

if
when
how

Lawyering for
Reproductive
Justice

Reproductive Justice in the Prison System

IF/WHEN/HOW ISSUE BRIEF

Contents

INTRODUCTION	3
INCARCERATED WOMEN	3
REPRODUCTIVE HEALTH CARE	3
FORCED STERILIZATION	4
ABORTION	5
SHACKLING PREGNANT WOMEN	6
SEXUAL ASSAULT	7
GENDER VARIANCE IN THE PRISON SYSTEM	8
YOUTH IN THE JUVENILE JUSTICE SYSTEM	9

INTRODUCTION

If/When/How recognizes that most law school courses are not applying an intersectional, reproductive justice lens to complex issues. To address this gap, our issue briefs and primers are designed to illustrate how law and policies disparately impact individuals and communities. If/When/How is committed to transforming legal education by providing students, instructors, and practitioners with the tools and support they need to utilize an intersectional approach.

If/When/How, formerly Law Students for Reproductive Justice, trains, networks, and mobilizes law students and legal professionals to work within and beyond the legal system to champion reproductive justice. We work in partnership with local organizations and national movements to ensure all people have the ability to decide if, when, and how to create and sustain a family.

INCARCERATED WOMEN

Today, prisons and jails in the U.S. confine approximately 206,000 women.¹ As of 2015, there are a total of 1,068,854 women on probation and parole combined.² These women are more likely to be women of color, poor, unemployed, and undereducated.³ The female prison population is now eight times higher than its population count in 1980, with more than 60% of women in state prisons having a child who is under the age of eighteen.⁴ Between 2012 and 2013, there was a 2.1% increase in incarceration of people designated to women's prisons, while there was a 0.5% decrease in incarceration of people designated to men's prisons.⁵ 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.⁶

- A 2004 study found that approximately 60% of women incarcerated in state and federal prisons were parents of minors, and more than four in ten mothers in state prisons were single parents.⁷ One in every 28 children has an incarcerated parent, a sharp increase from one in 125 in 1991.⁸
- Women of color are disproportionately represented in prison populations. One in eighteen black women and one in 45 Latina women will go to prison at some point, while one in 111 white women will face incarceration.⁹
- Most incarcerated women in state facilities were convicted for non-violent drug, property, or public order offenses.¹⁰
- Incarcerated women often face great difficulties in family life due to their incarceration.
 - Approximately 11% of mothers in prison reported their children were currently being cared for in a foster home or by an agency, compared to only 2% of incarcerated fathers.¹¹
 - 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.¹² The Act makes no exception for parents who are incarcerated for longer than 22 months.¹³
 - As technology has advanced, jails have been replacing in-person visitation with video visitation, which often involves a fee.¹⁴
 - In the 2011–2012 session, the California Legislature enacted AB 2015, which gives custodial parents who are arrested the right to make phone calls to arrange for the care of their children.¹⁵

REPRODUCTIVE HEALTH CARE

Reproductive health care needs do not cease upon entering prison. Approximately 6–10% of women are already pregnant when they enter a prison or jail.¹⁶ Approximately 5% of women incarcerated in jails,¹⁷ 4% of women incarcerated in state prisons, and 3% of women in federal prisons report that they are pregnant at the time of admission.¹⁸ Other data:

- Doctor visits for pregnant women in prison are often infrequent.¹⁹ Of the women in state prisons who reported being pregnant at admission, 94% reported having an obstetric exam, but only 54% reported receiving any type of pregnancy care.²⁰
- Women in prison are at high risk for STIs, HIV, and unintended pregnancies.²¹
- The American Civil Liberties Union (ACLU) identified publicly available pregnancy or reproductive health care correctional policies for 42 states.²²

- Twelve states explicitly state that medical examinations shall be included as a component of prenatal care.²³
- Sixteen states provide for screening or special treatment for high-risk pregnancies.²⁴
- Six states mention HIV testing.²⁵
- There are many documented instances of inadequate health care within prison systems. For example, in Arizona, Regan Clarine gave birth while incarcerated via a Cesarean (c-) section against her wishes. When she returned to her cell, the c-section reopened. Prison guards left her in the prison yard for two weeks with an open wound. When she finally saw medical staff, they treated the wound with sugar, an antiquated medical response to open wounds. They repeated this treatment for three weeks.²⁶
- In July 2016, Shadé Swayzer went into labor in a Milwaukee jail, where jail staff ignored her repeated requests for medical attention. When she informed a corrections officer that her water had broken, the officer laughed and ignored her. She did not receive medical attention until two hours after she had already given birth. Her child was declared dead the next day.²⁷

FORCED STERILIZATION

Incarcerated people in the U.S. have historically been targeted for forced and coerced sterilization as part of eugenic policies.²⁸ Despite federal and state guidelines against eugenic and forced sterilization, the practice is still a threat to incarcerated people today.²⁹ For more on eugenics and coerced sterilization generally, see the If/When/How Issue Brief on the Regulation of Pregnancy.³⁰

- In *Buck v. Bell* (1927), the U.S. Supreme Court upheld a Virginia law permitting the compulsory sterilization of people incarcerated in prisons or medical facilities when the state deemed it to be in the best interests of the inmate or society.³¹ This infamous decision precipitated a dramatic increase in eugenic sterilizations.³²
- From 1907 to 1928, men were sterilized at a higher rate than women.³³ Incarcerated men were targeted for compulsive sterilization to “punish their criminal behavior and treat their aggression.”³⁴ However, after 1920, the trend began to change course, and women – particularly women institutionalized for what we would now recognize as psychiatric disorders or intellectual disabilities³⁵ – were sterilized at higher rates.³⁶ Incarcerated men who had been sterilized won a series of lawsuits, charging the government with cruel and unusual punishment; but institutionalized women could not take advantage of these precedents because they had not been convicted of any crime.³⁷
- Women deemed “promiscuous” or “sexually deviant” who had given birth outside of wedlock were especially targeted for sterilization.³⁸

Federal Guidelines:

While they do not specifically address sterilization in prisons, federal guidelines for sterilizations funded under Medicaid make sterilization abuses more difficult by mandating that the patient give informed consent to the operation and undergo a thirty day waiting period.³⁹ However, the Medicaid consent form may not truly establish informed consent, since there is research that suggests that the form’s readability requires a literacy level above that of the average American adult.⁴⁰ Many states have adopted the federal guidelines.⁴¹

