LABORING FOR JUSTICE: THE CASE FOR DELAYING INCARCERATION OF PREGNANT INMATES

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> I think about it all the time, about what happened . . . . I never want to experience anything like that again. I didn't want them to get away with what happened.[1]
>
> – Jemika Johnson, a pregnant inmate at Rappahannock Regional Jail in Virginia

INTRODUCTION

Jemika Johnson, a twenty-four-year-old woman, was admitted to the Rappahannock Regional Jail in Virginia while four months pregnant.[2] On the morning of August 3, 2021, Johnson gave birth alone in her isolated cell after her cries for help and emergency calls through the intercom were ignored.[3] Johnson had informed staff that she was in labor, but officers failed to respond.[4]

Over the course of five hours, she delivered her baby without medical assistance.[5] When the staff finally discovered her, both Johnson and her newborn were lying in a pool of blood.[6] Although

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[1] Salvador Rizzo, *Woman Who Gave Birth Alone in Virginia Jail Cell Sues Over Baby's Death*, WASH. POST (Jan. 6, 2024), https://www.washingtonpost.com/dc-md-va/2024/01/06/woman-rappahannock-jail-birth-lawsuit-virginia/ [https://perma.cc/57UM-ZDXL].

[2] Ben Paviour, *Virginia Woman Whose Baby Died in Custody Sues Stafford Jail*, VPM (Dec. 27, 2023, at 16:00 ET), https://www.vpm.org/2023-12-27/rappahannock-regional-jail-lawsuit-jemika-johnson-pregnancy-childbirth [https://perma.cc/Z5EV-2ZQX].

[3] *Id.*; *see also* Rizzo, *supra* note 1.

[4] Paviour, *supra* note 2.

[5] *Id.*

[6] *Id.*

the baby was alive at birth, the infant was later pronounced dead at the hospital.[7] The medical examiner concluded that the baby's death resulted from complications related to acute chorioamnionitis, "a common condition which would have been identifiable and easily treatable with antibiotics"—care that Johnson never received.[8]

Jemika Johnson's story is just one of many that represent the systemic neglect and mistreatment of pregnant women in U.S. correctional facilities. Her experience highlights the failures of prisons and jails to provide adequate healthcare, even for those with vulnerable medical needs. Cases like hers expose how policies on paper often fall short in practice, allowing inhumane conditions to persist. Johnson's ordeal underscores the urgent need for reforms that address not only healthcare access but also the broader question of whether incarceration is appropriate for pregnant individuals.

This Comment emphasizes the urgent need to end the incarceration of pregnant women and advocates for postponing their imprisonment until after childbirth. Part I of this Comment delineates how the U.S. prison system fails to address the specific needs of incarcerated women, particularly those who are pregnant. This section examines the increasing number of women in prisons, the absence of national healthcare standards for pregnant inmates, and the inconsistent care offered in various facilities. It then highlights the negative consequences for pregnant women in prison and the harmful practices they may encounter. Part II identifies the core issue at the heart of this Comment. This section examines the absence of federal healthcare standards for pregnant inmates, resulting in inconsistent care across different states and facilities. It discusses the negative impacts of unsafe and inhumane conditions on pregnant inmates and their unborn children and the lack of oversight and current data collection on pregnancy-related healthcare in correctional settings.

Part III of this Comment presents a federal proposal to postpone the incarceration of pregnant women at the time of

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[7] *Id.*

[8] Rizzo, *supra* note 1.

sentencing. This section critiques the limitations of national prison healthcare standards and argues that delayed incarceration is a more effective solution. It also compares current state laws regarding solitary confinement, shackling, and prenatal care for pregnant inmates.

Additionally, this section evaluates alternative sentencing options and explores how policies in other contexts could inform the development of delayed incarceration for pregnant women. It also examines countries that have implemented delayed incarceration policies for pregnant inmates. Finally, this section contrasts delayed incarceration with other proposed solutions, including national healthcare standards for correctional facilities and alternative sentencing models suggested by scholars.

Part IV of this Comment addresses potential challenges with this proposed solution. This section explores whether delayed incarceration is more effective than other alternatives. Part V of this Comment then presents hypothetical scenarios illustrating how delayed incarceration for pregnant inmates could function under different circumstances. Finally, Part VI presents this Comment as a non-partisan perspective.

I. BACKGROUND

It is evident that our prison system has largely been built through a male-dominated lens, with designs and practices primarily catering to the needs and experiences of men. As a result, our prison system is often ill-equipped to address the unique needs of incarcerated women.

The rising number of women in prisons has highlighted critical issues, particularly the challenges of pregnancy during incarceration. Pregnant women in prison face numerous challenges that jeopardize both their health and the well-being of their unborn children. Additionally, in the United States, there are no nationalized healthcare standards or systems dedicated solely to female inmates who are pregnant.[9] The implementation

[9] Anna Roh, *Forced to Give Birth Alone: How Prisons and Jails Neglect Pregnant People Who Are Incarcerated*, COLUM.: MAILMAN SCH. PUB. HEALTH (Feb. 28, 2022), https://www.publichealth.columbia.edu/news/forced-give-birth-alone-how-prisons-jails-neglect-pregnant-people-who-are-incarcerated [https://perma.cc/8YZQ-36YM].

of healthcare services and the quality and availability of care for pregnant inmates vary significantly between states and individual facilities. As the number of pregnant women in prison continues to rise, it is crucial to implement a federal policy to address these challenges. While national healthcare standards for incarcerated women could help improve care, delaying incarceration for pregnant women may offer a more effective solution by keeping them out of prison during this critical time.

