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ARTICLE

THE IMPACT OF THE COVID-19 PANDEMIC ON THE CARE AND TREATMENT OF PREGNANT, BIRTHING, AND POSTPARTUM PEOPLE IN PRISONS IN THE UNITED STATES

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I. INTRODUCTION

It is a well-known, albeit unfortunate, fact that the United States incarcerates more people than any other country in the world.[1] Although only

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1. Aleks Kajstura, *States of Women's Incarceration: The Global Context 2018*, PRISON POL'Y INITIATIVE (June 2018), https://www.prisonpolicy.org/global/women/2018.html.

four percent of the world's women[2] reside in the United States, the United States is responsible for detaining thirty percent of incarcerated women worldwide.[3] The number of women in U.S. state and federal prisons increased by more than 600% between 1980 and 2020.[4] Women from racial and ethnic minority backgrounds are incarcerated at disproportionately higher rates than their White counterparts; in 2020, Latina women were 1.3 times, Black women were 1.7 times, and American Indian and Alaska Native women were 4.3 times more likely to be incarcerated than White women.[5] Most women in the carceral system are of childbearing age (aged eighteen to forty-four)[6] and more than half (fifty-eight percent) in state prison are mothers of minor children.[7] Seventy-seven percent of incarcerated mothers in state prisons reported being the primary caregiver to their minor children prior to incarceration, as opposed to twenty-six percent of incarcerated men.[8]

State and federal prisons and local jails have not historically collected information on pregnancy status at intake, so no consistent data are available. Sufrin and colleagues estimated that approximately 56,400 pregnant people were taken into custody between 2016 and 2017 (1,400 to state and federal prisons and 55,000 to jails).[9] On the basis of these data, it is estimated that approximately three percent of women in federal prisons, four percent of women in state prisons, and four percent of women in local jails were pregnant upon admission,[10] though it is important to recognize these numbers are out-of-date, and rates of incarcerated pregnant people are

2. Pregnancy and birth are also experienced by transgender and genderqueer/non-binary individuals, although there are almost no data on how many trans/non-binary individuals experience pregnancy during incarceration. Perinatal programming exists exclusively within women's prisons, and most research uses gendered terminology. In recognition that not only women have reproductive experiences, we use both gendered and gender-neutral terminology throughout this paper.

3. Kajstura, *supra* note 1.

4. *Compare* E. ANN CARSON, U.S. DEP'T OF JUST., NCJ NO. 302776, PRISONERS IN 2020 – STATISTICAL TABLES fig. 2 (2021) [hereinafter STATISTICAL TABLES], *with* CAROL B. KALISH, U.S. DEP'T OF JUST., NCJ NO. 76803, PRISONERS IN 1980 tbl. 1 (1981).

5. STATISTICAL TABLES, *supra* note 4, at 24.

6. *See* E. ANN CARSON, U.S. DEP'T OF JUST., NCJ NO. 251149, PRISONERS IN 2016, tbls. 9 & 10 (2018); Carolyn Sufrin, Lauren Beal, Jennifer Clarke, Rachel Jones & William D. Mosher, *Pregnancy Outcomes in US Prisons, 2016–2017*, 109 AM. J. PUB. HEALTH 799, 799 (2019).

7. LAURA M. MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, U.S. DEP'T OF JUST., NCJ NO. 252645, PARENTS IN PRISON AND THEIR MINOR CHILDREN: SURVEY OF PRISON INMATES, 2016, at 1 (2021).

8. LAUREN GLAZE & LAURA M. MARUSCHAK, U.S. DEP'T OF JUST., NCJ NO. 222984, PARENTS IN PRISON AND THEIR MINOR CHILDREN 5 (2008).

9. Carolyn Sufrin, Rachel Jones, William Mosher & Lauren Beal, *Pregnancy Prevalence and Outcomes in U.S. Jails*, 135 OBSTETRICS & GYNECOLOGY 1177, 1177 (2020).

10. Sufrin et al., *supra* note 6; Sufrin et al., *supra* note 9; LAURA MARUSCHAK, JENNIFER BRONSON & MARIEL ALPER, U.S. DEP'T OF JUST., NCJ NO. 252644, MEDICAL PROBLEMS REPORTED BY PRISONERS: SURVEY OF PRISON INMATES, 2016, at 7 (2021).

likely higher, particularly in local jails and state prisons.[11] In 2018, the First Step Act was signed into law, which required the Bureau of Justice Statistics (BJS) to annually report, among other things, the number of individuals who enter federal prison while pregnant.[12] As a result of this requirement, it was determined that slightly more than one percent of women in federal prison were pregnant upon admission in 2019.[13] Correlative data are not available to reflect the rate of pregnancy in local jails and state prisons at this time. It is worth noting that, while the BJS's reported rate of pregnancy has declined since the data reported in 2016–2017, the number of women in the carceral system has increased, thus the number of pregnant women in custody has likely stayed the same, if not increased.[14]

State and federal prisons were designed and continue to operate by gender-neutral, if not male-centric, policies that have negative impacts on women, particularly those who are pregnant or postpartum.[15] Pregnancy introduces unique, time-sensitive healthcare needs that ensure the pregnant person's physical and emotional needs are being met. A small body of international research shows a relationship between incarceration during pregnancy and poor maternal mental health, which increases the risk of poor outcomes in the mother (e.g., significant negative impact on mental health resulting from separation from their infant after birth) as well as the neonate (e.g., premature birth, low birth weight, and greater risk of the newborn needing hospitalization).[16] Lack of access to services in carceral settings (which, when offered, are generally of poor quality) also impacts maternal health (e.g., quality healthcare, childbirth and parenting education, nutrition, emotional support, counseling, and, at times, substance use management).[17] As of 2022, forty-one states and the District of Columbia had passed legislation specifically referring to healthcare provided to incarcer-

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11. Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, PRISON POL'Y INITIATIVE (Jan. 9, 2018), https://www.prisonpolicy.org/reports/women_overtime.html.

12. E. ANN CARSON, U.S. DEP'T OF JUST., NCJ NO. 255111, FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2020, at 1 (2021).

13. *See id.*; Aleks Kajstura, *Women's Mass Incarceration: The Whole Pie 2019*, PRISON POL'Y INITIATIVE (Oct. 29, 2019), https://www.prisonpolicy.org/reports/pie2019women.html.

14. *See* Roxanne Daniel, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, PRISON POL'Y INITIATIVE (Dec. 5, 2019), https://www.prisonpolicy.org/blog/2019/12/05/pregnancy.

15. *See* Barbara A. Hotelling, *Perinatal Needs of Pregnant, Incarcerated Women*, 17 J. PERINATAL EDUC. 37 (2008).

16. *See* Gillian Thomson, *Evaluation of Birth Companions Perinatal Support in Prisons During the COVID-19 Pandemic*, INT'L J. HEALTH PROMOTION & EDUC. 1, 2 (2023).