- Informed consent guidelines require that the provider certify “[t]o the best of his or her knowledge and belief, the individual to be sterilized appeared mentally competent and knowingly and voluntarily consented to be sterilized.”⁴²
- The patient must also be informed that no federal benefits may be withdrawn because they decide to withhold or withdraw their consent.⁴³
- “Informed consent may not be obtained if the individual to be sterilized is (1) [i]n labor or child birth; (2) [s]eeking to obtain or obtaining an abortion; or (3) [u]nder the influence of alcohol or other substances that affect the individual’s state of awareness.”⁴⁴ This statutory language presumably means that whatever “consent” is obtained during these three scenarios does not constitute informed consent.
- Finally, federal guidelines also mandate a thirty-day waiting period between obtaining consent and performing the operation.⁴⁵

California:

- Between 2006 and 2010, 144 people incarcerated at the California Institution for Women in Corona and the Valley State Prison for Women in Chowchilla were sterilized by the California Department of Corrections and Rehabilitation.⁴⁶ At least 116 of them were sterilized via tubal ligation during labor and delivery, while others

reported being prompted to sign consent forms while under sedation, undergoing hysterectomies after being falsely diagnosed with cervical cancer, and being denied alternative treatment options and proper follow-up care.⁴⁷ One woman reports being pressured to consent to sterilization while sedated for a c-section, despite regulations against obtaining consent under pressure or during labor or childbirth.⁴⁸

- California regulations restrict state-funded tubal ligation to cases of medical necessity, and require authorization from top correctional officials when the operation is performed in a prison.⁴⁹ However, the Corona and Chowchilla sterilizations were performed without state approval, and reports indicate that women were coerced into the procedure by prison officials and targeted based on their likelihood of returning to prison in the future.⁵⁰
- The Center for Investigative Reporting found that the number of tubal ligations performed on incarcerated people in California since 1997 could be as high as 250.⁵¹
- In 2014, the California Legislature enacted a statute that prohibits sterilization for the purpose of birth control of an individual under the control of the Department of Corrections and Rehabilitation or a county correctional facility, and limits sterilizations for other purposes to cases of medical emergency.⁵² The statute also requires the Department and other institutions of confinement to release on its website an annual report of sterilizations performed, disaggregated by race, age, medical justification, and method of sterilization.⁵³

ABORTION

People incarcerated in federal and state prisons, local jails, and immigration detention centers face numerous barriers to abortion care. Despite the absence of actual legal bans, a 2009 study found that only 68% of incarcerated people in women's prisons believed that their facility permitted women to obtain elective abortions.⁵⁴ This suggests that many facilities refuse to allow incarcerated women access to abortions.⁵⁵

- An individual in prison may struggle to persuade the guards, administrators, and medical staff to let her see a doctor and receive the abortion care she needs.⁵⁶
- Incarcerated people must be taken to an offsite location for the procedure,⁵⁷ and even at facilities that do not block access to abortions, many report receiving "little or no assistance in arranging, paying for, and getting to the appointment."⁵⁸
- Incarcerated persons often lack the financial means necessary to afford an abortion. Those who participate in work programs in federal prisons through UNICOR, the federal prison industries corporation, can earn between 23¢ and \$1.15 an hour.⁵⁹ Those working outside of a UNICOR programs can earn far less.⁶⁰ Neither of these salaries allows people to earn enough to pay for an abortion.⁶¹
- The 1976 **Hyde Amendment** bans the use of federal funds for abortions provided to low-income people through Medicaid.⁶² Currently, the Hyde Amendment bans federal funding for abortion except in cases of rape, incest, or where a woman's life is in danger.⁶³ Since Medicaid is a joint federal-state program, states can use their own funds to provide abortion coverage for Medicaid recipients; seventeen states currently do so, some voluntarily and others by court order.⁶⁴
- The federal Bureau of Immigration and Customs Enforcement ("ICE") will not provide or fund an abortion for a person in custody, but it has a policy that states that detention centers will arrange transportation to an appointment paid for by the abortion-seeker.⁶⁵ Given that most people in ICE detention arrive with few personal resources and limited knowledge about the area immediately surrounding the detention center at which they are housed (which is often not the same community in which they previously lived), this rule functionally acts as a complete bar to abortion care.
- The ACLU's review of publicly available correctional policies found 21 states with policies that mention healthcare for pregnant women planning to carry to term and also for those who seek an abortion.⁶⁶ Twelve states have policies that mention prenatal health care, but not abortion access,⁶⁷ and two states have an administrative regulation on correctional health care addressing abortion access, but not other pregnancy-related health care.⁶⁸
- 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.⁶⁹
- Six states and the District of Columbia have prison policies that fund “therapeutic” or “medically necessary” abortions.⁷⁰
- Nineteen states have prison policies that will only fund abortions to save a woman’s life.⁷¹
- The lack of written policy in many states means that people may be subject to different practices depending on the prison to which they have been sentenced.⁷² This may mean that people do not seek reproductive health care while incarcerated due to lack of information.
- Federal and state courts have repeatedly upheld incarcerated women’s right to abortion.⁷³ In the only case that 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.⁷⁴

SHACKLING PREGNANT WOMEN

Many jails and prisons have used restraints—such as leg irons, waist chains, and handcuffs—on sick and pregnant women regardless of whether they have a history of violence or escape.⁷⁵ Federal policy prohibits the shackling of incarcerated women during pregnancy or labor, but those in state or local facilities are subject to the laws of their jurisdiction — many of which still allow shackling.⁷⁶

- In 2008, the Federal Bureau of Prisons (“BOP”) and the U.S. Marshals Service (“USMS”) changed their policies to prohibit the shackling or use of restraints on incarcerated women who are pregnant or in labor, unless the circumstances require it.⁷⁷
 - According to the USMS, women in labor or postpartum recovery should not be shackled at all, and pregnant women may only be restrained by the “least restrictive [means] necessary to ensure safety and security.”⁷⁸ BOP policy dictates that a pregnant woman in labor, recovery, or transport should not be shackled unless she poses an immediate threat of escape or harm to herself or others.⁷⁹ The American Correctional Association (“ACA”) also disfavors shackling,⁸⁰ but ACA standards are not mandatory and ACA accreditation does not determine constitutionality.⁸¹
- In June 2010, the American Medical Association (“AMA”) adopted a resolution to prohibit the shackling of women during labor, referring to the practice as “barbaric” and “medically hazardous.”⁸² The resolution calls for the AMA to support language stating that no restraints of any kind should be used on an incarcerated woman who is in labor, delivering her baby, or 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.”⁸³
- 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.⁸⁴

