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Hurt, Hungry, and Handcuffed: How the Prison System Fails Pregnant Women and Their Newborns

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HURT, HUNGRY, AND HANDCUFFED: HOW THE PRISON SYSTEM FAILS PREGNANT WOMEN AND THEIR NEWBORNS

By: Sarah B. Bondar, JD*

ABSTRACT

Over 200,000 women are incarcerated in the United States' federal and state correctional institutions on any given day. In fact, more women are incarcerated now than ever before, and those rates of incarceration continue to grow at an exponential rate. Despite this large increase in the number of incarcerated women, jail policies, health-care protocols, and important interventions continue to focus primarily on incarcerated men and fail to consider the gender-specific needs of the increasing population of incarcerated females.

This comment discusses ways the United States prison system fails the pregnant women in their care. It discusses four main points including: the lack of proper nutrition of the pregnant mother-to-be while she is incarcerated; the act of shackling in-labor mothers while they are transported to the hospital to give birth and while in active labor and delivery; the aftercare and treatment of the new mother and the newborn infant immediately following the birth; and the detrimental effects of the lack of proper nutrition and care on a newborn infant born to incarcerated mother when the mother did not receive proper nutrition and care while incarcerated and pregnant. This comment advocates for a reform in policy and protocol regarding both federal and state prison systems, in order to afford an incarcerated pregnant mother-to-be proper health care and the children born to incarcerated mothers with a vital healthy start to life.

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INTRODUCTION

On any given day, almost 200,000 women are incarcerated in the United States' federal and state correctional institutions.¹ Almost another alarming one million women are currently on probation, parole, and supervision.² The devastating truth is that mass incarceration of women continues to increase.³ Despite this large increase in the number of incarcerated women, these women make up less than ten percent of the overall imprisoned population.⁴ As a result, policies that govern the facilities, health-care protocols for the inmates, and important ways of assisting focus on incarcerated men and do not take into consideration the specific needs of the increasing population of incarcerated females.⁵

Many researchers and scholars believe that the increase in the rate of incarceration for females can be attributed to a nationwide heavy focus on minor offenses related to drug use and prostitution.⁶

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¹ Niki Monazzam & Kristen M. Budd, *Fact Sheet: Incarcerated Women and Girls*, SENTENCING PROJECT (Apr. 3, 2023), <https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/> [<https://perma.cc/Z69S-F2J9>]; see also Aleks Kajstura & Wendy Sawyer, *Women's Mass Incarceration: The Whole Pie 2024*, PRISON POLICY INITIATIVE (Mar. 5, 2024), <https://www.prisonpolicy.org/reports/pie2024women.html> [<https://perma.cc/TS47-UGMV>].

² Monazzam & Budd, *supra* note 1.

³ *Id.* The number of incarcerated women increased from 171,000 to 191,000 plus from the year 2023 to 2024 alone. See *New Report, Women's Mass Incarceration: The Whole Pie 2023, Reveals How Many Women Are Locked up in the U.S., Where, and Why*, PRISON POLICY INITIATIVE BLOG (Mar. 1, 2023), https://www.prisonpolicy.org/blog/2023/03/01/womens_pie_2023/ [<https://perma.cc/9UYU-8G2A>]; see also *New Report, Women's Mass Incarceration: The Whole Pie 2024, Shows the Size and Scope of Women's Incarceration in America*, PRISON POLICY INITIATIVE BLOG (Mar. 5, 2024), https://www.prisonpolicy.org/blog/2024/03/05/womens_pie_2024/ [<https://perma.cc/6YA7-6KWX>].

⁴ Catherine Forestell & Danielle Dallaire, *Pregnant Behind Bars: Meeting the Nutritional Needs of Incarcerated Pregnant Women*, in HANDBOOK OF NUTRITION AND PREGNANCY 295, (Carol J. Lammi-Keefe et al. eds., 2018), <https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=1106&context=asbookchapters> [<https://perma.cc/9LX3-EW3Q>].

⁵ *Id.*

⁶ *Id.*

In many jurisdictions, this focus on minor offenses encompasses a mandatory sentence regardless of circumstances.⁷

What is even more alarming than the increasing rate of incarcerated females is that between five and ten percent of those women who enter the prison system yearly, will enter the system pregnant, and over two thousand babies will be born to those incarcerated mothers each and every year.⁸ While the right to “quality care” for all incarcerated persons, regardless of differences, was affirmed by the 1976 Supreme Court case *Estelle v. Gamble*, the definition of “quality care,” including prenatal care, varies immensely and was never strictly defined.⁹ While incarcerated, the treatment of the mother-to-be varies immensely from facility to facility, with no specific threshold.¹⁰ There are a few very important aspects of treatment and care of both the pregnant mother-to-be and the fetus that must be focused on while incarcerated, regardless of the varied policies of the facilities, the different security levels within each facility, and the differing level of offender population within the facility.¹¹

Part I of this comment will discuss the nutritional needs and the lack of proper nutrition of the pregnant mother-to-be while she is incarcerated.¹² Part II of this comment will address the act of shackling in-labor mothers while they are transported to the hospital to give birth and while in active labor and delivery, as well as the effects of the act of shackling on the mother-to-be and the unborn child.¹³ Part III of this comment will cover the aftercare and treatment of the new mother and the newborn infant immediately following the birth. Finally, the last part of this comment, Part IV, will discuss the detrimental effects of the lack of proper nutrition and lack of proper care on a newborn infant born to incarcerated mother, when

⁷ Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, 15 AM. MED. ASS'N J. ETHICS 779, 779 (2013), <https://journalofethics.ama-assn.org/article/shackling-and-separation-motherhood-prison/2013-09> [<https://perma.cc/5MVL-ZRD4>].

⁸ *Id.*

⁹ Christine Franco et al., *Equitable Care for Pregnant Incarcerated Women: Infant Contact After Birth—A Human Right*, 52 PERSPS. ON SEXUAL & REPROD. HEALTH 211, 211 (2020), <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/166238/psrh12166.pdf?sequence=2> [<https://perma.cc/97FT-JV78>]; see also *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

¹⁰ See Franco et al., *supra* note 9, at 211. See also *Estelle*, 429 U.S. at 103.