17. Somayeh Alirezaei & Robab Latifnejad Roudsari, *The Needs of Incarcerated Pregnant Women: A Systematic Review of Literature*, 10 INT'L J. CMTY. BASED NURSING & MIDWIFERY 2, 14 (2022); *see* Stephanie C. Kennedy, Annelise M. Mennicke & Chelsea Allen, *'I Took Care of My Kids': Mothering While Incarcerated*, 8 HEALTH & JUST., no. 12, June 5, 2020, at 12.

ated pregnant people, although the content, comprehensiveness, and oversight of these laws varied considerably between states.[18]

Pregnant individuals in prison must grapple with concerns unrelated to the prison environment but not typically encountered in the general community. Prior to going to prison, incarcerated women are three times more likely to be the head of a single-parent household with minor children (forty-two percent) than to be a co-parent in a two-parent household with minor children (fourteen percent).[19] Once incarcerated, single parents are required to arrange and coordinate childcare from the inside for their children residing in communities often located great distances from the prison,[20] which frequently results in a complicated cobbling together of formal, informal, and state-appointed solutions for care. While difficult for all parents in prison, arranging childcare for an unborn child is one more challenge the pregnant parent must traverse. All in all, pregnancy behind bars is extremely stressful.[21]

Recognizing the gaps in existing health services and resultant poor health outcomes in this population, some international standards have been created that support perinatal services for pregnant women in prison; such services include providing perinatal education, birth attendants, and comprehensive perinatal healthcare.[22] Some states in the United States have implemented similar perinatal programming to pregnant and postpartum individuals in prison.[23] Limited information is available on perinatal programming in prisons in the United States, but best estimates suggest that twenty-one states were planning for or had implemented perinatal programming in state prisons prior to the pandemic.[24] Group-based classes, one-on-one support, birth attendants, and lactation support are some of the enhanced services offered to support the unique needs of this population.[25] Evidence suggests birth outcomes are better for incarcerated pregnant individuals who receive enhanced perinatal care than their counterparts who receive little to no perinatal care; reduced likelihood of preterm delivery

18. *State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison*, AM. CIV. LIBERTIES UNION, https://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-0 (last visited Mar.23, 2023).

19. GLAZE & MARUSCHAK, *supra* note 8, at 5.

20. Kennedy, Mennicke & Allen, *supra* note 17, at 11.

21. *See generally* Sufrin et al., *supra* note 6; Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, 15 AMA J. ETHICS 779 (2013); Judith Merenda Wismont, *The Lived Pregnancy Experience of Women in Prison*, 45 J. MIDWIFERY & WOMEN'S HEALTH 292 (2000).

22. *See generally* Somayeh Alirezaei & Robab Latifnejad Roudsari, *The Needs of Incarcerated Pregnant Women: A Systematic Review of Literature*, 10 INT'L J. CMTY. BASED NURSING & MIDWIFERY 2, 12–14 (2022).

23. Stephanie H. Wilson et al., *Enhanced Perinatal Programs for People in Prisons: A Summary of Six States' Programs*, 83 J. CRIM. JUST., Nov.–Dec. 2022, at 1, 2.

24. *Id.*

25. *Id.*

and less likelihood of recidivism have been reported in individuals who received enhanced services.[26]

II. COVID-19 in United States Prisons

The conditions of confinement created unique challenges for incarcerated populations during the COVID-19 pandemic; crowded living conditions, poor ventilation, and unsanitary environments all combined to create conditions in which COVID-19 easily spread.[27] Additionally, high rates of chronic health conditions among incarcerated populations increased the risk of severe illness from COVID-19 infections.[28] Combined with little autonomy in healthcare decision-making, mistrust in correctional health services, limited access to timely information, and isolation from social supports, incarcerated people were and continue to be disproportionately impacted by the harms of COVID-19.[29]

Throughout the pandemic, COVID-19 incidence and mortality rates in prisons and jails have been consistently higher than in the general population.[30] Early in the pandemic, cases of COVID-19 were three times higher and deaths from COVID-19 were two and a half times higher in prison than in the general population.[31] In spring of 2021, the incidence of COVID-19 was more than three times greater in prisons,[32] and rates may have been higher than reported.[33]

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26. *Id.* at 7.

27. Brie A. Williams et al., *Correctional Facilities In The Shadow of COVID-19: Unique Challenges and Proposed Solutions*, Health Affs. (Mar. 26, 2020), https://www.healthaffairs.org/do/10.1377/forefront.20200324.784502; *see* Dora M. Dumont, Brad Brockmann, Samuel Dickman, Nicole Alexander & Josiah D. Rich, *Public Health and the Epidemic of Incarceration*, 33 Ann. Rev. Pub. Health 325 (2012); Eric Reinhart & Daniel L. Chen, *Carceral-Community Epidemiology, Structural Racism, and COVID-19 Disparities*, 118 Proc. Nat'l. Acad. Sciences 1, 1 (2021).

28. Laura M. Maruschak, Marcus Berzofsky & Jennifer Unangst, U.S. Dep't of Just., NCJ No. 248491, Medical Problems of State and Federal Prisoners and Jail Inmates, 2011–12 (2016); I.A. Binswanger, P.M. Krueger & J.F. Steiner, *Prevalence of Chronic Medical Conditions Among Jail and Prison Inmates in the USA Compared with the General Population*, 63 J. Epidemiology & Cmty. Health 912, 914 (2009).

29. Williams et al., *supra* note 27; Dumont et al., *supra* note 27; Reinhart & Chen, *supra* note 27.

30. Neal Marquez, Julie A. Ward, Kalind Parish, Brendan Saloner & Sharon Dolovich, *COVID-19 Incidence and Mortality in Federal and State Prisons Compared With the US Population, April 5, 2020, to April 3, 2021*, 326 JAMA 1865, 1867 (2021); Brendan Saloner, Kalind Parish, Julie A. Ward, Grace DiLaura & Sharon Dolovich, *COVID-19 Cases and Deaths in Federal and State Prisons*, 324 JAMA 602, 603 (2020).

31. Saloner et al., *supra* note 30, at 603.

32. Marquez et al., *supra* note 30, at 1866.

33. *Confirmed COVID-19 Cases and Deaths in US Correctional and Detention Facilities by State*, Ctrs. for Disease Control & Prevention (Aug. 6, 2021), https://stacks.cdc.gov/view/cdc/108619; Jasmine Aguilera, *'You Have Utterly Failed.' Department of Justice Undercounted Nearly 1,000 Deaths in U.S. Prisons*, Time (Sept. 27, 2022), https://time.com/6215142/deaths-prisons-jails-justice/.