The United States holds the highest incarceration rate globally, and in recent decades, the number of reproductive-aged women in prisons and jails has surged.[10] In 2022, The Sentencing Project reported that 180,684 women and girls were incarcerated in state jails, state prisons, and federal prisons across the United States.[11] The rate at which women are being incarcerated has increased at twice the pace of men since 1980.[12] Today, more than 975,000 women are under the control of the United States criminal justice system.[13] The degree of female incarceration varies significantly between states, with forty-nine out of every 100,000 women being imprisoned at the national level, including both state and federal systems, as of 2022.[14] The majority of incarcerated women are non-violent offenders "who offer little to no risk of fleeing, especially during labor and postpartum recovery."[15] In states that have prohibited shackling during pregnancy, there have been no documented cases of women in labor causing harm or attempting to escape.[16] Historically, "women are more likely than men to be [imprisoned] for

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[10] Laine et al., *Alternatives to Incarceration for Pregnant & Postpartum People: A Summary of State & Federal Laws*, UNIV. OF MINN.: CTR. FOR LEADERSHIP EDUC. IN MATERNAL & CHILD PUB. HEALTH (Mar. 2023), https://mch.umn.edu/alternatives/ [https://perma.cc/26VV-TYXS].

[11] Kristen M. Budd, Dinesh Napal & Joshua Rovner, *Incarcerated Women and Girls*, SENT'G PROJECT (Dec. 4, 2025), https://www.sentencingproject.org/fact-sheet/incarcerated-women-and-girls/ [https://perma.cc/M96B-N8HD].

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Sarah B. Bondar, *Hurt, Hungry, and Handcuffed: How the Prison System Fails Pregnant Women and Their Newborns*, 25 MARQ. BENEFITS & SOC. WELFARE L. REV. 248, 258 (2024).

[16] *Id.*

nonviolent, low-level drug-related crimes."[17] In fact, "[t]wenty-five percent of women in prison have been convicted of a drug offense, compared to [twelve percent] of men in prison."[18] Furthermore, "[nineteen percent] of incarcerated women have been convicted of a property crime, compared to [thirteen percent] among incarcerated men."[19]

According to a report by the Bureau of Justice Statistics, approximately four percent of women entering state prisons and three percent of women entering federal prisons were pregnant at the time of their admission.[20] Other reports indicate that "[b]etween [five to ten] percent of women enter prison and jail pregnant, and approximately 2,000 babies are born to incarcerated women annually."[21] Pregnant women are a particularly vulnerable demographic, often requiring highly specialized care and attention to address their unique health and emotional needs during pregnancy and to "protect against adverse pregnancy outcomes."[22] Their well-being demands a heightened focus on tailored medical and psychological support to ensure the safety of both the mother and the unborn child. Some of their specific needs include "appropriate medical and psychiatric health care . . . , family services, appropriate bathroom and recreational facilities, and protection against sexual victimization while incarcerated."[23]

Because correctional facilities often do not adequately address the specific needs of women in prison, these women face a wide range of negative impacts as a result of their imprisonment. Pregnant inmates often experience heightened anxiety during labor and delivery due to several factors: the "lack of control over the birthing experience, limited health education, absence of

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[17] Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, 15 AM. MED. ASS'N J. ETHICS 779, 779 (2013).

[18] Budd, Napal & Rovner, *supra* note 11.

[19] *Id*.

[20] LAURA M. MARUSCHAK, BUREAU OF JUST. STAT., MEDICAL PROBLEMS OF PRISONERS (2008).

[21] Clarke & Simon, *supra* note 17.

[22] 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/ [https://perma.cc/HG99-VFL3].

[23] Clarke & Simon, *supra* note 17.

support from family or friends, mother-newborn separation following delivery, and concern about infant placement."[24] For pregnant individuals who are incarcerated, childbirth is often followed by almost immediate separation from their newborns.[25]

Furthermore, research indicates that incarcerated or formerly incarcerated women often experience delays in starting prenatal care and are less likely to receive the recommended level of antenatal care compared to other women.[26] The lack of timely and sufficient prenatal care not only endangers the health of incarcerated women but also significantly increases the risk of poor birth outcomes. Studies show that incarcerated pregnant women face increased rates of adverse perinatal outcomes, including "miscarriage, preterm [birth], and infants who are small for their gestational age, [when] compared to women in the general population."[27] This systemic neglect, compounded by the inconsistent availability of maternal health services, leads to tragic outcomes. For example, many incarcerated women have reported giving birth alone in their cells, without any medical assistance, due to inadequate resources and preparation in these correctional facilities.[28]

The pregnancies of incarcerated women are frequently classified as "high risk" due to their increased likelihood of complications, including substance use disorders, inadequate nutrition, and sexually transmitted infections.[29] According to a 2004 report by the Bureau of Justice Statistics, only fifty-four percent of pregnant women in prison reported receiving any form of prenatal care during their incarceration.[30] In addition, the inconsistent and inadequate prenatal care policies in correctional facilities further exacerbate the health risks faced by pregnant inmates. As many prisons lack basic guidelines for handling high-

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[24] Susan Hatters Friedman, Aimee Kaempf & Sarah Kauffman, *The Realities of Pregnancy and Mothering While Incarcerated*, 48 J. AM. ACAD. PSYCHIATRY L. 365, 367 (2020).

[25] Laine et al.*, supra* note 10.

[26] Diksha Sapkota et al., *Navigating Pregnancy and Early Motherhood in Prison: A Thematic Analysis of Mothers' Experiences*, 10 HEALTH & JUST. 1, 2 (2022).