¹¹ Camille Kramer et al., *Shackling and Pregnancy Care Policies in US Prisons and Jails*, 27 MATERNAL & CHILD HEALTH J. 186, 194 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9660187/> [<https://perma.cc/LLP5-72LL>].

¹² Forestell & Dallaire, *supra* note 4, at 3.

¹³ Clarke & Simon, *supra* note 7.

the mother did not receive proper nutrition and care while incarcerated and pregnant.¹⁴

I. NUTRITIONAL NEEDS OF INCARCERATED MOTHERS IN PRISON

Although guidelines for jails and prison systems have been established in many jurisdictions recommending pregnancy screening for female inmates when they enter the system, the provision of anything beyond the most basic of human necessity to those who test positive for pregnancy is not a requirement in the federal, and many state prison and jail systems.¹⁵ While some state and federal prison systems do provide dietary supplements, as needed, there are many additional basic standards that are lacking for incarcerated women.¹⁶ Some of these additional basic standards include providing regular nutritious meals, a well-balanced diet, additional needed caloric intake, and nutritional counseling for incarcerated pregnant women.¹⁷ Jail policies and health care protocols provided by the system often turn a blind eye to recommendations and guidelines provided by outside sources because they are not mandatory.¹⁸ It is critical to meet the dietary needs of pregnant women in corrections facilities as many come from food-insecure environments and, upon release, will likely be returning to these environments.¹⁹ It is an unfortunate truth that while these women are incarcerated may be the only time these women are provided with nutritious meals. This proves the period of incarceration to be a very important and detrimental timeframe.

The National Commission of Correctional Health Care, (NCCHC), recommends a dietary supplement of folic acid to protect the fetus while growing.²⁰ Some protections afforded by folic acid include: protection from neural tube defects, low birth weight, and premature birth.²¹ The NCCHC also recommends iron as a supplement for pregnant women to protect against the risk of preterm delivery and low birthweight of the newborn.²² Despite the

¹⁴ Rebecca Shlafer et al., Best Practices for Nutrition Care of Pregnant Women in Prison 3-5 (Aug. 1, 2019) (unpublished manuscript) (on file with PubMed Central - National Center for Biotechnology Information), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6671683/> [<https://perma.cc/EY44-QZC8>].

¹⁵ Smriti Nair et al., *Pregnancy in Incarcerated Women: Need for National Legislation to Standardize Care*, 49 J. PERINATAL MED. 830, 831 (2021), <https://doi.org/10.1515/jpm-2021-0145> [<https://perma.cc/PV7J-GHB7>].

¹⁶ *Id.*

¹⁷ Shlafer et al., *supra* note 14, at 3-5.

¹⁸ Nair et al., *supra* note 15, at 831.

¹⁹ Forestell & Dallaire, *supra* note 4, at 3.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

importance of these supplements, these women are still not provided with the recommended levels of folic acid and iron.²³ On top of the lack of nutrition provided in the meals served, prenatal vitamins that are full of these nutrients, are also not a necessity in many facilities.²⁴ In addition to folic acid and iron, other nutrients are often found to be lacking in the diets of pregnant and incarcerated women, such as vitamin C which assists in the absorption of iron, Omega-3 fatty acids which help with the proper growth and development of the fetus overall, and Vitamin D or Calcium which assists in bone growth and density for both the mother and fetus.²⁵

Though the health and nutrition of pregnant inmates should be a priority for correctional facilities, it is costly, and therefore, the effort often falls by the wayside. There are some state corrections departments that have a registered dietitian or nutritionist on staff.²⁶ The dietician oversees the nutrition provided in the meals that are served to inmates, however, because there currently are not any federal regulations that mandate nutritional standards provided at correctional facilities, nor do they regulate the differing nutritional needs for pregnant women who are incarcerated, these dietitians do not differentiate between nutritional needs per incarcerated individual.²⁷ Moreover, because financing of these facilities often depends on legislative approval and appropriations that go up against other competing issues each year, sufficient nutrition for pregnant inmates is often not a priority.²⁸ As a result, incarcerated mothers-to-be are often left with unmet needs.²⁹

Some correctional facilities will offer small additional concessions to incarcerated and pregnant women.³⁰ This is often referred to as a “pregnancy snack.”³¹ Inmates will often report these snack as some extra crackers or an orange.³² In Oklahoma, where there is the highest rate of female prison inmates, mothers-to-be have stated they go almost twelve hours between breakfast and dinner with just one “pregnancy snack,” often consisting of a graham cracker, peanut butter, and powdered milk.³³

While not meeting an incarcerated pregnant mother’s needs can be a violation of human rights, contributing to a pregnant woman’s illness can be considered a violation of her 8th amendment right to

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4.

²⁷ *Id.* at 4-6.

²⁸ *Id.* at 5.

²⁹ *Id.* at 4.

³⁰ *Id.*

³¹ Victoria Law, *Pregnant Behind Bars: How Expectant Mothers’ Lives Are Under Threat*, MS. MAGAZINE, (Oct. 23, 2015), <https://msmagazine.com/2015/10/23/pregnant-behind-bars-how-expectant-mothers-lives-are-under-threat/> [https://perma.cc/WCA9-HQMP].

³² *Id.*

³³ *Id.*

protection against cruel and unusual punishment.³⁴ Correctional facilities often try to save money by packaging meals that are heavily processed, such as deli meats, bologna, and hot dogs, which may be contaminated with *Listeria*, or the bacterium *L. monocytogenes*, a bacterium that can cause fetal complications.³⁵ The Food and Drug Administration advises women against eating certain foods including raw or undercooked meats and poultry, sushi and deli meats while pregnant.³⁶ By eating ready-to-eat meats such as deli meats, that could be contaminated with *L. monocytogenes*, the pregnant mother runs the risk of contracting listeriosis and spreading the infection to their unborn child.³⁷ When infected with listeriosis, most women don't feel sick, and thus, being asymptomatic, they could unknowingly pass the infection on to their child.³⁸

Listeriosis may cause miscarriage, especially during the first trimester of pregnancy.³⁹ The mother is more at risk during the third trimester.⁴⁰ Symptoms that can result from contracting Listeriosis during the third trimester include: fever, chills, muscle aches, and diarrhea or upset stomach.⁴¹ Some additional symptoms may include stiff neck, moderate to severe headache, confusion, and loss of balance.⁴² Listeriosis can also lead to premature labor, the delivery of a low-birth-weight infant, and even infant death.⁴³ Fetuses who have a late infection (such as in the second or third trimester) may develop a wide variety of long-term serious health problems.⁴⁴ These health problems can include blindness, seizure, paralysis, and other health problems including impairments of the brain, kidney, or heart.⁴⁵ In newborn babies *listeria* can also cause meningitis.⁴⁶ If a pregnant woman knows about the detrimental effects of eating these foods

³⁴ K.E. Holt, *Nine Months to Life – The Law and The Pregnant Inmate*, 20 J. FAM. L. 523, 530, 532, 543 (1982), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/nine-months-life-law-and-pregnant-inmate> [<https://perma.cc/4T2Z-XT9T>].