When COVID-19 was first identified in the United States in January 2020,[34] there were concerted efforts to minimize the spread of the infection; one approach involved reducing the number of people detained in local, state, and federal carceral centers. In April 2020, then-Attorney General William Barr wrote a memo to the Department of Justice recommending individuals housed at federal prisons be considered for placement in home confinement.[35] Barr suggested prioritizing vulnerable individuals with underlying, complicated medical histories, including pregnancy. At the same time, prisons were restructuring their healthcare delivery systems to meet the growing medical demand of those infected by COVID-19.[36] This resulted in a considerable number of pregnant people being released on medical leave, allowing them to complete their pregnancies and give birth in community settings.[37]

In addition, COVID-19 slowed or halted court systems across the country and it took months for court operations to resume.[38] The National Center For State Courts reported that, between 2020 and 2021, state court case filings fell by twenty-eight percent, with some case types declining by more than fifty percent.[39] During this lull in court cases, fewer prison sentences were imposed;[40] some scholars posit the lower numbers of prison populations during this time can be credited to a decline in prison admissions as opposed to an increase in prison releases,[41] as arrestees remained in local jails, awaiting their court dates. These collective circumstances resulted in a fifteen percent decline in overall prison census[42] and an approximate decline of thirty percent in females held in state and federal prisons between 2019 and 2020.[43] This trend presumably translated to a reduction

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34. *CDC Museum COVID-19 Timeline*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/museum/timeline/covid19.html (Mar. 15, 2023).

35. Memorandum from Attorney General William Barr to the Director of Bureau of Prisons (Apr. 3, 2020), https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000.

36. *Id.*

37. *See* Leola A. Abraham, Timothy C. Brown & Shaun A. Thomas, *How COVID-19's Disruption of the U.S. Correctional System Provides an Opportunity for Decarceration*, 45 AM. J. CRIM. JUST. 780, 785 (2020).

38. STATISTICAL TABLES, *supra* note 4, at 1.

39. *Newly Released Data Shows the Pandemic's Effect on Case Filings*, NAT'L CTR. FOR STATE CTS., https://www.ncsc.org/newsroom/at-the-center/2022/newly-released-data-shows-the-pandemics-effect-on-case-filings (last visited Mar. 24, 2023).

40. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2022*, PRISON POL'Y INITIATIVE (Mar. 14, 2022), https://www.prisonpolicy.org/reports/pie2022.html.

41. Emily Widra, *State Prisons and Local Jails Appear Indifferent to COVID Outbreaks, Refuse to Depopulate Dangerous Facilities*, PRISON POL'Y INITIATIVE (Feb. 10, 2022), https://www.prisonpolicy.org/blog/2022/02/10/february2022_population.

42. STATISTICAL TABLES, *supra* note 4, at 1.

43. *Incarcerated Women and Girls*, SENT'G PROJECT (May 12, 2022), https://www.sentencingproject.org/publications/incarcerated-women-and-girls; Aleks Kajstura & Wendy Sawyer, *Women's Mass Incarceration: The Whole Pie 2023*, PRISON POL'Y INITIATIVE (Mar. 1, 2023), https://www.prisonpolicy.org/reports/pie2023women.html.

in the number of pregnant people behind bars, though specific data on this population have not been published.

In addition to the health disparities caused by the rampant spread of COVID-19 behind bars, the COVID-19 pandemic also drastically influenced prison operations.[44] Policies related to visiting, programming, and accessing health services were modified to limit the spread of disease.[45] In addition, staffing shortages due to COVID-19 illness compromised the provision of care for incarcerated people.[46] These impacts on prison operations uniquely impacted programming targeted toward pregnant and postpartum individuals within facilities. In the sections that follow, we consider the impacts of the COVID-19 pandemic on 1) prenatal care; 2) labor and birth; and, 3) postpartum experiences for incarcerated people. We will first describe the standard of practice before the COVID-19 pandemic and then consider how COVID-19 impacted these experiences.

III. Prenatal Care for Incarcerated People

For many people, pregnancy is a time of increased anxiety, though in prison, pregnancy has been described as "unsafe."[47] Concerns typically described during pregnancy are magnified in prison due to unique stressors resulting from the prison environment itself, including lack of autonomy in decision-making, substandard or highly variable healthcare, poor diet and nutrition, unpredictable processes for transportation to medical appointments and birth, the use of physical restraints during labor and birth, and the impending separation from their baby.[48] The National Commission on Correctional Health Care (NCCHC) has referenced comprehensive recommendations developed by the American College of Obstetricians and

44. Alexander Söderholm, Prisons and COVID-19: Lessons from an Ongoing Crisis, Int'l Drug Pol'y Consortium (2021), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Call/Others/idpc-prisons-covid19-lessons-from-an-ongoing-crisis-2021.pdf; Gregory Hooks & Wendy Sawyer, *Mass Incarceration, COVID-19, and Community Spread*, Prison Pol'y Initiative (Dec. 2020), https://www.prisonpolicy.org/reports/covidspread.html.

45. Danielle H. Dallaire et al., *COVID-19 and Prison Policies Related to Communication with Family Members*, 27 Psych., Pub. Pol'y & L. 231, 231 (2021); Camille Kramer, Ashley-Devon Williamston, Rebecca J. Shlafer & Carolyn B. Sufrin, *COVID-19's Effect on Pregnancy Care for Incarcerated People*, 6 Health Equity 406, 409 (2022).

46. *Pregnant and Postpartum People Who are Incarcerated During the COVID-19 Pandemic*, Am. Coll. of Obstetricians & Gynecologists (Jan. 27, 2021), https://www.acog.org/en/clinical-information/policy-and-position-statements/position-statements/2021/pregnant-and-postpartum-people-who-are-incarcerated-during-the-covid-19-pandemic.

47. Sufrin et al., *supra* note 6, at 803; Clarke & Simon, *supra* note 21, at 781.

48. *See* Alexander Testa, Dylan B. Jackson, Michael G. Vaughn & Jennifer K. Bello, *Incarceration as a Unique Social Stressor During Pregnancy: Implications for Maternal and Newborn Health*, 246 Soc. Sci. & Med. 112777 (2020); Susan Hatters Friedman, Aimee Kaempf & Sarah Kauffman, *The Realities of Pregnancy and Mothering While Incarcerated*, 48 J. Am. Acad. Psychiatry & L. (2020), http://jaapl.org/content/early/2020/05/13/JAAPL.003924-20; *Shackling of Pregnant Women in Jails and Prisons Continues*, Equal Just. Initiative (Jan. 29, 2020), https://eji.org/news/shackling-of-pregnant-women-in-jails-and-prisons-continues; Daniel, *supra* note 14.

