org/publications/download/wipp/factsheets/Wome\\_in\\_Prison\\_Fact\\_Sheet\\_2009\\_FINAL.pdf](http://www.correctionalassociation.org/publications/download/wipp/factsheets/Wome_in_Prison_Fact_Sheet_2009_FINAL.pdf) (2009).

<sup>7</sup> U.S. Census Bureau, *American Community Survey, 2006-2008 American Community Survey 3-Year Estimates*, [http://factfinder.census.gov/servlet/DTable?\\_bm=y&-geo\\_id=01000US&-ds\\_name=ACS\\_2008\\_3YR\\_G00\\_&-\\_lang=en&-mt\\_name=ACS\\_2008\\_3YR\\_G2000\\_B01001&-mt\\_name=ACS\\_2008\\_3YR\\_G2000\\_B01001A&-format=&-CONTEXT=dt](http://factfinder.census.gov/servlet/DTable?_bm=y&-geo_id=01000US&-ds_name=ACS_2008_3YR_G00_&-_lang=en&-mt_name=ACS_2008_3YR_G2000_B01001&-mt_name=ACS_2008_3YR_G2000_B01001A&-format=&-CONTEXT=dt).

<sup>8</sup> BUREAU OF JUSTICE STATISTICS, *PRISONERS 2008*, *supra* note 3, at app. tbl. 16.

<sup>9</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *WOMEN OFFENDERS*, at 9 (December 1999, rev. 10/3/00), <http://bjs.ojp.usdoj.gov/content/pub/pdf/wo.pdf>.



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<sup>10</sup> ACLU, *Women in Prison: An Overview*, *supra* note 4.

<sup>11</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CENSUS OF STATE AND FEDERAL CORRECTIONAL FACILITIES, 2005, at 4 (December 2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/csfcfo5.pdf>.

<sup>12</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, Rules 53(2) and 53(3); *see also* AMNESTY INT'L USA, NOT PART OF MY SENTENCE: VIOLATIONS OF THE HUMAN RIGHTS OF WOMEN IN CUSTODY (March 1999), <http://www.amnesty.org/en/library/info/AMR51/001/1999/en>. Cf. *Breiner v. Nevada Dep't of Corr.*, No. 09-15568 (9th Cir. July 8, 2010) (holding policy that limited supervisory positions in state women's prison to female correctional officers discriminated against male guards in violation of Title VII).

<sup>13</sup> ACLU, *Women in Prison: An Overview*, *supra* note 4; AMNESTY INT'L USA, NOT PART OF MY SENTENCE, *supra* note 12; *see generally* NATIONAL PRISON RAPE ELIMINATION COMMISSION, Report (June 2009), [http://www.cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPREC\\_FinalReport.PDF](http://www.cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPREC_FinalReport.PDF).

<sup>14</sup> ACLU, *Women in Prison: An Overview*, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> U.S. DEP'T OF JUSTICE, PARENTS IN PRISON AND THEIR MINOR CHILDREN, *supra* note 5, at tbl. 8.

<sup>17</sup> Mark Hardin, *Impact of the Adoption and Safe Families Act*, American Bar Association Center on Children and the Law (1998), available at <http://courts.michigan.gov/scao/services/cws/Materials/07-23-09-3ASFARvisitedOverview.pdf>.

<sup>18</sup> AMNESTY INT'L USA, VIOLENCE AGAINST WOMEN INFORMATION available at; <http://www.amnestyusa.org/our-work/issues/women-s-rights/violence-against-women/violence-against-women> (Last visited June 30, 2011); Anna Clark, "Giving Birth in Chains: The Shackling of Incarcerated Women During Labor and Delivery," RH REALITY CHECK (July 6, 2008), <http://www.rhrealitycheck.org/blog/2009/07/06/giving-birth-chains-the-shackling-incarcerated-women-during-labor-and-delivery>.

<sup>19</sup> AMNESTY INT'L USA, WOMEN IN PRISON, *supra* note 18.

<sup>20</sup> ACOG Letter to Malika Saada Saar, Rebecca Project for Human Rights, dated June 12, 2007, available at <http://miwww.acog.org/departments/underserved/20070612SaarLTR.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> Emily P. Walker, "AMA: House of Delegates Backs Ban on Shackling Inmates in Labor," MedPage Today (June 15, 2010), <http://www.medpagetoday.com/MeetingCoverage/AMA/20692>.