³⁵ Forestell & Dallaire, *supra* note 4, at 4.

³⁶ *People at Risk: Pregnant Women*, FOODSAFETY.GOV <https://www.foodsafety.gov/people-at-risk/pregnant-women> (Sept. 25, 2020) [<https://perma.cc/JLH7-3E7H>] [hereinafter *People at Risk*].

³⁷ *Listeria – Food Safety for Moms to Be*, FDA, <https://www.fda.gov/food/health-educators/listeria-food-safety-moms-be> (Sept. 27, 2018).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

and chooses not to or complains to staff, they are not provided with an adequate alternative option.⁴⁷

When incarcerated women are escorted out of prison, such as to a prenatal visit or to a court hearing, they are provided with a bagged lunch that is prepared in the kitchen. This bagged lunch all too often consists of a sandwich made with deli meat or bologna. When this bag lunch is provided, the mother-to-be is not always warned about the potential harmful side effects of eating these meats.⁴⁸

In addition to the lack of quality of meals and foods, meal timing throughout the day, as well as portion size, are very strictly controlled by the facility.⁴⁹ For these pregnant women, a lack of bodily autonomy can have consequences.⁵⁰ During pregnancy, many women suffer from nausea and acid reflux and prefer to eat multiple small meals throughout the day to help with digestion and to reduce any nausea.⁵¹ Because the facilities control the time meals are served and portion sizes, the mother-to-be is often unable to use food to her advantage in assisting to reduce her nausea and acid reflux⁵², leaving her feeling as if she has no control over her health and pregnancy.

A. Solution

While providing prenatal care for pregnant and incarcerated mothers-to-be is argued to be both costly and time consuming, there are five recommended standards to improve the nutritional intake of pregnant inmates in correctional facilities that amass for long term benefits, many of which can be accredited to Rebecca J. Shalfer and her partnering authors in the manuscript written for Best Practices for the Nutrition and Care of Pregnant and Incarcerated Women.⁵³ First, each facility shall administer a pregnancy test upon arrival, booking, or intake.⁵⁴ Early pregnancy determination is the best precursor to early administration of prenatal care and nutrition.⁵⁵ This early determination will in turn result in a healthier pregnancy

⁴⁷ Victoria Law, *Hungry, Shackled, and Grieving: What Prison Is Like for Pregnant People*, REWIRE NEWS GRP. (Jan. 24, 2018, 10:16 AM), <https://rewirenewsgroup.com/2018/01/24/hungry-shackled-grieving-prison-like-pregnant-people/> [<https://perma.cc/98QZ-57AV>].

⁴⁸ *Id.* ("According to the American College of Obstetricians and Gynecologists, eating lunch meats, cold cuts, and unpasteurized foods during pregnancy can lead to listeriosis. This illness generally manifests as mild flu-like symptoms, such as fever, chills, and muscle aches. During pregnancy, however, it can cause miscarriage, stillbirth, or preterm labor."); see also *People at Risk*, *supra* note 36.

⁴⁹ Forestell & Dallaire, *supra* note 4, at 4.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Shlafer et al., *supra* note 14, at 3.

⁵⁴ *Id.*

⁵⁵ *Id.*

for the mother and minimize the risk of any harm to the unborn child.⁵⁶

Second, prenatal vitamins should be immediately prescribed and administered to any mother-to-be who does test positive for pregnancy, to ensure that she is receiving the proper vitamins for proper health and nutrition.⁵⁷ Many of these women come from a nutritionally deficient background, therefore, the best way to ensure that they are learning proper nutrition and education, is to provide it for them while in the care of the government facilities.⁵⁸

Third, the facilities should follow the nutritional guidelines set forth by the Academy of Nutrition and Dietetics for a healthy pregnancy, regardless of cost or expense.⁵⁹ It is important that all mothers receive adequate folic acid, iron, calcium, zinc, and Vitamin D, but especially where there is a good chance that this may be the only time in her life that she will or could receive it.⁶⁰

Fourth, all facilities should be providing additional food and snacks and meals to pregnant women, and pregnant women should have free access to regular fluids, especially water.⁶¹ Pregnant women require up to three liters of fluid a day and dehydration during pregnancy can lead to devastating effects, including miscarriage, preterm labor, and contractions.⁶²

Finally, facilities should be providing pregnant inmates with educational resources regarding nutrition and the importance of a balanced diet. This will assist with inmate compliance and allow the pregnant inmate to understand the importance of her supplemented diet.⁶³ This will also provide them with material and education to leave the facility within the future.⁶⁴

II. SHACKLING WOMEN PRISONERS WHILE GIVING BIRTH

Women prisoners are still routinely shackled during pregnancy and childbirth, although this practice is regarded as an unsafe medical practice.⁶⁵ Restraining pregnant prisoners can result in

⁵⁶ *Id.*

⁵⁷ Anna Grannon, *An OB-GYN Answers All Your Questions About Prenatal Vitamins*, EXPECTFUL (Feb. 7, 2024), <https://expectful.com/articles/everything-need-know-prenatal-vitamins> [<https://perma.cc/8T6B-DC4V>].

⁵⁸ Schlafer et al., *supra* note 14, at 5-6.

⁵⁹ *Id.* at 3.

⁶⁰ *Id.* at 3-4.

⁶¹ *Id.* at 4-5.

⁶² *Id.* at 5.

⁶³ *Id.* at 5-6.