ACOG considers the use of restraints on pregnant women “demeaning and rarely necessary” and supports state and federal legislation to restrict the practice of shackling incarcerated women during pregnancy, labor, and postpartum care.⁸⁵
- Since 2000, 22 states—Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Louisiana, Maryland, Minnesota, New Mexico, New York, Nevada, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, and most recently, Massachusetts⁸⁶ and Maine⁸⁷—have passed legislation to limit the use of restraints on pregnant women in prison.⁸⁸
 - However, even in states with laws against the practice, many facilities still routinely shackle pregnant inmates; the ACLU suggests this is a result of inadequate training and poor implantation of the new laws.⁸⁹
- 2011 guidelines for federal immigration officials ban the use of restraints on pregnant women and women in post-delivery recuperation “absent truly extraordinary circumstances.”⁹⁰ In 2014, the “omnibus” spending bill included a provision intended to extend this protection to pregnant women detained by local authorities on the

behalf of ICE by requiring ICE to “ensure all detention contracts and agreements implement the Use of Force exception for all pregnant women in ICE detention.”⁹¹

- Legislative campaigns are underway in other states, including Massachusetts, New Jersey, and Iowa.⁹² In 2014, Governor Deval Patrick of Massachusetts signed a temporary emergency regulation prohibiting the shackling of pregnant incarcerated women, and encouraged the state legislature to pass a permanent ban.⁹³ As of May 2014, Massachusetts’s legislature passed a bill banning the shackling of pregnant prisoners during labor.⁹⁴ However, many jails and prisons in Massachusetts are failing to comply with the bill. Currently, Bill H.3679 has been referred to the House Committee on Bills in the Third Reading to ensure compliance with the anti-shackling law for pregnant incarcerated women,⁹⁵ specifically to: (1) Define postpartum recovery as a minimum of six weeks; (2) require that a jail or prison report any use of shackles during an inmate’s pregnancy within forty-eight hours, and that an annual report will be made available to the public regarding the use of shackles; (3) add EMTs to the list of medical professionals with authority to direct prison or jail staff to remove restraints during labor; and (4) mandate that jails and prisons train their staff on anti-shackling law.⁹⁶

Case Law:

- In October 2009, the Eighth Circuit 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.’”⁹⁷
- 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.⁹⁸
- In May 2012, a federal judge in Illinois approved a \$4.1 million award to women who claimed that they were shackled during labor while held at the Cook County Jail in Chicago, Illinois, in violation of constitutional protections and a state law that prevented such practices.⁹⁹ Although the Cook County sheriff’s office did not admit wrongdoing,¹⁰⁰ the settlement could prove to be a warning to other locations not to violate the law.
- In June 2012, a Nevada woman filed suit alleging violations of state law and her constitutional rights when correctional officers shackled her during transport to the hospital, labor, and immediately after the delivery of her daughter.¹⁰¹ As part of a settlement agreement, in 2014 the Nevada Department of Correction adopted new administrative regulations that restrict the use of restraints on pregnant women and permit incarcerated women who have recently given birth to use breast pumps.¹⁰²

SEXUAL ASSAULT

- In federal women’s prisons, 70% of prison correctional officers are male-designated,¹⁰³ and in state-operated correctional facilities, about 74% of all correctional officers are male.¹⁰⁴ The employment of cisgender men to guard people who identify as women is inconsistent with international human rights law.¹⁰⁵
- The Prison Rape Elimination Act of 2003 (“PREA”), a call for an end to prison rape, established the National Prison Rape Elimination Commission to collect data on sexual assault in prisons, and stipulated other specific requirements such as mandatory employee trainings.¹⁰⁶
- It is unclear whether PREA has reduced sexual violence; however, it is clear that PREA has allowed increased punishment against prisoners for consensual sexual activity.¹⁰⁷
- Guards often sexually assault, rape, or abuse people under their supervision.¹⁰⁸ Guards are in a position of authority to then retaliate against any person who complains of assault or harassment.¹⁰⁹
- Guards sometimes coerce incarcerated people into sexual favors in exchange for personal hygiene products, extra food, or to avoid punishment.¹¹⁰
- According to the federal Bureau of Justice Statistics, between 2011 and 2012, approximately 40% of transgender and gender-nonconforming people incarcerated in state and federal prisons and approximately 28% incarcerated in local jails reported sexual assault by faculty.¹¹¹
- Two lawsuits have been filed, one in 2012 and one in 2013, against three jailers at the Texas Live Oak County Jail for sexually abusing incarcerated women.¹¹² Both sets of complaints alleged that the defendants repeatedly raped, harassed, berated, and sexually humiliated women in the facility, sometimes withholding food and water,

becoming violent, or even threatening to kill the women if they did not acquiesce.¹¹³ Both complaints state that the assaults were common knowledge, yet no investigation was made,¹¹⁴ signifying a systemic, rather than an isolated, problem.

- The ACLU and Southern Poverty Law Center filed a suit in May 2013 on behalf of incarcerated men at the East Mississippi Correctional Facility (“EMCF”), addressing the prison’s egregious conditions, which principally stemmed from understaffing.¹¹⁵ Due to insufficient staff protection, people incarcerated at EMCF are particularly vulnerable to violence, including rape.¹¹⁶ On September 29, 2015, the court granted Plaintiff’s motion for class certification and allowed the case to proceed as a class action, representing all the prisoners at EMCF.¹¹⁷

GENDER VARIANCE IN THE PRISON SYSTEM

Nearly 1 in 6 trans*¹ individuals and half of black trans* people have experienced incarceration.¹¹⁸ Incarcerated individuals who deviate from “typical” gender identities or expressions often face increased discrimination from staff in the prison system.