[27] Roh, *supra* note 9.

[28] *Id.*

[29] Daniel, *supra* note 22.

[30] Maruschak, *supra* note 20; *see also* Daniel, *supra* note 22.

risk pregnancies and labor, the potential for serious medical complications grows significantly. According to American Civil Liberties Union data, "[twenty-three] out of [fifty] state prisons policies do not provide screening or treatment for high-risk pregnancies," which leaves pregnant women who have a risk of pre-eclampsia, struggle with substance abuse, or are HIV-positive without necessary care.[31] Moreover, only twenty-six out of fifty states' prisons have established protocols for labor and delivery, increasing the likelihood that pregnant inmates give birth alone without medical assistance.[32] Recent data from the Johns Hopkins School of Medicine shows alarming disparities in pregnancy outcomes across states, with miscarriage rates exceeding twenty percent in some prison populations.[33] In comparison, preterm births in others surpass the national average of roughly ten percent.[34]

Two of the most concerning challenges that pregnant women face within the prison system are the use of solitary confinement and shackling. These practices not only pose significant risks to their health and well-being but also highlight the urgent need for reforms that prioritize the safety and dignity of incarcerated individuals during pregnancy. The American College of Obstetricians and Gynecologists states that "shackling exacerbates pain, inhibits diagnosis of complications, and limits movement during the birthing process."[35]

As of July 2022, legislation banning the use of restraints during labor and delivery has been enacted in thirty-nine states, the District of Columbia, and at the federal level, including laws that restrict restraints at other times during pregnancy and the postpartum period.[36] In 2018, the federal government enacted the First Step Act, which is "a federal act that prohibits . . . punitive acts such as shackling while pregnant and in labor."[37] In addition, several states have taken action to prohibit or restrict the solitary

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[31] Roh, *supra* note 9.

[32] *Id.*

[33] Daniel, *supra* note 22.

[34] *Id.*

[35] *Id.*

[36] Camille Kramer et al., *Shackling and Pregnancy Care Policies in US Prisons and Jails*, 27 MATERNAL & CHILD HEALTH J. 186, 187 (2022).

[37] Bondar, *supra* note 15, at 260.

confinement of pregnant inmates. However, "many state institutions continue with the practice of shackling women while incarcerated and pregnant or in active labor," despite the passage of the First Step Act.[38] Therefore, although there are policies and protocols in place, there is no guarantee that pregnant inmates will receive the adequate care they need or that inhumane practices will not continue to occur.[39]

II. PROBLEM

The 1976 Supreme Court case *Estelle v. Gamble* established "the right to 'quality care' for all incarcerated persons, regardless of differences."[40] According to one scholar, under this case, "quality care" encompasses prenatal care, but the standard for this care "varies immensely and was never strictly defined."[41] At present, there are no federal healthcare standards or regulations in place to guarantee that pregnant inmates receive the care they require.[42] This gap in accountability leaves a significant void in ensuring proper medical treatment for pregnant people in custody. This also leads to very inconsistent treatment and care of pregnant inmates who are in various state jails and prisons.

Moreover, there is a notable lack of current, comprehensive information on healthcare policies and pregnancy data related to incarceration. Birth certificates do not collect information on mothers' incarceration status, and no federal agency tracking birth data monitors pregnancies in prison.[43] In addition, "no federal agency that collects incarceration statistics (namely, the BJS) records pregnancy data."[44] As a result, records of pregnancies and prenatal care are often insufficient, frequently based on individual stories, and rarely applicable at a national level.[45] Furthermore, the Bureau of Justice Statistics has not been

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[38] *Id.*

[39] *See* Laine et al., *supra* note 10.

[40] Bondar, *supra* note 15, at 251; *see also* 429 U.S. 97, 103 (1976).

[41] Bondar, *supra* note 15, at 251.

[42] Roh, *supra* note 9.

[43] Carolyn Sufrin et al., *Pregnancy Outcomes in US Prisons, 2016-2017*, 109 AM. J. PUB. HEALTH 799, 799-800 (2019).

[44] *Id.* at 800.

[45] Daniel, *supra* note 22.

updated in over fifteen years.[46] This shortfall mainly arises because "[c]orrectional facilities are not mandated to track or report pregnancy-related data, and most facilities do not have any routine process for collecting such information."[47] This lack of oversight not only impedes understanding of the healthcare needs of pregnant incarcerated individuals but also reinforces systemic inequalities in access to and outcomes of maternal healthcare.

This issue is further complicated by the fact that a significant number of laws and policies enacted by prisons, at both the state and federal levels, were initially created with male inmates and their needs as the primary focus.[48] As a result, these laws often fail to address the specific needs and challenges faced by many pregnant inmates, including "economic hardship, employment instability, substance abuse, lack of vocational skills, biological makeup, and a history of trauma and abuse."[49] Incarcerated pregnant women have six primary categories of needs: healthcare requirements—including prenatal, labor, delivery, and postpartum services—as well as educational needs focused on pregnancy, childbirth, and parenting.[50] Among these needs, proper nutrition is arguably one of the most vital. Unfortunately, existing laws often fail to clearly define how the needs of pregnant inmates should be addressed. Even where federal and state laws prohibit certain mistreatments of pregnant inmates, violations still occur. For instance, although twenty-two states have enacted laws against shackling pregnant inmates, these regulations are not consistently enforced by correctional officers.[51] A 2015 report by the Correctional Association of New York revealed that, despite the legal restrictions, twenty-three out of twenty-seven women

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[46] *Id*.