⁶⁴ *See id.* at 6.

⁶⁵ AM. C.L. UNION FOUND., THE SHACKLING OF PREGNANT WOMEN AND GIRLS IN U.S. PRISONS, JAILS & YOUTH DETENTION CENTER, AM. CIV. LIBERTIES UNION (2012), https://www.aclu.org/sites/default/files/field_document/anti-shackling_briefing_paper_stand_alone.pdf [<https://perma.cc/URX6-22HT>] [hereinafter ACLU Briefing Paper].

accidental trips and falls resulting in injury and harm.⁶⁶ This risk of fall creates a risk of harm to both the unborn child, and the mother, including the risk of miscarriage.⁶⁷ A greater risk for the mother and unborn child though, is shackling pregnant women during labor, delivery, and postpartum recovery.⁶⁸ The act of shackling during these times can interfere with appropriate medical care, especially during emergencies.⁶⁹ The shackles that are applied to the female inmates not only provide for extreme and painful discomfort, they prohibit the mother from being able to get into proper birthing positions, and they can also interfere with the proper medical care necessary to give birth should the possibility of serious medical emergencies such as C-section.⁷⁰ Despite the fact that very few, if any, jurisdictions have reported any escapes or threats to any staff (medical or correctional) from pregnant inmates, only ten states prohibit the use of shackles on pregnant inmates while they are in labor or give birth.⁷¹

To be free from being restrained is especially important during labor and delivery and during the immediate minutes following the birth of the child, when building connection between mother and child is so critical.⁷² Because the act of shackling limits the woman's ability to move freely during labor, the woman is left unable to shift positions to manage labor and childbirth and the pain associated with it or to maintain her physical safety, as well as the safety of her unborn child as it enters this world.⁷³ Shackling women during labor can also lead to unnecessary bruising and cuts as a result of the restrains on the arms, legs, other extremities, and abdomen as well as on other parts of the body⁷⁴

Women often need to move around during labor, delivery, and recovery to ease the pain and to move the process of labor and delivery along swiftly, including being able to move their legs.⁷⁵ Freedom of movement of the whole body while in labor makes the contractions more effective, the overall time of labor shorter, and gives the mother a better sense of autonomy over her body and the birthing process.⁷⁶ When a woman is restrained, medical staff are

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² AN ACT TO PROHIBIT THE SHACKLING OF PREGNANT PRISONERS (AM. MED. ASS'N 2010); see also ACLU Briefing Paper, *supra* note 65.

⁷³ ACLU Briefing Paper, *supra* note 65.

⁷⁴ *Id.*

⁷⁵ Author Unknown, *Freedom of Movement Throughout Labor*, MY MINDFUL BIRTH, (May 14, 2020), <http://mymindfulbirth.com/freedom-of-movement-throughout-labor/#:~:text=When%20you%20have%20the%20freedom,a%20better%20sense%20of%20control> [https://perma.cc/XV36-93ZU].

⁷⁶ *Id.*

limited in their abilities to do their job, and assist the mother or baby with their medical needs.⁷⁷

When restraints are used during labor, doctors are extremely limited in how they can assist in the birth or move a mother for the safety of the unborn child.⁷⁸ Delaying an immediate intervention such as a C-section by a time period as small as five minutes can lead to life changing injuries such as permanent brain damage.⁷⁹ Therefore, if a doctor needs to wait to remove shackles before conducting an emergency C-section, a greater risk of brain damage and injury to the unborn child results.⁸⁰

Most incarcerated women are non-violent offenders who offer little to no risk of fleeing, especially during labor and postpartum recovery.⁸¹ To date, in those states that do not allow shackling while pregnant, there have been no recorded incidents of women in labor harming anyone or attempting to flee.⁸² Beginning in the year 1990, New York City jails restricted the use of restraints on female inmates that were admitted for labor and delivery.⁸³ Since this restriction was placed, there have been no reported incidents of escape or harm to medical staff.⁸⁴ It is not unheard of that armed guards will accompany shackled women during delivery.⁸⁵

Correctional officers are trained in how to handle inmates, and do so well, without the need for shackling to prevent harm or injury to physicians, the mother, and the newborn.⁸⁶ It is not necessary to shackle women who are incarcerated for minor or non-violent offenses.⁸⁷ Not forgetting the fact that these women are in labor, and at this point, their main goal is likely birthing a healthy baby; it is also unlikely that they would want to hurt a guard or leave the hospital in this moment.⁸⁸ The use of shackles is unnecessary, inhumane, and poses a greater health risk to the unborn child and mother.⁸⁹

There appears to be inconsistencies in the restraint applications depending upon the incarceration facility. There is no federal law

⁷⁷ Stephanie Fritz & Kevin Whitacre, *Prison Nurseries: Experiences of Incarcerated Women During Pregnancy*, 55 J. OFFENDER REHAB. 2016, at 1-20, <https://www.in.gov/idoc/files/WON-Womens-Experiences.pdf> [<https://perma.cc/P85V-593Z>].

⁷⁸ *Id.*

⁷⁹ Am. Civ. Liberties Union Found., *supra* note 65.

⁸⁰ *See Id.*

⁸¹ Am. Civ. Liberties Union Found., *supra* note 65.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Tori DeAngelis, *The Restraint of Pregnant Inmates*, 47 AM. PSYCH. ASS'N, June 2016, at 26. <https://www.apa.org/monitor/2016/06/restraint-inmates>. [<https://perma.cc/9YNN-2X3Y>].