- In a 2011 survey of trans* people, 22% of respondents reported experiencing harassment from police officers, and among respondents who had served jail time, 16% reported being physically assaulted, and 37% reported experiencing harassment by correctional officers.¹¹⁹ In a 2012 study, 48% of lesbian, gay, bisexual, trans*, queer, intersex (“LGBTQI”) survivors of violence who reported the incident experienced police misconduct.¹²⁰ Transgender people, particularly trans women of color, are considerably more likely to experience police misconduct and violence than non-transgender people.¹²¹
- PREA specifically lists transgender people as protected under the Act.¹²² The Act prohibits bodily searches of transgender or intersex people for the sole purpose of determining the incarcerated person’s genitals, mandates employee trainings on communicating professionally with LGBTQI people, and requires prisons to take the incarcerated person’s safety concerns into consideration when determining their housing.¹²³
- Yet, trans* people who have not had genital surgery are housed in prisons according to the sex assigned at birth, regardless of how much other medical treatment they may have undergone.¹²⁴ Janetta Johnson, a transwoman, was sentenced to a men’s prison in 2009 where she suffered sexual assault and harassment from both other prisoners and prison staff, contrary to the PREA report stated that year.¹²⁵ CeCe McDonald is another notable example of this, as a transwoman of color who was sentenced to 41 months in a men’s prison for self-defense in 2012.¹²⁶ In 2014, transwoman Passion Star sued Texas correctional officers for allowing other inmates to attack her.¹²⁷
- Many prisons will place transgender and intersex people in administrative segregation, a placement generally used as punishment for dangerous and violent inmates.¹²⁸ This segregation results in the loss of many basic rights, such as interaction with other people, access to jobs and treatment services, and restrictions on privileges such as using the phone.¹²⁹
- Miki Ann DiMarco, an intersex incarcerated person, was put in solitary confinement for fourteen 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 “protection,” where she was isolated from human contact, unable to work, and denied the ability to exercise except for brief periods when no other incarcerated persons were around.¹³⁰ The Tenth Circuit found that this was not a violation of her due process rights, leaving other intersex persons in prison in that jurisdiction vulnerable to the same treatment.¹³¹
- In April 2012, the Los Angeles Police Department (“LAPD”) began housing transgender people arrested by the LAPD in a new area at the Metropolitan Detention Center where medical treatment, including hormones, is available.¹³² This change is expected to help protect transgender women from violence, as they were previously housed in men’s prisons.¹³³
- Although health care in prison is beset with obstacles for many who experience incarceration, it poses particular challenges for transgender individuals who may require lifelong hormone treatment. The denial of hormone therapy causes many medical and emotional complications.¹³⁴

¹ *The asterisk stands in place for *gender, *sexual, *feminine, *masculine, *folks, *person, *guy, *girl, *woman, and *man. It is an umbrella term that refers to all of the identities within the gender identity spectrum.

- In 2005, the Wisconsin legislature passed a law that bars prison doctors from denying transgender people access to any type of hormone therapy or sex reassignment surgery while in state custody.¹³⁵ The District Court struck down the law as a violation of the Eighth Amendment, the Court of Appeals affirmed, and the Supreme Court denied the petition for certiorari.¹³⁶
- In early 2017, a 57-year-old prisoner serving a life sentence in California became the first inmate in the United States to receive state-financed gender-reassignment surgery. This case led California to become the first state to establish standards that allow other transgender inmates to apply to receive state-financed gender-reassignment surgery.¹³⁷
 - In September 2016, Chelsea Manning, who announced that she was transgender the day after being sentenced to prison for leaking government files, was told that the United States military would permit her to proceed with gender-reassignment surgery¹³⁸, though her sentence was commuted by former President Obama near the end of his second term and she was released from military prison without having undergone the surgery.¹³⁹

YOUTH IN THE JUVENILE JUSTICE SYSTEM

- People who are classified as “women” account for approximately 14% of those in custody of the juvenile justice system.¹⁴⁰ The number of such women in custody increased 52% from 1991 to 2003,¹⁴¹ due in significant part to policy changes regarding how family conflicts, schoolyard arguments, and domestic violence incidents are treated by law enforcement.¹⁴²
- Although the gap is shrinking, girls account for a much larger number of status offenders (e.g., running away, truancy, underage drinking) than their male counterparts. In 2011, 11% of women were in juvenile detention because of status offenses as opposed to 3% of males.¹⁴³ Many girls who enter the juvenile detention system for status offenses, such as running away, cite abuse at home as one of the main causes.¹⁴⁴ Girls are less likely than boys to be in juvenile detention because of delinquency (89% as opposed to 97%) and violent crimes (14% as opposed to 27%).¹⁴⁵
- Up to 92% of women in juvenile detention centers have experienced one or more forms of physical, sexual, or emotional abuse before entering the system.¹⁴⁶
 - Thirty-two percent of women in juvenile detention have had or currently have sexually transmitted diseases.¹⁴⁷
 - Fourteen percent of women entering juvenile detention are pregnant at the time of detention.¹⁴⁸
 - Fifteen to 17% of juvenile facilities test all girls for pregnancy upon admission.¹⁴⁹
 - Most juvenile facilities lack appropriate prenatal or gynecological services for young women.¹⁵⁰
- In a 2012 survey, 9.5% of youth in state juvenile facilities reported experiencing one or more incidents of sexual victimization by another youth or facility staff in the previous twelve months.¹⁵¹ The majority of incidents involved facility staff, with 7.7% of youths reporting such experiences.¹⁵²

¹ Aleks Kajstura & Russ Immarigeon, *States of Women's Incarceration: The Global Context*, PRISON POLICY INITIATIVE, <http://www.prisonpolicy.org/global/women/> (last visited June 12, 2017).

² *Incarcerated Women and Girls*, THE SENTENCING PROJECT (Nov. 30, 2015), <http://www.sentencingproject.org/publications/incarcerated-women-and-girls/>

³ Carolyn B. Sufrin, Mitchell D. Creinin & Judy C. Chang, *Incarcerated Women and Abortion Provision: A Survey of Correctional Health Providers*, 41 *Perspectives on Sexual and Reproductive Health* 6-11 (2009).

⁴ *Incarcerated Women and Girls*, *supra* note 2.

⁵ E. Ann Carson, *Prisoners in 2013*, BJS, at tbl. 5 (Sept. 30, 2014), <http://www.bjs.gov/content/pub/pdf/p13.pdf>

⁶ *Data Show Surge in Female Inmates*, L. A. TIMES (May 21, 2006), <http://articles.latimes.com/2006/may/21/nation/na-prisoners21>.

⁷ Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, BUREAU OF JUSTICE STATISTICS (Mar. 30, 2010), <https://www.bjs.gov/content/pub/pdf/pptmc.pdf>.

⁸ *FAQs about Children of Prisoners*, PRISON FELLOWSHIP, https://www.prisonfellowship.org/resources/training-resources/family/ministry-basics/faqs-about-children-of-prisoners/#children_with_parent_in_prison (last visited June 27, 2017).

⁹ Jamal Hagler, *8 Facts You Should Know About the Criminal Justice System and People of Color*, AM. PROGRESS (May 28, 2015), <https://www.americanprogress.org/issues/criminal-justice/news/2015/05/28/113436/8-facts-you-should-know-about-the-criminal-justice-system-and-people-of-color/>.

¹⁰ Carson, *supra* note 5, at tbl. 13.

¹¹ Glaze, *supra* note 7, at tbl. 8.

¹² Adoption and Safe Families Act, 42 U.S.C. § 675(5)(E) (1997).