[47] Friedman, Kaempf & Kauffman, *supra* note 24, at 1.

[48] *See* Rahgan Jensen, *Pregnancy During Incarceration: A "Serious" Medical Need*, 46 BYU L. REV. 529, 532-33 (2021).

[49] *Id*.

[50] 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, 11 (2022).

[51] *See* Lachelle Dufresne, *Pregnant Prisoners in Shackles*, VOICES IN BIOETHICS, June 2023, at 5.

who gave birth while in state custody were shackled, thus violating the anti-shackling laws.[52]

While many jurisdictions have established guidelines recommending pregnancy screening for female inmates upon entry into jails and prison systems, there is no federal—or, in many state systems—provision requiring anything beyond basic necessities for those who test positive for pregnancy.[53] Although correctional facilities are expected to prioritize the health and nutrition of pregnant inmates, the associated costs and limited budgets often lead to neglect of these needs. Furthermore, because funding for these facilities depends on legislative approval and adequate nutrition for these women is not prioritized, their needs often go unmet.[54] Consequently, the U.S. incarceration system inadequately protects pregnant inmates, exposing them to severe human rights violations that endanger their health and that of their fetuses while exacerbating existing trauma and post-traumatic stress.[55]

A. Existing State Law & Policy on the Treatment of Pregnant Inmates

In the United States, pregnant inmates encounter numerous challenges, with three of the most critical being "lack of adequate prenatal and postpartum care, shackling, and prolonged solitary confinement."[56] The absence of federal regulations establishing uniform standards for the treatment and healthcare of pregnant inmates leads to significant disparities across states. Accordingly, it is essential for this Comment to begin by examining the current status of state laws and policies that regulate the treatment of pregnant inmates.

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[52] *Id.*

[53] Bondar, *supra* note 15, at 252.

[54] *Id.* at 253.

[55] Jensen, *supra* note 48, at 533-34.

[56] *Id.* at 534.

1. Lack of National Healthcare Standards for Pregnant Inmates

The *Estelle* case states that the Eighth Amendment of the U.S. Constitution mandates that all U.S. prisons and jails must "provide medical care for those whom it is punishing by incarceration," including prenatal and postpartum care.[57] Despite this constitutional mandate, no nationalized mandatory standards of healthcare, oversight or requirements for data collection of pregnant inmates have been established.[58] This results in significant variability in the standard of care provided to pregnant inmates across federal, state, and local prisons and jails in the United States.[59] Several organizations—including the National Commission on Correctional Health Care ("NCCHC"), the American Public Health Association ("APHA"), and the American College of Obstetricians and Gynecologists ("ACOG")—have proposed "minimum standards" of care that should be met for incarcerated women.[60]

The ACOG's proposed standards for pregnant individuals in custody include pregnancy assessment and testing upon entry, access to regular and emergency obstetric care, staff trained to recognize pregnancy-related issues, adherence to recommended obstetric guidelines, provision of healthy snacks for unique nutritional needs, and safe access to medications for opioid use disorder.[61] These proposed standards also include the opportunity for moderate exercise with restrictions on strenuous tasks, prompt medical evaluation for symptoms that could signal severe conditions, privacy in medical settings with limited correctional officer presence, and delivery services in licensed hospitals with high-risk pregnancy facilities when possible.[62] Additionally, the ACOG's "standards for perinatal care in correctional settings

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[57] Estelle v. Gamble, 429 U.S. 97, 103 (1976); *see also* Jensen, *supra* note 48, at 538.

[58] *See* Kramer et al., *supra* note 36, at 187.

[59] Jensen, *supra* note 48, at 539.

[60] *Id.*

[61] Committee on Health Care for Underserved Women, *ACOG Committee Opinion: Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, 138 OBSTETRICS & GYNECOLOGY 24, 28-29 (2021) [hereinafter *ACOG Committee Opinion No. 830*]; *see also* Jensen, *supra* note 48, at 539.

[62] *ACOG Committee Opinion No. 830*, *supra* note 61, at 29-30.

include pregnancy testing; access to pregnancy counseling and abortion services; assessing and treating for substance abuse, HIV, and depression; appropriate vitamins and diet; delivery in a licensed hospital with facilities for high-risk pregnancies; and postpartum contraception."[63]

However, among states that do provide some level of prenatal or postpartum care, only a small percentage have adopted these proposed standards.[64] Additionally, jail policies and health care protocols frequently disregard external recommendations and guidelines, as they are not legally mandatory.[65]

2. Access to Prenatal and Postpartum Medical Care

Despite incarcerated individuals having a constitutional right to healthcare, "only a half-dozen states have passed laws guaranteeing access to prenatal or postpartum medical care for people in custody."[66] To highlight the issue further, "forty-three states do not require medical examinations as a component of prenatal care."[67] As of 2019, twelve states have not established any policies requiring prenatal care, and "[twenty-four] states fail to codify any pre-existing arrangements for deliveries."[68] Furthermore, many pregnancies are classified as "high risk," necessitating specialized treatment for healthy births.[69] However, the Federal Bureau of Prisons and twenty-two states lack guidelines for providing care for these high-risk pregnancies,[70]

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[63] Friedman, Kaempf & Kauffman, *supra* note 24, at 366.

[64] *See* Jensen, *supra* note 48, at 539.

[65] Bondar, *supra* note 15, at 252.

[66] Renuka Rayasam, *Pregnancy Care Was Always Lacking in Jails. Could It Get Worse?*, 19TH NEWS (Feb. 16, 2024, at 09:59 CT), https://19thnews.org/2024/02/pregnancy-care-jails-standards-oversight/ [https://perma.cc/D5G2-LJ66].