⁸⁸ *See id.*

⁸⁹ *Id.*

regulating the use of shackles as a protocol in state prisons.⁹⁰ Therefore, there are grave disparities between how each prison facility chooses to handle shackling of their pregnant inmates, and inconsistencies within state laws and even different jurisdictions make the issue even more complicated and less black and white.⁹¹ Some pregnant offenders report that they are handcuffed during transport from the institution to the hospital, but leg restraints or belly chains are not used, but are used for nonpregnant offenders.⁹² Once admitted to the hospital the handcuffs and shackles are removed, "and the women are restrained to the bed with one ankle chain, which is long enough to access the bathroom."⁹³ The ankle chain can then be removed once medical staff advises that the mother is in active labor and is often put back on the mother within thirty minutes of delivery.⁹⁴

At the opposite end of the spectrum, other facilities have much stricter policies regarding how to handle pregnant inmates while incarcerated, including shackling and handcuffing through labor and delivery.⁹⁵ One female inmate reports being handcuffed and restrained through her entire labor and delivery.⁹⁶ Other inmates state that they were handcuffed until the hospital staff demanded the handcuffs and restraints be removed⁹⁷ for their protection and safety, worried it may harm them or the baby. The correction officers often have no say in what happens while they accompany the inmates to the hospital and have to adhere to the policies and protocols that were laid out for them by the facility in which they work for.⁹⁸

Another factor in the inconsistencies of the use of shackles includes the personal beliefs and relationships that the corrections officers have with those incarcerated mothers-to-be.⁹⁹ One inmate reported her experience as follows:

Please don't get them in trouble by this. But honestly, after you have the baby, you have to have that 13 foot one [restraint chain]. They never barely put it on me but when the CO [correctional officer] from basement. When he came up and did the walk around, that was the 5 o'clock one. I had to have it on

⁹⁰ Joe Hernandez, *More states are restricting the shackling of pregnant inmates, but it still occurs*, NPR (Apr. 22, 2022, 8:48 AM), <https://www.npr.org/2022/04/22/1093836514/shackle-pregnant-inmates-tennessee>. [<https://perma.cc/QJ4A-55B9>].

⁹¹ *See id.*

⁹² Fritz & Whiteacre, *supra* note 77, at 10.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at 11.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *See Id.*

⁹⁹ Fritz & Whiteacre, *supra* note 77, at 10.

then. And really when I went to the bathroom or when the CO was sleeping she would put it on me. But half the time, she didn't even do that. And they have to have it on you. And they said, 2 of COs told me, "you are the first person we have never had to put a shackle on like that." They said, I don't know why it's like that and I don't know if it was them themselves, but they said, "we don't want to."¹⁰⁰

If a correction officer had a personal belief and was willing to do something different than what the policy or procedure said, and knew or felt they would not get in trouble for it, then they may not adhere to those policies and/or procedures.¹⁰¹ However, if a correction officer makes a decision that differs from policy, he or she has to have a trust in the inmate that she will not tell, flee, or do anything wrong.¹⁰²

Although the Federal First Step Act—a federal act that prohibits some of these punitive acts such as shackling while pregnant and in labor— was passed in December 2018, many state institutions continue with the practice of shackling women while incarcerated and pregnant or in active labor.¹⁰³ The women are often incarcerated for offenses that range from petty theft and shoplifting to federal crimes, and everything in-between.¹⁰⁴ The fact that these women are incarcerated for a variety of offenses, in a variety of locations, with no unified policy, means many of these pregnant inmates are at the mercy of guards at the facilities in which they are incarcerated.¹⁰⁵ These guards have the power to choose how to control their movements, their environment, and their treatment, including the shackling procedures to which they adhere.¹⁰⁶ In 2019, seventy-four percent of responding nurses had cared for incarcerated pregnant or postpartum women and admitted to still shackling them.¹⁰⁷ Of the reasons given for shackling, sixty-one percent of the time, the reason was not because the prisoners posed a risk to others or were flight risks.¹⁰⁸ Rather, the reason for shackling was because there was a

¹⁰⁰ *Id.*

¹⁰¹ *See Id.*

¹⁰² *See Id.*

¹⁰³ P.L. 115-391; Lori Teresa Yearwood, *Pregnant and shackled: Why inmates are still giving birth cuffed and bound*, THE GUARDIAN (Jan. 24, 2020, 5:30 AM), <https://www.theguardian.com/us-news/2020/jan/24/shackled-pregnant-women-prisoners-birth>. [<https://perma.cc/W4KJ-QCP8>].

¹⁰⁴ *See* Fritz & Whiteacre, *supra* note 77, at 6.

¹⁰⁵ Lori Teresa Yearwood, *Pregnant and shackled: Why inmates are still giving birth cuffed and bound*, THE GUARDIAN (Jan. 24, 2020, 5:30 AM).

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *Id.*

rule or protocol within the facility which supported or required shackling.¹⁰⁹

A. Solution

Shackling a woman during labor demonstrates deliberate indifference to a prisoner's serious medical needs, a violation of long-established Supreme Court precedent protecting prisoners' 8th Amendment right to be free from cruel and unusual punishment.¹¹⁰ If a mother-to-be is in labor and needs serious medical assistance, the delay of removing the shackles not only causes serious medical risk to both the unborn child and the mother.¹¹¹

The only permanent solution to the problem of shackling women who are pregnant and incarcerated and while giving birth is a federal law prohibiting the use of shackles while pregnant and while in labor.¹¹² This act is inhumane and unnecessary, and above all, unsafe for all involved, including the doctors, mothers, and children.¹¹³

III. AFTERCARE AND TREATMENT OF MOTHER AND NEWBORN INFANT

On average, more than twenty percent of incarcerated women that give birth while incarcerated are forcibly separated from their newborns immediately after delivery for non-medical reasons.¹¹⁴ If a birth goes smoothly, the new mother will likely be released from the hospital and back to prison within twenty-four hours post birth.¹¹⁵ During a high-risk pregnancy or birth, a mother will likely only have a few days in the hospital for post-natal care before they then return to prison.¹¹⁶ Because there are less than ten prison-based nurseries in the United States, after birth, majority of the newborn children are placed with a family member, entered into the foster care system, or placed for adoption.¹¹⁷ Although studies of

¹⁰⁹ *Id.*

¹¹⁰ *Nelson v. Corr. Med. Servs.*, 583 F.3d 522 (8th Cir. 2009).

¹¹¹ See *id.* (holding that the corrections officer's conduct constituted deliberate indifference in violation of the Eighth Amendment, and the female inmate had a clearly established right not to be shackled absent clear and convincing evidence that she was a security or flight risk.).

¹¹² Erica Anderson, *Childbirth in Chains: Why the Shackling of Incarcerated Pregnant Women is Unconstitutional*, UNI. CINCINNATI L. REV. (Apr. 23, 2021), <https://uclawreview.org/2021/04/23/childbirth-in-chains-why-the-shackling-of-incarcerated-pregnant-women-is-unconstitutional/> [<https://perma.cc/SWP7-7RNU>].