¹³ *Id.*

¹⁴ Bernadette Rabuy and Peter Wagner, *Screening Out Family Time: The for-profit video visitation industry in prisons and jails*, PRISON POLICY INITIATIVE (Jan. 6, 2015), <http://www.prisonpolicy.org/visitation/report.html>.

¹⁵ An Act to Amend Section 851.5 of the Penal Code, relating to criminal procedure (2012), http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201120AB2015.

¹⁶ *Reproductive Health Care for Incarcerated Women and Adolescent Females*, THE AM. COLL. OF OBSTETRICIANS AND GYNECOLOGISTS (Aug. 2012), <http://www.acog.org/resources-and-publications/committee-opinions/committee-on-health-care-for-underserved-women/reproductive-health-care-for-incarcerated-women-and-adolescent-females>.

¹⁷ Laura M. Maruschak, *Medical Problems of Jail Inmates*, BUREAU OF JUSTICE STATISTICS (Nov. 2006), <https://www.bjs.gov/content/pub/pdf/mpji.pdf>.

¹⁸ Laura M. Maruschak, *Medical Problems of Prisoners*, BUREAU OF JUSTICE STATISTICS, tbl. 10 (Apr. 22, 2008), <https://www.bjs.gov/content/pub/pdf/mpp.pdf>.

¹⁹ Jennifer G. Clarke, et al., *Reproductive Health Care and Family Planning Needs Among Incarcerated Women*, 96 AM. J. OF PUB. HEALTH 834 (2006).

²⁰ Maruschak, *Medical Problems of Prisoners*, *supra* note 18.

²¹ Clarke, *supra* note 19.

²² *State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison*, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-map> (last visited June 27, 2017).

²³ *Id.* (Alabama, California, Idaho, Massachusetts, Missouri, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, South Dakota, and Texas).

²⁴ *Id.* (Alaska, Colorado, Delaware, District of Columbia, Florida, Idaho, Kansas, Massachusetts, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Washington).

²⁵ *Id.* (Alabama, California, Missouri, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, and Washington).

²⁶ Agibail Leonard & Adam May, *Whistleblower: Arizona inmates are dying from inadequate healthcare*, AL JAZEERA AM. (May 28, 2014), <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/27/whistleblower-arizonainmatesaredyingfrominadequatehealthcare.html>.

²⁷ Abigail Abrams, *Newborn Baby Died in Milwaukee Jail After Staff Ignored Birth, Inmate Says*, TIME (Nov. 17, 2016), <http://time.com/4575263/baby-died-jail-milwaukee/>.

²⁸ Loretta Ross, *Eugenicists never Retreat, they Just Regroup: Sterilization and Reproductive Oppression in Prisons*, RH REALITY CHECK (June 12, 2014) <http://rhrealitycheck.org/article/2014/06/12/eugenicists-never-retreat-just-regroup-sterilization-reproductive-oppression-prisons/>.

²⁹ *Id.* (noting that the first federal guidelines prohibiting sterilization abuse were implemented in 1976).

³⁰ *Regulation of Pregnancy*, IF/WHEN/HOW (2016), <http://www.ifwhenhow.org/support-resources/academic-support/>.

³¹ Buck v. Bell, 274 U.S. 200 (1927).

³² Rebecca Kluchin, *Fit to Be Tied: Sterilization and Reproductive Rights in America 1950-1980* 16 (2009).

³³ *Id.* at 17.

³⁴ *Id.*

³⁵ Alex Stern, *Sterilization Abuse in State Prisons: Time to Break With California's Long Eugenic Patterns*, HUFFINGTON POST (July 23, 2014), http://www.huffingtonpost.com/alex-stern/sterilization-california-prisons_b_3631287.html.

³⁶ Kluchin, *supra* note 32.

³⁷ *Id.* at 17-18.

³⁸ Stern, *supra* note 35.

³⁹ 42 C.F.R. § 441.250 (2014).

⁴⁰ Sonya Borrero, et al., *Medicaid Policy on Sterilization — Anachronistic or Still Relevant?*, 370 NEW ENG. J. MED. 102, 102 (2014).

⁴¹ E.g. Oregon Health Auth., *Consent to Sterilization*, https://aix-xweb1p.state.or.us/es_xweb/DHSforms/Served/he0742a.pdf (last revised July, 2016); Michigan Dept. of Cmty. Health, *Consent for Sterilization*, http://www.michigan.gov/documents/Msa-1959_41619_7.pdf (last revised May 2015).

⁴² 42 C.F.R. § 441.258(c)(1)(iii) (2014).

⁴³ § 441.258(c)(1)(i).

⁴⁴ 42 C.F.R. § 441.257(b)(1)-(3) (2014).

⁴⁵ 42 C.F.R. § 441.253(d) (2014).

⁴⁶ Corey G. Johnson, *Female Inmates Sterilized at California Prisons Without Approval*, CTR. FOR INVESTIGATIVE REPORTING (July 7, 2013), <http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917>.

⁴⁷ Ross, *supra* note 28.