[67] REBECCA PROJECT FOR HUM. RTS., NAT'L WOMEN'S L. CTR., MOTHERS BEHIND BARS: A STATE-BY-STATE REPORT CARD AND FEDERAL REVIEW ON CONDITIONS OF CONFINEMENT FOR PREGNANT AND PARENTING WOMEN 6 (2010) [hereinafter REBECCA PROJECT].

[68] Daniel, *supra* note 22.

[69] *High-Risk Pregnancy*, CLEV. CLINIC (July 12, 2024), https://my.clevelandclinic.org/health/diseases/22190-high-risk-pregnancy [https://perma.cc/FY9G-TUH5].

[70] *See id.*

and "thirty-four states do not require screening and treatment for women with high-risk pregnancies."[71]

In addition to a heightened level of care, proper nutrition is essential to the health and well-being of a pregnant mother and her unborn child. According to the American Public Health Association, unbalanced, inadequate diets increase the risk of "preterm birth, birth defects, and other developmental problems in early childhood."[72] Despite these risks, thirty-one states lack policies addressing the nutritional needs of pregnant women in prison.[73] Of the states with nutrition guidelines, twelve employ guidelines that notably lack specificity, often relying on ambiguous terms like "adequate or appropriate" to describe nutritional standards.[74] Inadequate nutrition during pregnancy can significantly increase health risks for both the pregnant individual and the developing fetus.[75] For example, iron deficiency anemia is associated with a higher likelihood of serious conditions such as preeclampsia, postpartum depression, and postpartum hemorrhage.[76] Each of these conditions can lead to severe complications for the mother or even result in mortality.[77] Therefore, proper dietary support is essential to reduce these risks and promote better health outcomes for the mother and the child.

Postpartum care is a significant concern for incarcerated women, as their medical needs continue well after childbirth. According to the ACOG, the period following birth is "critical" for both mother and child.[78] The ACOG recommends that women have contact with their obstetrician-gynecologists or other healthcare providers within the first three weeks postpartum.[79] The care for these women should be ongoing for a period of twelve

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[71] REBECCA PROJECT, *supra* note 67.

[72] Daniel, *supra* note 22.

[73] *See id*.

[74] *Id*.

[75] Shalev et al., *State Laws on Adequate Nutrition for People Who Are Pregnant While Incarcerated,* UNIV. OF MINN.: CTR. FOR LEADERSHIP EDUC. IN MATERNAL & CHILD PUB. HEALTH (Mar. 2024), https://mch.umn.edu/nutrition/ [https://perma.cc/J9P5-J3C4].

[76] *Id*.

[77] *Id*.

[78] *ACOG Committee Opinion: Optimizing Postpartum Care*, 131 OBSTETRICS & GYNECOLOGY 140, 141 (2018).

[79] *Id*. at 140.

weeks and precisely tailored to support and account for each woman's individualized needs.[80] While postpartum care is challenging for any mother, the difficulties are compounded in a prison setting, where limited access to medical support, mental health resources, and family connections can make recovery especially hard.

During the postpartum period, many women experience issues that are not accommodated, or can be challenging to accommodate, in correctional facilities. These issues include vaginal soreness or tears, contractions, hemorrhoids, hair and weight loss, trouble sleeping, and mood changes.[81] One of the major concerns is postpartum depression. Postpartum depression ("PPD") is a condition that usually develops between two to eight weeks after giving birth, that encompasses "feeling overwhelmed, persistent crying, lack of bonding with your baby[,] and doubting your ability to care for yourself and your baby."[82] Women who give birth in custody and are subsequently separated from their newborns are at a significantly higher risk of developing PPD,[83] with prolonged incarceration further increasing this likelihood.[84] For incarcerated individuals recovering after childbirth, who are often separated from their newborns within forty-eight hours, "confinement severely increases the risks of developing postpartum depression."[85] The lack of supportive social networks and limited access to essential health education in prison compounds their vulnerability,[86] making it more challenging to manage the emotional and mental health impacts of childbirth. This gap in support leaves incarcerated mothers particularly susceptible to PPD, intensifying their need for adequate postpartum care and resources.

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[80] *Id.*

[81] *Postpartum Care: What to Expect After a Vaginal Birth*, MAYO CLINIC (Dec. 27, 2023), https://www.mayoclinic.org/healthy-lifestyle/labor-and-delivery/in-depth/postpartum-care/art-20047233 [https://perma.cc/8FT6-H6WX].

[82] Mandy Rich, *What Is Postpartum Depression?*, UNICEF, https://www.unicef.org/parenting/mental-health/what-postpartum-depression [https://perma.cc/8C2J-GWPR] (last visited Nov. 2, 2024).

[83] Mariann A. Howland, *Depressive Symptoms Among Pregnant and Postpartum Women in Prison*, 66 J. MIDWIFERY & WOMEN'S HEALTH 494, 494 (2021).

[84] *Id.*

[85] Jensen, *supra* note 48, at 549.

[86] *See* Friedman, Kaempf & Kauffman, *supra* note 24.