Gynecologists (ACOG) for prenatal and postpartum care in prison settings.[49] These recommendations include: 1) assessing for pregnancy upon intake; 2) providing pregnancy and abortion counseling upon intake; 3) following national standards on frequency and quality of prenatal care; 4) assessing for and treating substance use disorders; 5) administering necessary vaccinations; 6) screening for and treating mood disorders; 7) educating about breastfeeding; 8) educating and ensuring proper nutritional intake; and 9) ensuring a licensed hospital is available for birth. NCCHC offers an accreditation process that requires organizations to abide by these standards, though accreditation is voluntary.[50] As such, there are no mandatory standards by which prisons need to abide, which results in considerable variation in the type and quality of pregnancy-related care in prisons across the country. For example, ACOG and NCCHC recommend that all people under the age of fifty-five be tested for pregnancy upon admission to jail or prison.[51] In a sample of twenty-two prisons, Sufrin and colleagues found that thirty-six percent of state prisons did not routinely screen for pregnancy upon intake, which, in some cases, resulted in delaying the initiation of pregnancy-related care.[52] Other studies found that, of individuals who were identified as being pregnant at intake, nearly half (forty-six percent) reported never receiving prenatal care while incarcerated.[53] Of those who received prenatal care, it was reportedly often late, dismissive, insufficient, and licensed perinatal specialists (i.e., obstetricians, maternal fetal medicine doctors, and/or certified nurse midwives) were not available to provide care in carceral settings.[54]

Prison-based prenatal programming can include a variety of components. The most common type of programming is group-based prenatal classes, which are typically facilitated by childbirth educators, doulas, or

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49. *See generally Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, https://www.acog.org/en/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals; AM. ACAD. PEDIATRICS & AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, GUIDELINES FOR PERINATAL CARE (Sarah J. Kilpatrick & Luann Papile eds., 8th ed. 2017) (ebook); *Women's Health Care in Correctional Settings*, NAT'L COMM'N ON CORR. HEALTH CARE (2020), https://www.ncchc.org/womens-health-care-in-correctional-settings-2020.

50. AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, *supra* note 49; AM. ACAD. PEDIATRICS & AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, *supra* note 49; NAT'L COMM'N ON CORR. HEALTH CARE, *supra* note 49.

51. CAROLYN SUFRIN, NAT'L COMM'N ON CORR. HEALTH CARE, PREGNANCY AND POSTPARTUM CARE IN CORRECTIONAL SETTINGS 2 (2018), https://www.ncchc.org/wp-content/uploads/Pregnancy-and-Postpartum-Care-2018.pdf.

52. Sufrin et al., *supra* note 6, at 801 tbl. 1.

53. LAURA M. MARUSCHAK, BUREAU OF JUST. STAT., NCJ NO. 221740, MEDICAL PROBLEMS OF PRISONERS 1, 4 (2008), https://bjs.ojp.gov/library/publications/medical-problems-prisoners.

54. Allison D. Crawford, The Experiences of Latina Mothers Impacted by Incarceration (June 2021) (Ph.D. dissertation, University of Texas at San Antonio) (ProQuest); SUFRIN, *supra* note 51.

nurses.[55] Prenatal classes include standard childbirth education topics, such as physiology of birth, stages of labor, nutrition, comfort measures, pain medication, and lactation.[56] In addition, prison-based curricula often include incarceration-specific topics, such as trauma, parenting from inside prison, and support for gender-specific issues that pertain to expectant individuals in the carceral system.[57] Another component of prenatal care is one-on-one prenatal doula support, including two to three individual prenatal meetings between a doula and pregnant person over the course of the pregnancy. At least one prison offered walk-in "office hours" during which clients could drop in and meet with a doula or childbirth educator to receive additional resources and support.[58]

IV. COVID-19's Impact on Prenatal Care

Policies and practices related to visiting, programming, and accessing health services varied widely from state to state and changed frequently over the course of the pandemic.[59] Kramer and colleagues found that prisons made changes to their policies and practices related to the care and treatment of pregnant people in response to COVID-19.[60] While some of these changes were beneficial for pregnant people (e.g., waiving "co-pays" to be seen by prison health services[61] and allowing unlimited free phone calls[62]), some of the practices could have negative long-term health implications for incarcerated pregnant people. For example, most prisons reported quarantining people for a duration of ten to fourteen days upon initial arrival to the facility, and nearly half reported quarantining pregnant people again following off-site medical visits and/or hospitalization for birth.[63] Given the frequency of off-site medical appointments during pregnancy, it would not be unusual for a pregnant person to spend all or a significant portion of late pregnancy in an isolation cell due to quarantining requirements. Although placing pregnant people in medical isolation arguably provided some protection against contracting the COVID-19 virus, a considerable body of research demonstrates other harms directly attributa-

55. Wilson et al., *supra* note 23, at 3–5.

56. Wilson et al., *supra* note 23, at 3–5.

57. Wilson et al., *supra* note 23, at 5.

58. Wilson et al., *supra* note 23, at 5. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA) (2020).

59. *See generally* Carrie Pettus-Davis, Stephanie C. Kennedy & Christopher A. Veeh, *Incarcerated Individuals' Experiences of COVID-19 in the United States*, 17 INT'L J. PRISONER HEALTH 335 (2021).

60. Kramer et al., *supra* note 45, at 410.

61. Tiana Herring, *Prisons Shouldn't be Charging Medical Co-Pays – Especially During a Pandemic*, PRISON POL'Y INITIATIVE (Dec. 21, 2020), https://www.prisonpolicy.org/blog/2020/12/21/copay-survey.

62. Video Visiting and Telephone Calls Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, 85 Fed. Reg. 37, 335 (June 22, 2020) (to be codified at 28 C.F.R. pt. 540).

63. Kramer et al., *supra* note 45, at 409.

ble to solitary confinement, including trauma, self-harm, violence, and suicide,[64] and potentially increasing risk for morbidity and mortality.[65] In addition to the psychological risks, isolation during pregnancy introduces pregnancy-specific concerns, including restricting access to necessary medical services and limiting mobility, which can increase the risk of developing blood clots.[66]

Additional COVID-19-related disruptions that impacted pregnant people in prisons included canceling prenatal programming. For example, a study by Dallaire and colleagues showed that, once COVID-19 began to spread, Departments of Corrections (DOCs) across the country quickly suspended in-person visiting and restricted access to the facilities for volunteers and non-essential staff.[67] Since programs such as doula care, childbirth education, parenting classes, and other supportive services are generally facilitated by volunteers, these programs were suspended for indefinite periods of time. Some prisons had the infrastructure and resources to provide these services virtually (e.g., via videoconferencing), though multiple facilities lacked the technology and expertise needed to support virtual programming, resulting in lapsed access to these supports.[68] These suspensions had notable implications on the social support and well-being of pregnant and parenting people in particular and likely increased feelings of isolation and loneliness, which negatively impacted maternal mental health.[69]

V. Labor and Birth Experiences Among People in Prison

As with prenatal care, there are no mandated requirements outlining care for laboring and birthing individuals in correctional settings. NCCHC advises labor and birth support match community standards and refers care providers to, again, consult ACOG's position paper outlining guidelines on level of care.[70] These recommendations include: 1) having emergency de-

64. David H. Cloud et al., *Medical Isolation and Solitary Confinement: Balancing Health and Humanity in US Jails and Prisons During COVID-19*, 35 J. Gen. Internal Med. 2738, 2738 (2020); Keramet Reiter et al., *Psychological Distress in Solitary Confinement: Symptoms, Severity, and Prevalence in the United States, 2017–2018*, 110 Am. J. Pub. Health S56, S58 (2020); Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am. J. Pub. Health 442 (2014); Am. Civ. Liberties Union, Still Worse Than Second-Class: Solitary Confinement of Women in the United States (2019), https://www.aclu.org/report/worse-second-class-solitary-confinement-women-united-states.