- ⁴⁸ California State Auditor, *Sterilization of Female Inmates: Some Inmates were Sterilized Unlawfully and Safeguards Designed to Limit Occurrences of the Procedure Failed* 1 (June 2014), <https://www.auditor.ca.gov/pdfs/reports/2013-120.pdf>; Johnson, *Female Inmates Sterilized at California Prisons Without Approval*, *supra* note 46.
- ⁴⁹ Johnson, *Female Inmates Sterilized at California Prisons Without Approval*, *supra* note 46.
- ⁵⁰ *Id.*
- ⁵¹ Corey Johnson, *California Legislators Urge Speedy Inquiry into Prison Sterilizations*, THE CTR. FOR INVESTIGATIVE REPORTING (Aug. 21, 2013), <http://cironline.org/reports/california-legislators-urge-speedy-inquiry-prison-sterilizations-5133>.
- ⁵² S.B. 1135, Ca. Leg., 2013-2014 Reg. Sess. (Ca. 2014), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1135.
- ⁵³ Cal. Penal Code § 3440
- ⁵⁴ Diana Kasdan, *Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict with Constitutional Standards?*, GUTTMACHER INSTITUTE (Mar. 23, 2009), <http://www.guttmacher.org/pubs/psrh/full/4105909.pdf>.
- ⁵⁵ *Id.*
- ⁵⁶ Rachel Roth, *Reproductive Rights in Theory and Practice: The Meaning of Roe v. Wade for Women in Prison*, CTR. FOR AM. PROGRESS (Jan. 20, 2006), <https://www.americanprogress.org/issues/women/news/2006/01/20/1794/reproductive-rights-in-theory-and-practice-the-meaning-of-ro-v-wade-for-women-in-prison/>.
- ⁵⁷ *Id.*
- ⁵⁸ Kasdan, *supra* note 54.
- ⁵⁹ Diane Cardwell, *Private Businesses Fight Federal Prisons for Contracts*, NY TIMES (Mar. 14, 2012), <http://www.nytimes.com/2012/03/15/business/private-businesses-fight-federal-prisons-for-contracts.html?pagewanted=all>.
- ⁶⁰ Section III: *The Prison Economy*, PRISON POLICY INITIATIVE, <http://www.prisonpolicy.org/prisonindex/prisonlabor.html> (last visited June 27, 2017).
- ⁶¹ See *Many Women Find it Difficult to Pay for an Abortion Procedure, are Unable to use Insurance*, GUTTMACHER INSTITUTE (May 8, 2013), <http://www.guttmacher.org/media/nr/2013/05/08/> (reporting that in 2009 the average cost of a first trimester abortion procedure was \$470).
- ⁶² *Public Funding for Abortion*, AM. CIVIL LIBERTIES UNION (July 21, 2004), <http://www.aclu.org/reproductive-freedom/public-funding-abortion>.
- ⁶³ Heather D. Boonstra, *Insurance Coverage of Abortion: Beyond the Exceptions For Life Endangerment, Rape and Incest*, GUTTMACHER INSTITUTE (Sept. 13, 2013), <https://www.guttmacher.org/about/gpr/2013/09/insurance-coverage-abortion-beyond-exceptions-life-endangerment-rape-and-incest>.
- ⁶⁴ *Id.*
- ⁶⁵ *Detained and Dismissed: Women's Struggles to Obtain Health Care in United States Immigration Detention*, HUMAN RIGHTS WATCH (Mar. 17, 2009), <http://www.hrw.org/en/reports/2009/03/16/detained-and-dismissed-0>.
- ⁶⁶ *State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison*, *supra* note 23 (Alaska, Arkansas, California, Colorado, Delaware, District of Columbia, Idaho, Kansas, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Washington).
- ⁶⁷ *Id.* (Arizona, Connecticut, Florida, Indiana, Maine, Michigan, New Mexico, New York, North Carolina, Tennessee, Utah, Vermont, Virginia).
- ⁶⁸ *Id.* (Illinois, Minnesota).
- ⁶⁹ Rachel Roth, *Do Prisoners Have Abortion Rights?*, 30 *Feminist Studies* 353, 356 (Summer 2004). (California, Connecticut, Georgia, Hawaii, New Jersey, New York, Oregon, Vermont, and Washington).
- ⁷⁰ *Id.* (District of Columbia, Massachusetts, Minnesota, Nevada, New Mexico, Tennessee, West Virginia).
- ⁷¹ *Id.* (Alabama, Arkansas, Colorado, Delaware, Florida, Illinois, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, Rhode Island, South Carolina, Texas, Utah, and Wisconsin).
- ⁷² Roth, *Do Prisoners Have Abortion Rights?*, *supra* note 69, at 354-65.
- ⁷³ See, e.g., *Victoria W. v. Larpernter*, 369 F. 3d 475 (5th Cir. 2004); *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008); *Doe v. Arpaio*, 150 P.3d 1258 (Ariz. Ct. App. 2007). See generally Diana Kasdan, *Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict With Constitutional Standards?*, 41 *PERSPECTIVES ON SEXUAL AND REPROD. HEALTH* 59 (2009).
- ⁷⁴ *Monmouth Cty Corr. Inst. Inmates v. Lanzaro*, 34 F.2d 326, 333 (3rd Cir. 1987).
- ⁷⁵ Tori DeAngelis, *The restraint of pregnant inmates*, Monitor on Psychology (June 2016) <https://www.apa.org/monitor/2016/06/restraint-inmates.aspx>; 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>.
- ⁷⁶ Clark, *supra* note 75.
- ⁷⁷ *End The Shackling of Incarcerated Women and Adolescents during Pregnancy, Labor, and Recovery*, AM. PSYCHOLOGICAL ASS'N (May 22, 2014),
- ⁷⁸ U.S. MARSHALS SERV., POLICY 9.1 (RESTRAINING DEVICES) §§ (D)(3)(e), (h) (as amended in 2010).
- ⁷⁹ *End The Shackling of Incarcerated Women and Adolescents during Pregnancy, Labor, and Recovery*, *supra* note 77.

⁸⁰ ADULT CORRECTIONAL INSTITUTIONS (ACI) STANDARDS, 4-4190-1 (Am. Corr. Ass'n 4th ed.).

⁸¹ *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979); *Grenning v. Miller-Stout*, 739 F.3d 1235, 1241 (9th Cir. 2014) (finding that the Court could not determine the significance of ACA accreditation).

⁸² 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>.

⁸³ *Id.*

⁸⁴ *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, THE AM. COLL. OF OBSTETRICIANS AND GYNCOLOGISTS (Nov. 2011), <http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females>.

⁸⁵ *Id.*

⁸⁶ Joe Mirkin, Mass. *anti-shackling bill signed into law*, PRISON POLICY INITIATIVE (May 21, 2014), <http://www.prisonpolicy.org/blog/2014/05/21/ma-shackling-victory/>.

⁸⁷ Rachel Roth, *Maine's New Anti-Shackling Law Was No 'Accident'*, REWIRE (July 24, 2015), <https://rewire.news/article/2015/07/24/maines-new-anti-shackling-law-accident/>.

⁸⁸ ACLU Briefing Paper: *The Shackling of Pregnant Women and Girls in U.S. Prisons, Jails & Youth Detention Centers*, AM. CIVIL LIBERTIES UNION, http://www.aclu.org/files/assets/anti-shackling_briefing_paper_stand_alone.pdf (last visited June 27, 2017); Nina Liss-Schultz, *Minnesota Law Protects Incarcerated Pregnant Women From Shackling, Provides Doulas*, RH REALITY CHECK (July 8, 2014), <http://rhrealitycheck.org/article/2014/07/08/minnesota-law-protects-incarcerated-pregnant-women-shackling-provides-doulas/>;

HB0027, Leg., Reg. Sess. (Md. 2014),

<http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb0027&stab=01&pid=billpage&tab=subject3&ys=2014RS> (last visited June 27, 2017).

⁸⁹ Tara Murtha, *Pregnant Women Incarcerated in Pennsylvania Routinely Shackled, Despite Law*, RH REALITY CHECK (May 19, 2014), <http://rhrealitycheck.org/article/2014/05/19/pregnant-women-incarcerated-pennsylvania-routinely-shackled-despite-law/>.