3. Shackling and Solitary Confinement

Shackling and solitary confinement also represent significant issues for pregnant inmates that many states often overlook or inadequately address. This is evidenced by the fact that currently, only "[twenty-two] states have some legislation restricting the use of shackles during pregnancy,"[87] and "[twelve] states still provide no policy limiting restraints on women during pregnancy."[88] Organizations such as the American Civil Liberties Union, ACOG, and the American Psychological Association have condemned the practice of shackling pregnant inmates; this is likely because shackling can lead to adverse health effects such as "increased discomfort, limited mobility, increased fall risk, delays in medical assessments during obstetrical emergencies, increased risk of blood clots, interference with normal labor and delivery, and interference with mother-infant bonding."[89] In 2018, Congress took action with regards to shackling of pregnant inmates and enacted the First Step Act, "prohibit[ing] [the] shackling of pregnant women in federal custody except where restraints are necessary to prevent serious harm or escape."[90]

Solitary confinement, "also known as isolation or administrative segregation,"[91] "refers to the physical and social isolation of an individual in a single cell for [twenty-two and a half] to [twenty-four] hours a day, with the remaining time typically spent exercising in a barren yard or cage."[92] Depending on the jurisdiction, solitary confinement can also consist of "very limited, if any, access to educational, vocational and recreational activities, all conducted in isolation from others."[93] States often justify solitary confinement for various purposes, including as a disciplinary measure, a protective strategy for vulnerable

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[87] *Id.* at 367.

[88] Daniel, *supra* note 22.

[89] Friedman, Kaempf & Kauffman, *supra* note 24, at 367.

[90] *Id.*

[91] *Solitary Confinement*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/solitary_confinement#:~:text=Solitary%20confinement%2C%20also%20known%20as,with%20limited%20contact%20with%20others [https://perma.cc/7ZU9-3E7G] (last visited Oct. 30, 2024).

[92] Sharon Shalev, *Solitary Confinement as a Prison Health Issue*, *in* WHO GUIDE TO PRISONS AND HEALTH 27 (2017).

[93] *Id.*

prisoners, and a method for helping staff manage specific individuals.[94] However, solitary confinement can have severe effects on inmates, particularly pregnant individuals, often causing numerous health issues such as "gastro-intestinal and genito-urinary problems, diaphoresis, insomnia, deterioration of eyesight," "profound fatigue," "heart palpitations, migraine headaches," "weight loss," and "aggravation of pre-existing medical problems."[95] Inmates in solitary confinement also exhibit higher levels of "self-harm and suicide" compared to the general population.[96]

The restrictive conditions of incarceration, paired with the stress and dehumanizing experience of pregnancy and childbirth while in custody, place pregnant individuals at a heightened risk of mental health disorders[97]—a risk that is only intensified by the use of solitary confinement. A pregnant woman's access to vital prenatal and emergency medical care can be severely compromised when placed in solitary confinement, particularly during critical situations where immediate intervention is needed.[98] Solitary confinement can also exacerbate stress and depression in pregnant women, increasing the likelihood of complications such as reduced immune function and a higher risk of preterm labor, miscarriage, and low birth weight in their babies.[99] The Department of Justice advises against placing pregnant or postpartum inmates in solitary confinement except in extreme situations, while the United Nations' Bangkok Rules

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[94] *See Solitary Confinement*, PENAL REFORM INT'L, https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/ [https://perma.cc/MT6H-KVYT] (last visited Oct. 30, 2024).

[95] Shalev, *supra* note 92, at 28.

[96] *Id.*

[97] Caitlin A. Hendricks et al., *Mental Health, Chronic and Infectious Conditions Among Pregnant Persons in US State Prisons and Local Jails 2016-2017*, 20 WOMEN'S HEALTH 1, 4-5 (2024).

[98] Mahnoor Yunus, *The Challenges in Health Care for Pregnant Women in U.S. Correctional Institutions*, 19 HASTINGS RACE & POVERTY L.J. 125, 132 (2021); *see also* AM. C.L. UNION, STILL WORSE THAN SECOND-CLASS: SOLITARY CONFINEMENT OF WOMEN IN THE UNITED STATES 9 (2024).

[99] Yunus, *supra* note 98, at 132; *see also Legislative Memo: Prohibiting the Use of Segregated Confinement for Incarcerated Women Who are Pregnant, Recently Gave Birth, and/or Are Participating in the Nursery Programs*, N.Y. C.L. UNION (May 24, 2017), http://nyclu.org/resources/policy/legislations/legislative-memo-prohibiting-use-segregated-confinement-incarcerated-women-who-are.

outright prohibit solitary confinement for pregnant or nursing women.[100] As of 2024, forty-two states in the U.S. have enacted laws that ban or restrict the solitary confinement of inmates, including some states that have prohibited the solitary confinement of pregnant inmates altogether.[101] However, despite these laws, these inhumane practices still occur at an alarming rate, and the level of protection these laws offer pregnant women varies significantly from state to state.

The absence of consistent, comprehensive standards for the treatment of pregnant inmates in the United States has led to severe disparities in care, leaving many incarcerated women and their unborn children at risk of serious health complications. Current laws and policies governing prenatal and postpartum care, shackling, and solitary confinement vary widely across states, often resulting in inadequate and unpredictable support for pregnant inmates. To address these challenges effectively, a unified approach that mandates the delayed incarceration of pregnant women is essential. This policy shift would ensure that pregnant individuals receive the proper and adequate care they need, ultimately safeguarding both maternal and fetal health and promoting a more humane approach to incarceration.

III. SOLUTION/CONTRIBUTION

A. Delayed Incarceration

To address the ongoing challenges pregnant women face in the criminal justice system, I propose a federal law that would prohibit the incarceration of women who are pregnant at the time of sentencing, with consideration for extending these protections to those who become pregnant while incarcerated. Delayed incarceration, also referred to as a "delayed sentence," is "a type of sentence that is not imposed immediately after a criminal defendant is found guilty. Instead, the sentencing is delayed, allowing the defendant to comply with certain restrictions or

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[100] AM. C.L. UNION, *supra* note 98.