65. Craig Haney, *The Psychological Effects of Solitary Confinement: A Systematic Critique*, 47 Crime & Just. 365, 375 (2018).

66. Am. Coll. Obstetricians & Gynecologists, *supra* note 49, at 31.

67. Dallaire et al., *supra* note 45, at 234.

68. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

69. Thomas Hewson, Andrew Shepard, Jake Hard & Jennifer Shaw, *Effects of the COVID-19 Pandemic on the Mental Health of Prisoners*, 7 Lancet Psychiatry 568, 569 (2020).

70. Nat'l Comm'n on Corr. Health Care, *supra* note 49.

livery kits available; 2) having a qualified healthcare provider evaluate pregnant women presenting with labor symptoms, with the understanding that this could lead to transporting clients offsite; 3) having access to a licensed hospital with accommodations for high-risk pregnancies; 4) educating correctional staff to respect the privacy of the birthing person, particularly during pelvic exams and birth; and 5) not using restraints and isolation during pregnancy, labor, or birth.[71] State and federal prisons, however, have inconsistent policies, and many fall short on meeting these recommendations.[72] A June 2021 report from the National Partnership for Women and Families found that nearly half of U.S. states (twenty-four) have no policies or protocol on record that direct staff on how to triage pregnant individuals in labor, including navigating transportation to the local hospital and coordinated healthcare.[73]

There is evidence supporting the notion that giving birth without social, emotional, and physical support increases the odds of adverse maternal and infant health outcomes, such as an increased risk for postpartum depression and preterm birth.[74] In many states, family members are not allowed to support the birth of a loved one who is incarcerated,[75] and most prison policies prohibit birthing parents' family members from being contacted at any point during birth.[76] In fact, in the event that labor is induced (as often happens), most DOC policies forbid incarcerated patients from knowing when they will be transported to the hospital for induction.[77] Providing doula support at birth is among perinatal services offered at selected prisons, though it is unclear how many states provide this service.[78] As a result, rather than being surrounded by family and other desired social support, most pregnant people in prison give birth on their own, notwithstanding the presence of prison officers (whose role is to maintain the peace and

71. SUFRIN, *supra* note 51.

72. AM. CIV. LIBERTIES UNION, *supra* note 18.

73. Nicolette Wolfrey, *Incarceration Harms Moms & Babies*, NAT'L P'SHIP FOR WOMEN & FAMILIES (2021), https://www.nationalpartnership.org/our-work/health/moms-and-babies/incarceration-harms-moms-and-babies.html.

74. Joan Webster, Catherine Nicholas, Catherine Velacott, Noelle Cridland & Lisa Fawcett, *Quality of Life and Depression Following Childbirth: Impact of Social Support*, 27 MIDWIFERY 745, 747 (2011); Keshia M. Reid & Miles G. Taylor, *Social Support, Stress, and Maternal Postpartum Depression: A Comparison of Supportive Relationships*, 54 SOC. SCI. RSCH. 246, 255–56 (2015); Kimberly J. Nylen, Michael W. O'Hara & Jane Engeldinger, *Perceived Social Support Interacts with Prenatal Depression to Predict Birth Outcomes*, 36 J. BEHAV. MED 427, 435 (2013).

75. Virginia Pendleton, Jennifer B. Saunders & Rebecca Shlafer, *Corrections Officers' Knowledge and Perspectives of Maternal and Child Health Policies and Programs for Pregnant Women in Prison*, 8 HEALTH & JUST., no. 1, Jan. 4, 2020, at 1.

76. Deborah Ahrens, *Incarcerated Childbirth and Broader "Birth Control": Autonomy, Regulation, and the State*, 80 MO. L. REV. 1, 28–29 (2015).

77. Abirami Kirubarajan et al., *Pregnancy and Childbirth During Incarceration: A Qualitative Systematic Review of Lived Experiences*, 129 BJOG: AN INT'L J. OBSTETRICS & GYNAECOLOGY 1460, 1466–67 (2022).

78. Wilson et al., *supra* note 23.

keep everyone safe—not to provide emotional support or physical touch).[79] ACOG's position paper suggests correctional officers do not need to be inside a hospital room unless there is imminent threat or it is requested by medical personnel. Rather, it recommends birthing individuals have a healthcare chaperone be present and that correctional officers be absent during pelvic examinations.[80] In spite of this, a recent systemic review of twenty-four peer-reviewed articles identified frequent reports of officers violating the privacy of laboring people under their custody,[81] and male officers were more readily available than female officers.[82] Some incarcerated people expressed that male officers did not give them privacy during labor and birth.[83]

The impact of correctional officers' demeanor at the birth should not be undervalued; birthing people reported experiencing dehumanizing behavior by officers staffing their births; for example, not allowing the laboring person to close the door to the bathroom in the hospital room, or laughing at their discomfort.[84] Other birthing people, however, reported feeling compassion from officers staffing their births and felt as if the officers were advocating for them, insofar as they were able, given constraints of prison policy.[85]

Prior to the pandemic, labor and birth had been documented as particularly anxiety-inducing among incarcerated people due to lack of control over their birth experience, limited health education, lack of emotional and social support, and concern about infant placement.[86] The use of restraints or shackles is one way in which a birthing person can experience loss of control of their birth experience and is of paramount concern in this population. Medical and psychological experts oppose shackling, describing it as inhumane, unethical, dangerous, and traumatic for the birthing person as well as the infant.[87] In 2018, federal legislation was passed that prohibited the use of restraints during pregnancy, birth, and postpartum in incarcerated populations in federal facilities.[88] As of 2022, thirty-seven states have

79. Pendleton et al., *supra* note 75, at 7.

80. Am. Coll. Obstetricians & Gynecologists, *supra* note 49, at e27.

81. Kirubarajan et al., *supra* note 77, at 1463.

82. Kirubarajan et al., *supra* note 77, at 1463.

83. Ahrens, *supra* note 76, at 29.

84. Alicia Suarez, *"I Wish I Could Hold Your Hand": Inconsistent Interactions Between Pregnant Women and Prison Officers*, 27 J. Corr. Health Care 23, 26 (2021).

85. *Id.*

86. Friedman et al., *supra* note 48, at 3.

87. *ACLU Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers*, Am. Civ. Liberties Union, https://www.aclu.org/other/aclu-briefing-paper-shackling-pregnant-women-girls-us-prisons-jails-youth-detention-centers (last visited Sept. 23, 2022); Am. Pub. Health Ass'n, Standards for Health Services in Correctional Institutions (3d ed. 2003); Joe Hernandez, *More States Are Restricting the Shackling of Pregnant Inmates, But It Still Occurs*, NPR (Apr. 22, 2022), https://www.npr.org/2022/04/22/1093836514/shackle-pregnant-inmates-tennessee.