⁹⁰ *Performance-Based National Detention Standards 2.15: Use of Force and Restraints*, U.S. IMMIGRATION AND CUSTOMS ENF'T, 213 (as modified by Feb. 2013), http://www.ice.gov/doclib/detention-standards/2011/use_of_force_and_restraints.pdf.

⁹¹ Joanne Lin, *End Near for Shackling of Pregnant Women*, AM. CIVIL LIBERTIES UNION (Jan. 21, 2014)

<https://www.aclu.org/blog/immigrants-rights-reproductive-freedom/end-near-shackling-pregnant-women>.

⁹² Teddy Wilson, *State Bills Aim to End Practice of Shackling Pregnant Inmates*, RH REALITY CHECK (Jan. 24, 2014)

<http://rhrealitycheck.org/article/2014/01/24/state-bills-aim-end-practice-shackling-pregnant-inmates/>.

⁹³ Emily Crockett, *Massachusetts Governor Signs Emergency Regulations Prohibiting Shackling of Pregnant Inmates*, RH REALITY CHECK, (Feb. 21, 2014) <http://rhrealitycheck.org/article/2014/02/21/massachusetts-governor-signs-emergency-regulations-prohibiting-shackling-pregnant-inmates/>.

⁹⁴ Rachel Roth, *Massachusetts Anti-Shackling Coalition*, NAT'L LAW. GUILD MASS. CHAPTER (Sept. 29, 2015),

<http://www.nlgmasslawyers.org/massachusetts-anti-shackling-coalition/>.

⁹⁵ *Bill H.3679*, MASS. LEGISLATURE, <https://malegislature.gov/Bills/189/House/H3679> (last visited June 27, 2017).

⁹⁶ Roth, *Massachusetts Anti-Shackling Coalition*, *supra* note 94.

⁹⁷ *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 534 (8th Cir. 2009); see also *Federal Appeals Court Condemns Shackling of Pregnant Prisoners in Labor*, AM. CIVIL LIBERTIES UNION (Oct. 2, 2009), <http://www.aclu.org/prisoners-rights-reproductive-freedom/federal-appeals-court-condemns-shackling-pregnant-prisoners-la>.

⁹⁸ *WA settles with inmate shackled during childbirth*, HUFFINGTON POST (May 19, 2010), <http://www.huffingtonpost.com/huff-wires/20100519/us-pregnant-shackled/>.

⁹⁹ Amy Fettig, *\$4.1 Million Settlement Puts Jails on Notice: Shackling Pregnant Women is Unlawful*, AM. CIVIL LIBERTIES UNION (May 24, 2012), <http://www.aclu.org/blog/content/41-million-settlement-puts-jails-notice-shackling-pregnant-women-unlawful>.

¹⁰⁰ Sadhbh Walshe, *Women are Born Free in the US but Everywhere Give Birth in Chains*, THE GUARDIAN (June 6, 2012), <http://www.guardian.co.uk/commentisfree/2012/jun/06/women-born-free-give-birth-in-chains>.

¹⁰¹ Timothy Pratt, *Nevada Inmate Shackled Before Giving Birth Sues*, REUTERS (June 20, 2012),

<http://www.reuters.com/article/2012/06/21/us-usa-shackles-nevada-idUSBRE85K04F20120621>.

¹⁰² *ACLU of Nevada Lawsuit Leads Nevada Prison Board to Adopt Nation-Leading Policies Protecting Pregnant Inmates*, AM. CIVIL LIBERTIES UNION (Mar. 18, 2014), <https://www.aclu.org/prisoners-rights/aclu-nevada-lawsuit-leads-nevada-prison-board-adopt-nation-leading-policies>.

¹⁰³ *Words from Prison – Did you know...?*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/words-prison-did-you-know> (last visited June 12, 2017).

¹⁰⁴ James J. Stephan, *Census of State and Federal Correctional Facilities, 2005*, BUREAU OF JUSTICE STATISTICS (Oct. 2008) <https://www.bjs.gov/content/pub/pdf/csfc05.pdf>.

¹⁰⁵ *See Not Part of My Sentence: Violations of the Human Rights of Women in Custody*, AMNESTY INT'L USA, AI INDEX: AMR 51/01/99, 52 (Mar. 1999, amr510011999en.pdf; *Cf.*, *Breiner v. Nevada Dep't of Corr.*, 610 F.3d 1202 (9th Cir. 2010) (holding that a policy that limited supervisory positions in state women's prison to female correctional officers discriminated against male guards in violation of Title VII).