[101] Hernandez D. Stroud, *Reforming Solitary Confinement Without the High Court*, BRENNAN CTR. FOR JUST. (Feb. 21, 2024), https://www.brennancenter.org/our-work/analysis-opinion/reforming-solitary-confinement-without-high-court [https://perma.cc/WMN7-G5J4].

conditions during the delay period."[102] Delaying incarceration would give pregnant individuals greater control over their pregnancy, including access to nutrition and healthcare choices that may not be available in a correctional setting. This approach not only prioritizes the health and autonomy of pregnant women but also reduces the financial burden on the state to provide specialized prenatal and postpartum care within prisons, where adequate resources are often lacking.

In this discussion, I will outline the critical aspects of implementing delayed incarceration. This proposal will delineate which pregnant women qualify for delayed incarceration based on the severity of their crime, their stage of pregnancy, any high-risk conditions, and the potential risks they pose to both public safety and their unborn child. Additionally, it is crucial to evaluate any history of prior offenses or risk of flight. The proposal will also outline specific conditions individuals must meet during the delay, such as attending prenatal care appointments or participating in treatment programs.

1. Essential Factors for Consideration

Several nuanced and essential factors must be considered when implementing delayed incarceration. First and foremost are the nature and severity of the crime committed by the individual. It is also crucial to evaluate whether the offense is nonviolent or violent, as this distinction can significantly influence the decision to grant delayed incarceration.

Additionally, establishing clear eligibility criteria for delayed incarceration is vital. This could include factors such as the individual's criminal history and whether they pose a risk to public safety or are deemed a flight risk. Specific guidelines should be developed to ensure that only those pregnant women who meet these criteria are eligible for such a program. The timeline for postponement is another critical factor, encompassing details about how long a mother can remain with her child after delivery. This period should be carefully defined, considering both the mother's physical recovery and the newborn's needs.

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[102] *Legal Definitions - Delayed Sentence*, LSD, https://www.lsd.law/define/delayed-sentence [https://perma.cc/BM22-HABM] (last visited Nov. 7, 2024).

Furthermore, exploring alternative punishment options is important. Alternatives, such as house arrest, community service, regular check-ins with probation officers during the postponement, or supervised release, should be explored as viable solutions. Each of these alternatives must be assessed for its effectiveness in promoting rehabilitation while maintaining public safety. Ultimately, all these considerations are critical in making informed decisions about which pregnant women are eligible for delayed incarceration.

2. Elements of a Model Solution

This Comment does not aim to create a "perfect" federal statute; rather, it seeks to articulate key components that should be included in any federal legislation designed to postpone the incarceration of pregnant women. By examining the necessary provisions, such as eligibility criteria, the duration of the delay, and supportive services for pregnant women during this time, we can lay the groundwork for a more humane approach to justice that acknowledges the unique needs of pregnant individuals in the legal system.

It is crucial to recognize that women who are pregnant may face sentencing at various stages of their pregnancy, with some being in the early stages while others are in their third trimester. This variability necessitates that judges approach each case with a tailored perspective, assessing the unique circumstances of each individual woman. Consequently, judges must carefully evaluate the appropriate duration of delayed incarceration on a case-by-case basis. When making this determination, judges must consider several factors, including the specific stage of pregnancy, which can significantly impact the health and well-being of both the mother and the unborn child. Additionally, they should evaluate the nature and severity of the crime committed, whether the pregnancy is high-risk, and the potential risk of flight. For instance, a less severe offense committed by a woman in her later stages of pregnancy may warrant a different consideration compared to a more serious crime committed by someone earlier in their pregnancy.

In my proposed solution, I recommend that the maximum duration for a delayed sentence should not surpass twelve months,

regardless of the specific stage of pregnancy that the mother is currently experiencing.[103] This timeframe is designed to ensure that the mother has sufficient opportunity to deliver her child safely, as well as to foster a strong bond with her newborn immediately after birth.[104] Additionally, it allows for an essential recovery period during the postpartum phase, which is crucial for the mother's physical and emotional well-being.[105] While the ceiling for the delayed sentence is set at twelve months, it is important to emphasize that judges have complete discretion to evaluate and determine the appropriate length of delay on a case-by-case basis.

In addition, precise eligibility requirements must be established for pregnant inmates within the justice system. Ideally, no woman should have to endure the challenges of incarceration while pregnant, as the physical and emotional toll can be significant for both mother and child. Nevertheless, there may be circumstances in which pregnant inmates could present a higher risk to public safety if released back into the community. For this reason, a comprehensive cost-benefit analysis is essential to determine the appropriate course of action regarding their incarceration.

To qualify for delayed incarceration, a pregnant woman must not be classified as a violent offender or have been convicted of serious felonies. Specifically, this restriction extends to individuals charged with first-degree felonies, which often include serious crimes, such as murder or major drug trafficking. In contrast, those facing charges for misdemeanors, minor offenses, non-violent crimes, or low-level felonies may be considered for eligibility under a deferred incarceration policy. It is imperative that judges exercise discretion and conduct an in-depth review of each woman's criminal background. For instance, if a woman has a history of repeat offenses and has previously committed serious

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[103] Rebecca J. Shlafer et al., *Justice for Incarcerated Moms Act of 2021: Reflections and Recommendations*, 18 WOMEN'S HEALTH 1, 3 (2022); U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-106404, PREGNANT WOMEN IN STATE PRISONS AND LOCAL JAILS: FEDERAL ASSISTANCE TO SUPPORT THEIR CARE (2024).