88. 18 U.S.C. § 4322.

adopted legislation that addresses the use of shackling in state prisons as well, with varying levels of forbiddance.[89]

In facilities that provided doula support during labor and birth, pre-COVID protocol was for prison staff to alert doulas when a client went into labor. Upon arrival at the hospital, doulas provided informational, emotional, and physical support to the birthing person throughout labor and stayed for two to three hours after birth.[90] In facilities that encouraged moms to breastfeed in the hospital, doulas might also provide lactation support.[91]

VI. COVID-19's Impact on Labor and Birth

A study of pregnant women who were not incarcerated found that the COVID-19 pandemic increased symptoms of anxiety, with infant health and well-being identified as the biggest source of anxiety for those giving birth.[92] Early in the pandemic, the Center for Disease Control and Prevention (CDC) issued guidance to hospitals that limited visitors during childbirth, particularly in areas with high rates of community transmission.[93] Hospitals dictated when support people were allowed to be present at births, directives rooted in hospital identified sources of information (e.g., CDC guidance, access to personal protective equipment for healthcare staff, state executive orders).[94] Hospitals also reacted to COVID's nature of peaking and subsiding in communities, thus changing their policies quickly and unpredictably over time.[95] This churning dictated whether or not doulas and other support people were permitted to attend births; some were able to do so uninterrupted throughout the pandemic, while others were restricted from attending births for months at a time.[96] Some hospitals agreed to mak-

89. Hernandez, *supra* note 87.

90. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

91. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

92. Urszula Nowacka, Szymon Kozlowski, Marcin Januszewski, Janusz Sierdzinski, Artur Jakimiuk & Tadeusz Issat, *COVID-19 Pandemic-Related Anxiety in Pregnant Women*, 18 Int'l J. Env't Rsch. & Pub. Health, no. 14, July 6, 2021, at 6–7.

93. *See Considerations for Inpatient Obstetric Healthcare Settings*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/hcp/inpatient-obstetric-healthcare-guidance.html (Nov. 19, 2021).

94. Hillary S. Weiner et al., *Hospital Visitation Policies During the SARS-CoV-2 Pandemic*, 49 Am. J. Infection Control 516, 519 (2021).

95. Rohit Jaswaney et al., *Hospital Policies During COVID-19: An Analysis of Visitor Restrictions*, 28 J. Pub. Health Mgmt. & Prac. E299, E299–E300 (2022); Molly R. Altman et al., *Where the System Failed: The COVID-19 Pandemic's Impact on Pregnancy and Birth Care*, 8 Glob. Qualitative Nursing Rsch., Jan.–Dec. 2021, at 1.

96. *See, e.g.*, Molly R. Altman, Meghan K. Eagan-Torkko, Selina A. Mohammed, Ira Kantrowitz-Gordon, Rue M. Khosa & Amelia R. Gavin, *The Impact of COVID-19 Visitor Policy Restrictions on Birthing Communities of Colour*, 77 J. Advanced Nursing 4827, 4828 (2021); Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

ing exceptions on an individual case basis, though there were no clear guidelines on how to be granted such.[97] When hospital policy restricted doulas from attending births, incarcerated individuals were required to give birth alone, which, as mentioned above, has been linked to poor outcomes in mothers.[98]

One survey collected from seventeen prisons and jails across the United States reported five (twenty-nine percent) facilities provided doula or birth companion support at the hospital before the COVID-19 pandemic.[99] Fortunately, only one of the five prisons providing birth support reported changing their visitation policies during the pandemic, and the reported change did not impact doulas' ability to attend births.[100] In addition, at least one state passed legislation during the pandemic that eased restrictions on assistants attending births for incarcerated pregnant people: in October 2021, Michigan formalized a policy ensuring all pregnant people in prison have access to a support person at the hospital during labor and birth.[101]

It is worth noting some aspects of the labor and birth experience that were not impacted by the pandemic. In a 2020 survey of prisons and jails across the United States, among those that routinely scheduled labor inductions at thirty-nine weeks, none reported changes to policy as a result of COVID-19.[102] Similarly, among prisons and jails that provided off-site routine prenatal care, high-risk prenatal consultations, and/or evaluations of acute pregnancy problems, there were no reported changes to these policies due to COVID-19.[103]

VII. Postpartum Care and Support for Incarcerated People

The act of separating a person who recently gave birth from their newborn can be emotionally intolerable, leading to increased risk of self-harm and suicide.[104] ACOG's guidelines for postpartum individuals in prison

97. Weiner et al., *supra* note 94, at 519.

98. *See* Nofar Yakovi Gan-Or, *Going Solo: The Law and Ethics of Childbirth During the COVID-19 Pandemic*, 7 J. L. & Biosciences, no. 1, Jan.–June 2020, at 1; Nylen et al. *supra* note 74, at 437.

99. Kramer et al., *supra* note 45, at 408.

100. Kramer et al., *supra* note 45, at 408.

101. Press Release, Governor Gretchen Whitmer, *Governor Whitmer Expands Maternal and Post-Partum Healthcare for Prisoners* (2021), https://www.michigan.gov/whitmer/news/press-releases/2021/10/19/governor-whitmer-expands-maternal-and-post-partum-healthcare-for-prisoners.

102. Kramer et al., *supra* note 45, at 408.

103. Kramer et al., *supra* note 45, at 408.

104. Laura Abbott, Tricia Scott & Hilary Thomas, *Compulsory Separation of Women Prisoners From Their Babies Following Childbirth: Uncertainty, Loss and Disenfranchised Grief*, Sociol. Health & Illness (Early View), 1–18 (2021); Diksha Sapkota et al., *Navigating Pregnancy and Early Motherhood in Prison: A Thematic Analysis of Mothers' Experiences*, 10 Health & Just., no. 32, Oct. 29, 2022, at 1.

align closely to community standards of care:[105] 1) screening all individuals at intake for postpartum and breastfeeding status; 2) receiving a physical postpartum checkup at two to six weeks; 3) screening for and treating mental health conditions; 4) providing lactation education and support; 5) educating on nutrition; and 6) discussing postpartum contraception options.[106] In the absence of mandatory standards, however, there is little documentation on how often these recommendations are followed, and few studies have been done on the direct experiences of postpartum people in prisons.