<sup>23</sup> *Id.*

<sup>24</sup> Rachel Roth, *AMA Opposes Shackling Pregnant Women in Labor*, RH REALITY CHECK (June 16, 2010), <http://www.rhrealitycheck.org/reader-diaries/2010/06/16/opposes-shackling-pregnant-women-labor>; ABC27 NEWS, *House Passes Bill Banning Shackling Inmates During Childbirth*, June 29, 2010, <http://www.abc27.com/story/12888054/house-passes-bill-banning-shackling-inmates-during-childbirth>. S. 0165, 2011 Leg., Reg. Sess. (R.I. 2011). For information about organizations that have been organizing to oppose the shackling of pregnant women in labor, see Brief of Amicus Curiae, *Norris v. Nelson*, No. 07-2481 (8th Cir. filed July 31, 2008), available at <http://advocatesforpregnantwomen.org/NelsonAmicusFinal%5B1%5D.pdf>.

<sup>25</sup> Roth, *supra* note 24. S. 0165, *supra* note 24.

<sup>26</sup> Tonya Williams, *Modern Day Chain Gangs: Shackling Pregnant Mothers in Georgia Prisons and Jails*, RH REALITY CHECK (May 10, 2010), <http://www.rhrealitycheck.org/blog/2010/05/09/modern-chain-gangs-shackling-pregnant-mothers-georgia-prisons-jails>; Spark Reproductive Justice Now, *Legislate This! Program*, <http://www.legislatethis.org> (last visited June 21, 2011).

<sup>27</sup> US Dep't of Justice, Federal Bureau of Prisons, *Program Statement: Escorted Trips*, at § 11 (Oct. 6, 2008), [http://www.bop.gov/policy/progstat/5538\\_005.pdf](http://www.bop.gov/policy/progstat/5538_005.pdf); AELE Law Enforcement Legal Center, *Shackling Pregnant Prisoners*, 2009 (12) AELE Mo. L. J. 301, 305.

<sup>28</sup> *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 534 (8th Cir. 2009); *see also* ACLU, "Federal Appeals Court Condemns Shackling of Pregnant Prisoners in Labor" (Oct. 2, 2009), [http://www.aclu.org/prisoners-rights\\_reproductive-freedom/federal-appeals-court-condemns-shackling-pregnant-prisoners-la](http://www.aclu.org/prisoners-rights_reproductive-freedom/federal-appeals-court-condemns-shackling-pregnant-prisoners-la).

<sup>29</sup> Legal Voice, Press Release, "Settlement Reached With Woman Restrained During Labor" (May 19, 2010), [http://www.nwwlc.org/pdf/Brawley\\_v\\_DOC\\_Settlement\\_Press\\_Release.pdf](http://www.nwwlc.org/pdf/Brawley_v_DOC_Settlement_Press_Release.pdf).

<sup>30</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Medical Problems of Jail Inmates*, at 1 (Nov. 2006), <http://bjs.ojp.usdoj.gov/content/pub/pdf/mpji.pdf>.

<sup>31</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Medical Problems of Prisoners*, at tbl. 10 (Apr. 22, 2008), <http://bjs.ojp.usdoj.gov/content/pub/pdf/mpp.pdf>.

<sup>32</sup> 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>.

<sup>33</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Medical Problems of Prisoners*, *supra* note 31, at tbl. 10.

<sup>34</sup> Clarke, *supra* note 32.