¹¹³ *Id.*

¹¹⁴ Christine Franco et al., *Equitable Care for Pregnant Incarcerated Women: Infant Contact After Birth—A Human Right*, 52 UNIV. OF MICH. 211, 211-12 (Dec. 2020), <https://deepblue.lib.umich.edu/bitstream/handle/2027.42/166238/psrh12166.pdf?sequence=2> [<https://perma.cc/3CSG-YQKS>].

¹¹⁵ Clarke & Simon, *supra* note 7, at 781.

¹¹⁶ Franco et al., *supra* note 115, at 211.

¹¹⁷ *Id.*

immediate postpartum mother–newborn separation in the incarcerated population are not available at this time, practitioners report that practices vary from immediate forced removal from mother, to deliberate separation in the hospital with limited and/or sporadic supervised contact, to full support of the mother–infant relationship while in the hospital with breastfeeding support and in room sleeping for the newborn, just as with a traditional patient–infant relationship.¹¹⁸ Therefore, what is assumed to be best medical practice for the general population, unfortunately, does not translate in the absence of national guidelines.¹¹⁹ Often individual hospitals and prisons are left to determine their own policies for infant contact and care post-birth.¹²⁰

Individual bias and institutional norms perpetuate stereotypes of incarcerated persons and facilitate the idea of the unworthiness and dangerousness of an incarcerated mother; there are no documented studies that support these internal beliefs and biases, and there are no documented cases of women who were incarcerated at the time of birth intentionally harming their newborns during the first days of life.¹²¹ If there is not absence of evidence otherwise, it should not be an assumption that pregnant women in jails or prisons are more likely to harm their children.¹²² Finally, incarcerated individuals give birth within the safe space of a birth unit and are monitored by corrections officers at all times throughout their hospital stay, making it highly unlikely that a patient would be able to harm their newborn.¹²³

A. Risks to the Infant

The idea that infant separation immediately following birth provides safety for the newborn is further eroded by the evidence that the parent-child bond that is nurtured by the time spent with the newborn immediately following the birth.¹²⁴ The American Academy of Pediatrics, the American Academy of Family Physicians, and the World Health Organization recommend skin-to-

¹¹⁸ *Id.* at 211-12.

¹¹⁹ Franco et al., *supra* note 115, at 212 (“Mothers and babies have a physiologic need to be together at the moment of birth and during the hours and days that follow. Keeping mothers and babies together is a safe and healthy birth practice. Evidence supports immediate, uninterrupted skin-to-skin care after vaginal birth and during and after cesarean surgery for all stable mothers and babies, regardless of feeding preference”); Jeannette T. Crenshaw, *Health Birth Practice #6: Keep Mother and Baby Together*, 23 J. Perinatal Educ. 211 (Fall 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4235060/>. [<https://perma.cc/QW5Z-QBG5>].

¹²⁰ Franco et al., *supra* note 115, at 211-12.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* at 212.

skin contact in the hours after birth and as much contact as possible between mothers who are stable after birth and their babies.¹²⁵ During the 1970s, the term “golden hour,” was developed to describe the important time following birth where things such as skin-to-skin contact, a breast crawl, and breast feeding can occur to aid in developing bonds between mother and infant.¹²⁶

Newborns taken away from their mothers in these critical hours after birth are unable to receive these important benefits. Not being able to take in these crucial benefits could lead to more irritability as an infant or toddler, behavioral dysregulation as they age, and an incomplete bond between the mother–infant.¹²⁷ Further, children of incarcerated mothers have increased risk of developing mental health issues and increased mortality rate.¹²⁸ Given that the children born to incarcerated mothers and deprived of this bonding time with the birth mother are at risk for adverse childhood outcomes, it is crucial for them to obtain every benefit they can to put them in a better place.¹²⁹ It is unethical to withhold bonding time and care for the infants of incarcerated mothers when the standard of care is so well known and determined for the general population.

B. Risks to the Mother

Uninterrupted skin-to-skin contact is important and beneficial for both newborns and new mothers.¹³⁰ Separating the mother from the infant acts as a barrier to the important bonding process that provides amazing benefits.¹³¹ This forced separation is especially concerning because up to eighty percent of pregnant women involved in the criminal justice system have depression, compared to only eight percent of the general pregnant population.¹³² It has also been shown that incarcerated women have an increased lifetime prevalence of Post-Traumatic Stress Disorder, close to around forty percent, compared with somewhere between six and nine percent in the general population.¹³³ When a mother experiences skin-to-skin contact with her child immediately following birth, it is proven that she also experiences decreased symptoms of postpartum depression.¹³⁴

Direct contact between mother and infant after birth can assist in breastfeeding, resulting in the release of oxytocin, and decreasing the

¹²⁵ *Id.* at 212.

¹²⁶ *Id.* at 212.

¹²⁷ *Id.* at 212.

¹²⁸ *Id.* at 212.

¹²⁹ *Id.* at 212.

¹³⁰ *Id.* at 212.

¹³¹ *Id.* at 212.

¹³² *Id.* at 212.

¹³³ *Id.*

¹³⁴ *Id.*

risk of any post birth complications. Even when incarcerated mothers have made the decision not to continue breastfeeding once they return to prison, the experience of latching and breastfeeding while in the hospital provide for a beneficial experience that assists in facilitating a bonding experience between mother and infant.¹³⁵ Medical practitioners are entrusted with patient care and protecting their patients, which is why this practice of unneeded and immediate separation is one that must cease. Instead of protecting patients, this practice is contributing to lifetime trauma and mental health instability.¹³⁶

C. Solution

The greatest solution to the improper care of and sentiment to the new mothers who give birth while incarcerated would be to increase the amount of facilities in the United States which offer prison nurseries for mothers to remain close and still care for their infant after birth.¹³⁷ This option would reduce the amount of infant children put into the foster care or adoption system, and also reduce the burden on the families to care for the infant while the mother is incarcerated.¹³⁸

IV. EFFECTS OF LACK OF PROPER NUTRITION AND CARE ON NEWBORNS

Lack of proper nutrition in the mother-to-be while pregnant and incarcerated can lead to detrimental health and lifelong effects on the newborn when born. The maternal dietary deficiencies and malnutrition can result in nutritional deficiencies in the fetus both while in uterine and after birth while growing up.¹³⁹ Maternal

¹³⁵ *Id.* at 212-13.