As a result of the Newborns' and Mothers' Health Protection Act of 1996, postnatal hospital stays could not be less than twenty-four hours, up to forty-eight hours after a vaginal birth of a full-term, healthy newborn and up to ninety-six hours after a cesarean birth.[107] This requirement applied to all births, regardless of incarceration status.[108] Most prisons do not allow mothers and newborns to stay together after discharge from the hospital, thus a majority of parents are separated from their newborns within a few days of birth, which is consistently reported as devastating and psychologically traumatizing for both the birthing parent and newborn.[109]

Shackling during the postpartum period is still permitted in up to thirteen states.[110] This means postpartum people may have their ankles and arms restrained while holding and breastfeeding their newborn in the hospital, as well as during transfer from the hospital to the prison after discharge. Upon return to the prison, it is not uncommon for postpartum individuals to be subjected to unclothed body and cavity searches.[111] Strip searches are dehumanizing under normal circumstances, though conducting cavity searches on individuals recovering from childbirth is additionally traumatizing, stressful, and potentially dangerous.[112]

Prior to the pandemic, some prison doula programs accommodated hospital visits between the doulas and the new parent every day prior to hospital discharge.[113] During these visits, the doula provided informational support around the physical recovery from childbirth, helped with

105. *See generally* AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, *supra* note 49; NAT'L COMM'N ON CORR. HEALTH CARE, *supra* note 49; AM. ACAD. PEDIATRICS & AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, *supra* note 49, at 279–300.

106. *See generally* AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, *supra* note 49.

107. Newborns' and Mothers' Health Protection Act of 1996, 29 U.S.C. § 1185(a)(1).

108. *See* Brigitte Lemyre, Ann L Jefferies & Pat O'Flaherty, *Facilitating Discharge from Hospital of the Healthy Term Infant*, 23 PAEDIATRICS & CHILD HEALTH 515, 516 (2018).

109. Clarke & Simon, *supra* note 21, at 781–82.

110. Hernandez, *supra* note 87.

111. *See* Karissa Rajagopal, Deborah Landis-Lewis, Kimberly Haven & Carolyn Sufrin, *Reproductive Health Care for Incarcerated People: Advancing Health Equity in Unequitable Settings*, 66 CLINICAL OBSTETRICS & GYNECOLOGY 73, 81 (2023).

112. Hotelling, *supra* note 15, at 38.

113. Interview by Amanda Corbett &Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

breastfeeding initiation (when relevant), and offered general emotional support.[114] Some programs accommodated doula visits with the mother on the day of hospital discharge to provide emotional support during separation from their infant.[115] Doula programs also typically included two to three postpartum visits with the birthing person after their return to prison.[116]

While there is no federal policy supporting breastfeeding in prison,[117] NCCHC recommends correctional facilities support parents' decision to breastfeed their infant in the hospital and pump their milk for their infant once they return to prison.[118] Still, only one-third of jails and prisons have written policies regarding lactation.[119] Some prisons may lack a safe place to pump and/or store the pumped milk.[120] Other facilities may design their lactation programs to support postpartum parents in maintaining their milk supply rather than provide nourishment to the infant. In these instances, individuals are allowed to pump their milk, but must discard it.[121] Other prisons may have programs that allow postpartum people to pump and freeze their milk, and then arrange to get their milk to the caregiver, either by shipping the milk to the caregiver or having the caregiver pick it up.[122] In cases where the caregiver is required to pick up the milk, if they reside too far from the prison to travel and pick up the milk in a timely manner (typically weekly), the mother may be deemed ineligible to participate in the program.[123] Other prisons require a release date to fall within a specified time period in order to be eligible to participate in the lactation program,[124] and in still other cases, prison guidelines limit the frequency and length of time parents are allowed to pump in one day, which can negatively impact their milk supply.[125] In 2022, nine states (Illinois, Indiana, Missouri, Nebraska, New York, Ohio, South Dakota, Washington, West

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114. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

115. Wilson et al., *supra* note 23, at 5.

116. Wilson et al., *supra* note 23, at 5.

117. Michigan Breastfeeding Network, *Working to Overcome Roadblocks Kits: Guide to Breastfeeding and Incarceration*, https://mibreastfeeding.org/wp-content/uploads/2018/05/Guide-to-Breastfeeding-and-Incarceration.pdf.

118. *See* Sufrin, *supra* note 51, at 6.

119. Ifeyinwa V. Asiodu, Lauren Beal & Carolyn Sufrin, *Breastfeeding in Incarcerated Settings in the United States: A National Survey of Frequency and Policies*, 16 Breastfeeding Med. 710 (2021).

120. Rebecca J. Shlafer, Laurel Davis, Lauren A. Hindt, Lorie S. Goshin & Erica Gerrity, *Intention and Initiation of Breastfeeding Among Women Who Are Incarcerated*, 22 Nursing for Women's Health 64, 68 (2018).

121. Asiodu et al., *supra* note 119.

122. Wilson et al., *supra* note 23, at 6.

123. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

124. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58; Asiodu et al., *supra* note 119.

125. Interview by Amanda Corbett & Anne Siegler with Key Personnel from Six States (AL, AR, GA, MI, MN, VA), *supra* note 58.

Virginia) offered prison nursery programs to eligible individuals as an alternative to separating incarcerated parents and their newborns.[126] Prison nurseries are units within correctional facilities that are designated for incarcerated females to reside with their infants, act as their primary caregiver, and take classes in parenting and child development.[127] The eligibility requirements are often strict and states dictate how long the infant is allowed to co-reside with the parent after birth.[128] Parents in prisons with nursery programs are permitted to breastfeed, but there are barriers in those settings as well, including limited education about breastfeeding and minimal support from other mothers and prison staff.[129]

Several states offer other alternative parenting programs.[130] Two states (California and Texas) allow eligible parents and their children to reside in a safe environment outside of a prison facility and provide services to rehabilitate parents and give them skills to re-enter the community and provide for their families.[131] Five states (Georgia, Louisiana, Minnesota, North Carolina, Vermont) have programs in place that allow pregnant and postpartum parents to serve their prison sentences in community-based programs (e.g., rehabilitation centers or halfway houses).[132]

VIII. COVID-19's Impact on Postpartum Care and Support

Although little is known about the pandemic's impact, specifically on postpartum people in prison, research shows hospital stays after birth were shortened across the board during the COVID-19 pandemic.[133] Handley and colleagues found that shortened post-birth hospitalization (defined as less than two midnights for a vaginal birth and less than three midnights for a cesarean birth) increased for all uncomplicated births from 28.5% before the pandemic to 43% during the height of the pandemic (March 1 through August 31, 2020).[134] Presumably, these shifts impacted incarcerated patients similarly, thereby reducing their already limited time with their newborns before the mother returned to prison.

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126. Kaitlin Thorne, *Prison Nurseries Help Incarcerated Mothers Bond, but Options Are Limited*, Louisville Pub. Media (May 30, 2022), https://wfpl.org/prison-nurseries-help-incarcerated-mothers-bond-but-options-are-limited.

127. Jill Barnas, *Prison Nursery Programs*, MOST Pol'y Initiative (Aug. 25, 2021), https://mostpolicyinitiative.org/science-note/prison-nursery-programs; Mary W. Byrne, *Interventions in Prison Nurseries*, *in* Handbook on Children with Incarcerated Parents: Research, Policy, and Practice 167, 168 (J. Mark Eddy & Julie Poehlmann-Tynan eds., 2d ed. 2019).