- ¹⁰⁶ Prison Rape Elimination Act of 2003, Pub. L. No. 108-79, 117 Stat. 972 (codified at 42 U.S.C. §15601 (2006)).
- ¹⁰⁷ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* 91, (2011).
- ¹⁰⁸ *Words from Prison—Did you know...?*, *supra* note 103; *Women in Prison: A Fact Sheet*, PRISON POLICY, http://www.prisonpolicy.org/scans/women_prison.pdf (last visited June 27, 2017); see generally, *National Prison Rape Elimination Commission Report*, NAT'L PRISON RAPE ELIMINATION COMM'N (June 2009), http://www.cybercemetery.unt.edu/archive/nprec/20090820155502/http://nprec.us/files/pdfs/NPREC_FinalReport.PDF.
- ¹⁰⁹ *Words from Prison—Did you know...?*, *supra* note 93.
- ¹¹⁰ *Not Part of My Sentence: Violations of the Human Rights of Women in Custody*, *supra* note 105.
- ¹¹¹ Allen J. Beck, *Sexual Victimization in Prisons and Jails Reported by Inmates 2011-12*, BUREAU OF JUSTICE STATISTICS, (Dec. 2014), http://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.
- ¹¹² Hunter Stuart, *Texas Sheriff's Jail Ran 'Rape Camp,' Where Female Inmates Were Repeatedly Violated, Lawsuit Alleges*, HUFFINGTON POST (June 18 2013), http://www.huffingtonpost.com/2013/06/18/texas-rape-camp_n_3459920.html.
- ¹¹³ *Id.*
- ¹¹⁴ *Id.*
- ¹¹⁵ *Dockery v. Epps*, AM. CIVIL LIBERTIES UNION (September 30, 2015), <http://www.aclu.org/prisoners-rights/dockery-v-epps>; *Dockery v. Epps*, et al., No. 3:13CV00326, 2013 WL 3819535 (S.D. Miss. May 30, 2013).
- ¹¹⁶ *Id.*
- ¹¹⁷ *Id.*
- ¹¹⁸ Jaime M. Grant, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, NAT'L GAY AND LESBIAN TASK FORCE & NAT'L CTR. FOR TRANSGENDER EQUALITY 158, 163 (2011), http://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf.
- ¹¹⁹ *Id.* at 164.
- ¹²⁰ Sue Yacka, *National Report on Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities Released Today*, NAT'L COALITION OF ANTI-VIOLENCE PROGRAMS (June 4, 2013), http://www.avp.org/storage/documents/2012_mr_ncavp_hvreport.pdf.
- ¹²¹ *Id.*
- ¹²² Prison Rape Elimination Act of 2003, *supra* note 106.
- ¹²³ *Ending the Abuse: Protecting LGBTI Prisoners from Sexual Assault Regulations*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/files/assets/prea/012014-ACLU-PREA-Regulations.pdf> (last visited June 12, 2017).
- ¹²⁴ See *Farmer v. Brennan*, 511 U.S. 825, 829 (1994).
- ¹²⁵ Zoe Greenberg, *Sentenced to Abuse: Trans People Suffer Rape, Coercion, Denial of Medical Treatment*, RH REALITY CHECK (May 12, 2015), <http://rhrealitycheck.org/article/2015/05/12/sentenced-abuse-trans-people-prison-suffer-rape-coercion-denial-medical-treatment/>.
- ¹²⁶ Kira Brekke, *CeCe McDonald Shares the Struggles of Being A Trans Woman In A Male Prison Facility*, THE HUFFINGTON POST (May 21, 2015), http://www.huffingtonpost.com/2014/05/21/cece-mcdonald-prison_n_5366778.html.
- ¹²⁷ Nicole Pasulka, *Trans Woman Says Prison Officials Allowed Inmates To Attack Her*, TAKEPART (Oct. 24, 2014), <http://www.takepart.com/article/2014/10/24/terror-texas-trans-woman-rape>.
- ¹²⁸ Shannon Minter & Christopher Daley, *Trans Realities: A Legal Needs Assessment of San Francisco's Transgender Community*, NAT'L CTR. FOR LESBIAN RIGHTS & TRANSGENDER LAW CTR. 26 (2003), <http://www.nclrights.org/wpcontent/uploads/2013/07/transrealities0803.pdf>; Letter from Lambda Legal, et al., to Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights, Testimony from Organizations Supporting LGBT Equality (June 19, 2012), https://www.lambdalegal.org/sites/default/files/ltr_sjsccrhr_20120619_solitary-confinement.pdf.
- ¹²⁹ Letter from Christopher Daley, Dir., Transgender Law Center, to the Nat'l Prison Rape Elimination Comm'n, 4-5 (Aug. 15, 2005), <http://www.prearesourcecenter.org/sites/default/files/library/transgenderlawcenterpreatestimony05.pdf>.
- ¹³⁰ Cheryl Chase, *Federal Judge Finds Wyoming Prison Violated Constitutional Rights of Intersexual Prisoner*, INTERSEX SOC'Y OF N. AM. (June 22, 2004), <http://www.isna.org/dimarco>.
- ¹³¹ *Estate of DiMarco v. Wyoming Dept. of Corrections*, 473 F.3d 1334, 1345 (10th Cir. 2007).
- ¹³² *LAPD to house transgender arrestees in separate section*, L.A. TIMES (Apr. 12, 2012), <http://latimesblogs.latimes.com/lanow/2012/04/lapd-jail-transgender.html>.
- ¹³³ *Id.*
- ¹³⁴ Grant, *supra* note 119, at 169.
- ¹³⁵ *Fields v. Smith*, 712 F. Supp. 2d 830, 869-70 (E.D. Wis. 2010), *supplemented* (July 9, 2010), *aff'd*, 653 F.3d 550 (7th Cir. 2011).
- ¹³⁶ *Fields v. Smith*, AM. CIVIL LIBERTIES UNION (Sept. 13, 2011), <https://www.aclu.org/cases/fields-v-smith>.
- ¹³⁷ *California is First to Pay for Prisoner's Sex-Reassignment Surgery*, NY TIMES (JAN. 7, 2017) <https://www.nytimes.com/2017/01/07/us/california-is-first-to-pay-for-prisoners-sex-reassignment-surgery.html>.

- ¹³⁸ Jonah Engel Bromwich, *Chelsea Manning Told She Can Have Gender Reassignment Surgery, Lawyer Says*, NY TIMES, (Sept. 13, 2016). <https://www.nytimes.com/2016/09/14/us/chelsea-manning-told-she-can-have-gender-reassignment-surgery-lawyer-says.html>.
- ¹³⁹ Maya Oppenheim, *Chelsea Manning will lose transgender benefits after leaving military prison, says US Army*, THE INDEPENDENT (Jan. 19, 2017) <http://www.independent.co.uk/news/world/americas/chelsea-manning-lose-transgender-benefits-us-army-military-prison-barack-obama-president-commutation-a7535216.html>.
- ¹⁴⁰ *Indicators on Children and Youth*, CHILD TRENDS, http://www.childtrends.org/wp-content/uploads/2012/05/88_Juvenile_Detention.pdf (Dec. 2015) (finding that in 2011, “female” youth made up 8,344 of the 61,423 juveniles in residential custody facilities).
- ¹⁴¹ Howard N. Snyder & Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report*, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, 206 (Mar. 2006), <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf>.
- ¹⁴² *Unique Needs of Girls in the Juvenile Justice System*, CREATE A PATH, <http://createapath.org/wp-content/uploads/2012/08/PHR-Factsheet.pdf> (last visited June 12, 2017).
- ¹⁴³ *Indicators on Children and Youth*, *supra* note 141.
- ¹⁴⁴ *Id.* at 3-4.
- ¹⁴⁵ *Id.* at 15.
- ¹⁴⁶ *Unique Needs of Girls in the Juvenile Justice System*, *supra* note 143, at 1.
- ¹⁴⁷ *Id.*
- ¹⁴⁸ *Id.*
- ¹⁴⁹ Jenny Gold, *Women’s Health in Juvenile Detention: How a System Designed for Boys Is Failing Girls*, THE ATLANTIC (Nov. 28, 2012), <http://www.theatlantic.com/health/archive/2012/11/womens-health-in-juvenile-detention-how-a-system-designed-for-boys-is-failing-girls/265668/>.
- ¹⁵⁰ *Unique Needs of Girls in the Juvenile Justice System*, *supra* note 143, at 1.
- ¹⁵¹ Allen H. Beck, et al., *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012*, BUREAU OF JUSTICE STATISTICS, tbl.1 (June 2013), <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.
- ¹⁵² *Id.*