¹³⁶ *Id.* at 213.

¹³⁷ Elizabeth Chuck, *Prison nurseries give incarcerated mothers a chance to raise their babies – behind bars*, NBC NEWS (Aug. 4, 2018, 6:00 AM), <https://www.nbcnews.com/news/us-news/prison-nurseries-give-incarcerated-mothers-chance-raise-their-babies-behind-n894171> [<https://perma.cc/9FYE-26PV>] (Research on how the women and babies fare long term is limited but encouraging. One five-year study (*Intergenerational Transmission of Attachment for Infants Raised in a Prison Nursery*) found that babies raised in prison nurseries had comparable rates of secure attachments to their mothers and others in their life, to healthy children raised in families on the outside); see M.W. Byrne et al., *Intergenerational Transmission of Attachment for Infants Raised in a Prison Nursery*, NAT'L INST.S OF HEALTH, 12 ATTACH HUM. DEV. 375 (July 2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2942021/>. [<https://perma.cc/BWG6-47JM>].

¹³⁸ *Id.*

¹³⁹ T.S. Osteria, *Maternal nutrition, infant health, and subsequent fertility*, NAT'L LIBR. OF MED. (July-Sept. 1982), <https://pubmed.ncbi.nlm.nih.gov/12266149/#:~:text=Studies%20have%20confirmed%20the%20correlation,retardation%2C%20and%20poor%20school%20performance> [<https://perma.cc/7RKD-U2FY>].

malnutrition may also lead to a smaller placenta size and decreased nutrient supply to the fetus.¹⁴⁰ These correlations between severe maternal malnutrition and lowered birth weight, neurological disorders, impaired and slowed physical growth, mental and cognitive disorders, and poor school performance in the newborn.¹⁴¹

Poor maternal nutritional status of the mother-to-be has been related specifically to low birth weight in the newborn, which has detrimental lifelong implications.¹⁴² During pregnancy, the fetus is entirely dependent on the maternal nutrients provided by the mother's intake.¹⁴³ Thus, inadequate intake of fat and protein in mothers throughout their pregnancy led to poor nutrient availability for the fetus, which then impacts the growth and development of the baby.¹⁴⁴

Babies who were born with low birth weight were found to be at increased risk for mental health problems, beginning in childhood and extending at least into their thirties.¹⁴⁵ As the infant grows into a young child, they were significantly more likely to be diagnosed with attention deficit hyperactivity disorder ("ADHD").¹⁴⁶ Adolescents and pre-teens were also found to be at greater risk for ADHD and social problems.¹⁴⁷ Once reaching adult age, those who were born with low birth weight were reported to have significantly higher diagnoses of depression, anxiety, and low levels of social functioning.¹⁴⁸

Being born with low birth weight has significant implications on an infant as they age into adulthood.¹⁴⁹ This negative effect is said to be equivalent to being twelve years older than the individual's actual age, once reaching the age of thirty.¹⁵⁰ Being born at a weight less than five- and one-half pounds at birth increases the probability of being in poor health as an adult by over seventy percent.¹⁵¹ Not only

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ Karen Mathewson, *Low Birth Weight Babies At Higher Risk For Mental Health Problems Later in Life*, AM. PSYCH. ASS'N (Feb. 13 2017), <https://www.apa.org/news/press/releases/2017/02/low-birth-weight#:~:text=Extremely%20low%20birth%20weight%20babies%20were%20found%20to%20be%20at,study%20included%20in%20the%20review> [<https://perma.cc/EES6-6WGZ>].

¹⁴⁶ *Born to lose: How birth weight affects adult health and success*, UNIV. MICH. VICE PRESIDENT FOR COMM'N (June 5, 2007), <https://news.umich.edu/born-to-lose-how-birth-weight-affects-adult-health-and-success> [<https://perma.cc/N3CU-CD6P>].

¹⁴⁷ *Id.*

¹⁴⁸ Mathewson, *supra* note 146.

¹⁴⁹ *Id.*

¹⁵⁰ *Born to lose: How birth weight affects adult health and success*, *supra* note 147.

¹⁵¹ *Id.*

does low birth weight affect a child as they age, but it has lasting effects as the adult ages into later life as well.¹⁵²

Aside from maternal nutrition during pregnancy, the first one thousand days post birth hold the greatest possibility and are the most detrimental to a child's life.¹⁵³ The ability of a child to develop, learn, and thrive is significantly impacted by how well or how poorly mothers and children are fed and cared for throughout this period.¹⁵⁴ This is the time period where the brain of a child grows and develops most; this is also the period of time where the foundation for a child's long-term health is established.¹⁵⁵ A child's brain creates one million new neural connections every second.¹⁵⁶ These new neural connections provide the foundation for a child's future.

Achieving both physical and mental wellness is a lifetime goal for any human being, even if they do not realize it at the time. The first one thousand days, or the period from conception to age two, are the most crucial for the development of a person's body, brain, metabolism, and immune system.¹⁵⁷ Malnutrition is associated with numerous health problems, such as obesity, impaired growth, cognitive issues, and mental health problems.¹⁵⁸ A pregnant incarcerated woman's well-being, diet and nutrition levels, and stress levels likely affect the development of her unborn child.¹⁵⁹ After birth, the child's immediate interactions with its mother, immediate and long-term physical environment, and nutrition have a long-term effect on their well-being and health.

The nutrition, diet, and care needed by an expectant and incarcerated mother throughout the first trimester of her pregnancy impact the first one thousand days of a child's life.¹⁶⁰ A child's developing brain and body suffer irreparable damage from insufficient nutrition in those days.¹⁶¹ Several nutrients are extremely important for the growth of the unborn child's brain

¹⁵² *Id.*

¹⁵³ Akanksha Likhar & Manoj S. Patil, *Importance of Maternal Nutrition In the First 1,000 Day sof Life and Its Effects on Child Development: A Narrative Review*, 14 CUREUS (Oct. 8, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9640361/pdf/cureus-0014-00000030083.pdf> [<https://perma.cc/53B3-PDXB>].