128. *See* Naomi Schaefer Riley, *On Prison Nurseries*, Nat'l Affs. (2019), https://www.nationalaffairs.com/publications/detail/on-prison-nurseries.

129. Shlafer et al., *supra* note 120, at S629.

130. Thorne, *supra* note 126.

131. Thorne, *supra* note 126.

132. *See* Thorne, *supra* note 126.

133. Sara C. Handley et al., *Birth Hospital Length of Stay and Rehospitalization During COVID-19*, 149 Pediatrics, no. 1, Jan. 2022, at 2.

134. *Id.* at 4.

Upon return to prison, postpartum patients faced additional burdens brought on by the pandemic, such as the aforementioned mandatory medical isolation for ten to fourteen days.[135] These practices were particularly concerning, given the already high rates of depressive symptoms among postpartum individuals in prison.[136] Combined with notable barriers to in-person visiting[137] and increased measures that limited physical touch, incarcerated parents faced tremendous challenges in bonding with their newborns and maintaining confidence in their parenting.[138] Despite many COVID-19 restrictions being lifted, many carceral systems retained limits on visitation for extended periods of time, reinstating them when COVID cases were identified in the prison, increasing social disconnectedness.[139]

The disrupted doula and lactation programming impacted postpartum and parenting people as well.[140] As with prenatal programming, some facilities were able to shift from in-person postpartum support to video conferencing or telephone to provide programming.[141] Many facilities, however, did not have the capacity or resources to support these shifts; thus, programming was suspended indefinitely. In these cases, incarcerated people had limited support for their physical and mental health during the postpartum period.[142] There are little data available on postpartum care provided in prisons, and those that exist have considerable limitations, including poor quality, inconsistent reporting, and variability in definitions of outcome.[143] With these limitations in mind, there is evidence that suggests correctional facilities are not set up to support perinatal health—physical or emotional—particularly during the postpartum period, and available programming is subpar.[144]

The forced separation of the infant and mother perpetuates an environment of social disturbances from the onset of the newborn's life. It is well known that people who are incarcerated have higher rates of mental health diagnoses than the general population, and women present higher rates of

135. Kramer et al., *supra* note 45, at 410.

136. Mariann A. Howland, Bethany Kotlar, Laurel Davis & Rebecca J. Shlafer, *Depressive Symptoms Among Pregnant and Postpartum Women in Prison*, 66 J. MIDWIFERY & WOMEN'S HEALTH 494, 494 (2021).

137. *See, e.g.*, Breanna Boppre, Dana Dehart & Cheri J. Shapiro, *"The Prison System Doesn't Make It Comfortable to Visit": Prison Visitation From the Perspectives of People Incarcerated and Family Members*, 49 CRIM. JUST. & BEHAV. 1474 (2022).

138. Shlafer et al., *supra* note 120, at 73–74.

139. *How Prisons in Each State Are Restricting Visits Due to Coronavirus*, MARSHALL PROJECT (2021), https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus (last visited Sep 15, 2022).

140. Kramer et al., *supra* note 45, at 409–10.

141. Dallaire et al., *supra* note 45, at 235.

142. Kramer et al., *supra* note 45, at 410.

143. Eleanor Bard, Marian Knight & Emma Plugge, *Perinatal Health Care Services for Imprisoned Pregnant Women and Associated Outcomes: A Systematic Review*, 16 BIOMED CENT. PREGNANCY & CHILDBIRTH, no. 285, Sept. 29, 2016, at 10.

144. Sapkota et al., *supra* note 104, at 10.

mental illness than men. Research shows that seventy-three percent of women in state prisons were found to have a mental health disorder, as opposed to fifty-five percent of their male counterparts.[145]

IX. Conclusions

Behind bars, the COVID-19 pandemic has disrupted the continuum of pregnancy-related care and postpartum support, drastically impacting pregnant and postpartum people in prison. Policies related to visiting, programming, and accessing health services have been modified to limit the spread of disease, compromising the provision of care for incarcerated people during and after their pregnancies.[146] Policy changes (or lack thereof), however, do not always match personal accounts of individuals' experiences inside prisons; written policy is only as effective as the level to which it is enforced. The extent to which care and experiences have been affected by the pandemic is difficult to capture.

As the COVID-19 pandemic continues to impact people behind bars, the population of pregnant and postpartum people needs to be prioritized for care and treatment in order to promote positive maternal and child health outcomes. Importantly, this population needs to be prioritized for release.[147] The conditions of carceral facilities put people at greater risk of COVID-19 infection, severe illness, and death; and facilities are not well-equipped to deal with ongoing public health crises.[148] Those who are most vulnerable, such as pregnant individuals, should be prioritized for release.[149] In addition, given their increased risk for adverse outcomes from COVID-19 infection, pregnant and postpartum people are strongly recommended to get vaccinated against COVID-19.[150] To promote uptake of COVID-19 vaccination, and counteract targeted misinformation, tailored messages about vaccination are needed for pregnant and postpartum people who are incarcerated. Messages should be evidence-based, timely, transparent, and tailored to the unique context of incarceration, including acknowledgement of unethical medical experiments conducted on individuals in the criminal le-

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145. Mollimichelle Cabeldue, Ashley Blackburn & Janet L. Mullings, *Mental Health Among Incarcerated Women: An Examination of Factors Impacting Depression and PTSD Symptomology*, 29 Women & Crim. Just. 52, 52–53 (2019).

146. Kramer et al., *supra* note 45, at 409–10; Dallaire et al., *supra* note 45, at 234–39; *see also* Am. Coll. Obstetricians & Gynecologists, *supra* note 49.

147. *See generally* Abraham et al., *supra* note 37.

148. Williams et al., *supra* note 27; Marquez et al., *supra* note 30, at 1867; *see* Ctrs. for Disease Control & Prevention, *supra* note 33.

149. Lauren Kuhlik & Carolyn Sufrin, *During COVID-19 Crisis, We Must Prioritize the Release of Pregnant People, News & Commentary*, Am. Civ. Liberties Union (May 12, 2020), https://www.aclu.org/news/prisoners-rights/during-covid-19-crisis-we-must-prioritize-the-release-of-pregnant-people; *see generally* Abraham et al., *supra* note 37.

150. *Pregnant and Recently Pregnant People*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html (last visited Oct. 3, 2022).

gal system. Pregnant and postpartum people in prisons and jails should be provided with frequent opportunities to ask questions about their health and the COVID-19 vaccines from providers they trust.

Given the unpredictable nature of the COVID-19 pandemic and the potential for future public health crises to emerge, policies and practices need to be enacted that are responsive, equity-focused, and evidence-based. Understanding the impact of the COVID-19 pandemic on the care and treatment of pregnant and postpartum people in prisons is paramount to developing policies and practices that address health disparities, center maternal and child health, and promote health equity.