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- <sup>35</sup> ACLU, State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison, <http://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-map> (“ACLU State Standards”) (last visited June 21, 2011).
- <sup>36</sup> *Id.* (California, Massachusetts, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Texas).
- <sup>37</sup> *Id.* (Alaska, Colorado, Delaware, District of Columbia, Florida, Idaho, Kansas, Massachusetts, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Washington).
- <sup>38</sup> *Id.* (California, Oklahoma, Pennsylvania, Texas).
- <sup>39</sup> 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>.
- <sup>40</sup> *Id.*
- <sup>41</sup> Rachel Roth, *Do Prisoners Have Abortion Rights?*, FEMINIST STUDIES 30, no. 2, at 360 (Summer 2004).
- <sup>42</sup> Roth, *Reproductive Rights in Theory and Practice*, *supra* note 40.
- <sup>43</sup> ACLU, “Public Funding for Abortion” (July 24, 2004), <http://www.aclu.org/reproductive-freedom/public-funding-abortion>.
- <sup>44</sup> U.S. Dep’t of Justice, Federal Bureau of Prisons, “Program Statement: Birth Control, Pregnancy, Child Placement and Abortion,” No. 6070.05, August 6, 1996, sec. 551.23, [http://www.bop.gov/policy/progstat/6070\\_005.pdf](http://www.bop.gov/policy/progstat/6070_005.pdf).
- <sup>45</sup> HUMAN RIGHTS WATCH, DETAINED AND DISMISSED: WOMEN’S STRUGGLES TO OBTAIN HEALTH CARE IN UNITED STATES IMMIGRATION DETENTION, at 53-54 (2009), <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed-o>.
- <sup>46</sup> ACLU State Standards, *supra* note 36 (Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Idaho, Kansas, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Washington).
- <sup>47</sup> *Id.* (Arizona, Connecticut, Florida, Indiana, Maine, Michigan, New Mexico, New York, North Carolina, Tennessee, Utah, Vermont, Virginia, Washington).
- <sup>48</sup> *Id.* (Illinois).
- <sup>49</sup> Roth, *Do Prisoners Have Abortion Rights?*, *supra* note 41, at 354-65 (California, Connecticut, Georgia, Hawaii, New Jersey, New York, Oregon, Vermont, and Washington).
- <sup>50</sup> *Id.* (District of Columbia, Massachusetts, Minnesota, Nevada, New Mexico, Tennessee, West Virginia).
- <sup>51</sup> *Id.* (Alabama, Arkansas, Colorado, Delaware, Florida, Illinois, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, Rhode Island, South Carolina, Texas, Utah, and Wisconsin).
- <sup>52</sup> Personal communication with Rachel Roth (Nov. 17, 2009).
- <sup>53</sup> Roth, *Do Prisoners Have Abortion Rights?*, *supra* note 41, at 356.
- <sup>54</sup> *See, e.g.*, Victoria W. v. Larpenter, 369 F. 3d 475 (5th Cir. 2004); Roe v. Crawford, 514 F. 3d 789 (8th Cir. 2008); Doe v. Arpaio, 150 P. 3d 1258 (Ct. App. Ariz. 2007). *See generally* Diana Kasdan, *Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict With Constitutional Standards?*, 40 PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 59 (2009).
- <sup>55</sup> Monmouth Cty Corr. Inst. Inmates v. Lanzaro, 34 F.2d 326, 333 (3rd Cir. 1987).
- <sup>56</sup> AMNESTY INT’L USA, VIOLENCE AGAINST WOMEN INFORMATION, *supra* note 18.
- <sup>57</sup> SHANNON MINTER & CHRISTOPHER DALEY, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO’S TRANSGENDER COMMUNITY 21 (2003), *available at* <http://www.transgenderlawcenter.org/trans/pdfs/Trans%20Realities%20Final%20Final.pdf>.
- <sup>58</sup> *Id.* at 26.
- <sup>59</sup> Letter from Christopher Daley, Director, Transgender Law Center, to the National Prison Rape Elimination Commission (Aug. 15, 2005) *available at* <http://transgenderlawcenter.org/pdf/prisonrape.pdf>.
- <sup>60</sup> MINTER & DALEY, *supra* note 57, at 26.
- <sup>61</sup> Cheryl Chase, *Federal Judge Finds Wyoming Prison Violated Constitutional Rights of Intersexual Prisoner*, Jun. 24, 2004, *available at* <http://www.isna.org/dimarco>.
- <sup>62</sup> 473 F.3d 1334, 1345 (2007).
- <sup>63</sup> HOWARD N. SNYDER & MELISSA SICKMUND, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT, U.S. Dep’t of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention 206 (2006), <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/chapter7.pdf>.
- <sup>64</sup> *Id.*
- <sup>65</sup> Physicians for Human Rights, *Unique Needs of Girls in the Juvenile Justice System*, at 1-2, *available at* [http://women.ca.gov/images/pdf/issues/women\\_girls\\_cjs/girls.pdf](http://women.ca.gov/images/pdf/issues/women_girls_cjs/girls.pdf) (last visited June 28, 2011).
- <sup>66</sup> JUVENILE OFFENDERS AND VICTIMS, *supra* note 63, at 210.
- <sup>67</sup> Physicians for Human Rights, *supra* note 65, at 1.
- <sup>68</sup> *Id.*
- <sup>69</sup> *Id.*
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.*



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<sup>72</sup> U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2008-09*, at 1 (Jan. 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/svjfry09.pdf>.

<sup>73</sup> *Id.*