¹⁵⁴ *Id.*

¹⁵⁵ Shlafer et al., *supra* note 14, at 3.

¹⁵⁶ *Early childhood development: For every child, early moments matter*, UNICEF.ORG (last visited Apr. 18, 2024), <https://www.unicef.org/early-childhood-development#:~:text=In%20the%20first%20few%20years,health%20and%20behaviour%20throughout%20life> [<https://perma.cc/S3AN-5MB7>].

¹⁵⁷ Likhar & Patil, *supra* note 154; see also *The first 1,000 days*, AUSTL. DEP'T HEALTH AND AGED CARE (June 2022), <https://www.pregnancybirthbaby.org.au/the-first-1000-days#:~:text=The%20first%201%20C000%20days%20refers%20to%20a%20child%27s,body%20and%20immune%20system%20grows%20and%20develops%20significantly> [<https://perma.cc/NS7H-B8VF>].

¹⁵⁸ Likhar & Patil, *supra* note 154.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

during pregnancy.¹⁶² These nutrients consist of certain specific lipids, healthy amounts of protein, folate, zinc, iodine, and iron.¹⁶³ Poor health outcomes of child, especially low birth weight, and long-lasting health effects, are linked to inadequate maternal nutrition during conception, during pregnancy, and after delivery.¹⁶⁴

A. Solution

Addressing malnutrition in prison systems is crucial in providing these children born to incarcerated mothers with the best opportunity to thrive. A child's ability to thrive in life depends upon good nutrition provided to its mother during pregnancy and continued proper care and nutrition during the early years of life.¹⁶⁵ Children who receive proper nutrition in the first one thousand days have a higher likelihood of a healthy birth weight, a reduced risk of long-term illness and disorder, such diabetes and obesity, a lower risk of cognitive disability, and fewer behavioral issues.¹⁶⁶ The physical and mental development of a child will be hindered if the mother-to-be is malnourished when she is pregnant or during the first two years of the child's life.¹⁶⁷ The child will be affected by this for the rest of their life, and those effects cannot be undone.¹⁶⁸ All children, regardless of what circumstances brought them into this world, have the right to the best opportunity afforded to them in life. In addressing the nutritional needs of women in the prison system, the effects of poor nutrition or lack of proper nutrition on infants and newborns can be better prevented and vetted.

CONCLUSION

Despite the increase in the number of women who are incarcerated, incarcerated women still make up less than ten percent of the overall imprisoned population.¹⁶⁹ As a result, health-care protocols, inmate policies, and overall helpful interventions still focus mainly on the male incarcerated population and fail to consider the gender specific needs of the growing female population, such as pregnancy and healthy births.¹⁷⁰ Those women who find themselves

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Fritz & Whiteacre, *supra* note 77, at 1.

¹⁷⁰ Franco et al., *supra* note 115, at 211.

pregnant and incarcerated are often already experiencing high-risk pregnancies.¹⁷¹

The needs of pregnant incarcerated women are very different than that of an incarcerated male.¹⁷² Most women who are incarcerated are non-violent offenders.¹⁷³ These women are largely victims of poverty and abuse and have learned to cope with these challenges that have been presented to them, not through engaging in violent crimes, but through other maladaptive behaviors such as committing property offenses and drug offenses.¹⁷⁴

Providing support for incarcerated pregnant women begins with early pregnancy screening, and the provisions of individualized meal plans that provide additional nutritional needs to these women aside from unhealthy prepackaged and calorie dense foods.¹⁷⁵ The provision of prenatal vitamins should be as mandatory as medication.¹⁷⁶ The use of shackling while pregnant provides more risk than benefit for these mothers-to-be, both in transport and while in labor and therefore needs to be long abolished.¹⁷⁷ There needs to be an established post-natal care plan for the mother and the infant, including time with the mother and baby, to connect and bond, as well as heal.¹⁷⁸

Most importantly, even if the nutritional needs of the mother are not to be considered when planning for the food of the mother while incarcerated; the nutritional needs of the child should be.¹⁷⁹ The effects of malnutrition on a newborn are detrimental. The effects of low birth weight can be lifelong.¹⁸⁰ With programs such as WIC available to ensure that the mother is receiving healthy foods while pregnant for pregnant women outside of incarceration, it is hard to

¹⁷¹ Rhee, Nissa, *Improving the Health and Wellbeing of Incarcerated Mothers*, Aug 26, 2019. <https://www.vera.org/news/improving-the-health-and-wellbeing-of-incarcerated-mothers> [<https://perma.cc/XF4Y-79QG>].

¹⁷² Velmanette Montgomery, *Legislators and Human Rights Activists Hail end of Shackling Incarcerated Pregnant Women*, N.Y. STATE SENATE (May 19, 2009), <https://www.nysenate.gov/newsroom/press-releases/2009/velmanette-montgomery/legislators-and-human-rights-activists-hail-end> [<https://perma.cc/7KCM-VWVG>].

¹⁷³ *Id.*

¹⁷⁴ Unknown Author, *New report, Women's Mass Incarceration: The Whole Pie 2024*, shows the size and scope of women's incarceration in America, March 5, 2024, https://www.prisonpolicy.org/blog/2024/03/05/womens_pie_2024/ [<https://perma.cc/44SN-NLRD>].

¹⁷⁵ Shlafer et al., *supra* note 14, at 3.

¹⁷⁶ Nair et al., *supra* note 15, at 833.

¹⁷⁷ Anderson, *supra* note 113.

¹⁷⁸ Somayeh Alirezaei, *The Needs of Incarcerated Pregnant Women: A Systematic Review of Literature*, (Jan. 10, 2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8724729/> [<https://perma.cc/393G-G4FU>].

¹⁷⁹ *Born to lose: How birth weight affects adult health and success*, *supra* note 147.

¹⁸⁰ *Id.*

imagine that the prisons cannot provide the same staples to pregnant women while incarcerated.¹⁸¹

¹⁸¹ WIC - Women, Infants, and Children, U.S. DEP'T OF AGRIC. (last visited Apr. 18, 2024), <https://www.nutrition.gov/topics/food-security-and-access/food-assistance-programs/wic-women-infants-and-children> [<https://perma.cc/KG8S-T5VA>].