[104] *ACOG Committee Opinion No. 830*, *supra* note 61, at 31.

[105] *Postpartum*, CLEV. CLINIC (Feb. 27, 2024), https://my.clevelandclinic.org/health/articles/postpartum [https://perma.cc/CV69-P8J3].

felonies, this may disqualify her from eligibility for delayed incarceration.

When examining the situation of women who become pregnant while incarcerated, it is essential to consider the eligibility requirements that may apply to them. These requirements are similar to those discussed, but the standards these women must meet to demonstrate their eligibility are significantly more stringent. Additionally, the circumstances surrounding their pregnancy are crucial in assessing their eligibility. If there is credible evidence suggesting that these women intentionally sought to become pregnant in order to postpone the completion of their prison sentences, this could lead to ineligibility. In such cases, a judge may have the discretion to deny their eligibility for early release or alternative sentencing options based on the perceived manipulation of the system.

On the other hand, women who have received a sentence of capital punishment are only eligible for deferred execution during their pregnancy.[106] However, in such cases, the execution would be postponed in accordance with 18 U.S.C. § 3596. This statute explicitly states that "[a] sentence of death shall not be carried out upon a woman while she is pregnant."[107]

Judges should strongly consider the option of delayed incarceration during pretrial sentencing. It is essential to recognize that the conditions in jails can often be significantly worse than those in standard prisons, as jails are typically overcrowded, under-resourced, and lacking in adequate healthcare and support services.[108] For women—especially those who are pregnant—being held in jail until their sentencing can pose serious risks to both their health and the health of their unborn child.[109] When women are unable to meet bail or are not eligible

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[106] Smith et al., *State Laws on the Death Penalty for People Who are Pregnant While Incarcerated*, CTR. FOR LEADERSHIP EDUC. IN MATERNAL & CHILD PUB. HEALTH (Oct. 2024), https://mch.umn.edu/death-penalty/ [https://perma.cc/KPV9-XSSX].

[107] 18 U.S.C. § 3596.

[108] Christopher Blackwell, *Two Decades of Prison Did Not Prepare Me for the Horrors of County Jail*, N.Y. TIMES: SUNDAY OP. (May 16, 2023), https://www.nytimes.com/2023/05/16/opinion/sunday/abuse-jail-prison.html [https://perma.cc/F95W-HNMM].

[109] *Pregnant Women in Prison at Greater Risk of Pregnancy Complications and Baby Loss*, TOMMY'S (Sep. 26, 2022), https://www.tommys.org/about-us/news-views/pregnant-

for release, their confinement can lead to increased stress and anxiety, negatively impacting their prenatal health.[110] Furthermore, the environment in jails can exacerbate existing health issues and create additional challenges for pregnant women.[111] Therefore, pretrial detention decisions should be carefully weighed against the potential harm it poses to the mother and her child.

In cases involving pregnant women who qualify for delayed incarceration, judges must have the discretion to impose alternative sentencing measures such as house arrest, community service, or other rehabilitative options. To ensure the well-being of both the mother and the unborn child, these women must remain under some form of supervision throughout their sentence. This supervision should entail regular check-ins with probation officers, who will monitor compliance with the terms set by the court. Additionally, these women should be mandated to attend a specified number of prenatal medical appointments, which will be tracked and reported on by the probation officer.

The care provided during this time must meet essential nutritional and health standards for pregnant women. This includes adhering to a balanced diet, receiving adequate prenatal vitamins, and engaging in necessary lifestyle adjustments to promote a healthy pregnancy. Probation officers should work closely with healthcare providers to ensure that all health recommendations are followed and that any concerns regarding the mother's health or the child's development are addressed promptly.

For pregnant women facing substance abuse issues, the statute should explicitly require access to appropriate treatment and support services beginning at the start of their delayed incarceration. This may involve enrollment in rehabilitation programs, participation in counseling sessions, and ongoing

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women-prison-greater-risk-pregnancy-complications-and-baby-loss [https://perma.cc/YM9L-UNZ5].

[110] Candice Norwood, *Pregnant People Face Health Risks and Inconsistent Care in Prisons*, L.A. ILLUMINATOR (Oct. 5, 2024, at 10:00 CT), https://lailluminator.com/2024/10/05/pregnant-prison/ [https://perma.cc/8HPB-SHL3].

[111] Karissa Rajagopal et al., *Reproductive Health Care for Incarcerated People: Advancing Health Equity in Unequitable Settings*, PUBMED CENT. (Mar. 1, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC9851923/ [https://perma.cc/V35S-XKCW].

assessments to track their progress. By providing the necessary resources and support, the legal system can help these women combat their addictions while also prioritizing the health and safety of their unborn children.

It is crucial to understand, however, that any period of delayed incarceration for pregnant women will not be considered as part of their overall sentence. This means that such delays will neither reduce the length of their stay in prison nor provide an opportunity for earlier release. The intention behind this policy is not to offer a loophole or a "get-out-of-jail-free" card specifically for expectant mothers. Additionally, it is not designed to encourage women to conceive as a means to extend their time outside of prison. The primary aim is to address the unique circumstances surrounding pregnancy while maintaining the integrity of the judicial system and the established sentencing guidelines.

3. Comparison to Alternative Solutions

In contemplating my proposed federal law aimed at implementing delayed incarceration, this Comment delves into various states that have either proposed or enacted innovative alternative sentencing options specifically designed for pregnant inmates. These options include community housing arrangements, prison nursery programs, and provisions for delayed sentencing.[112] By analyzing these existing measures, I seek to establish a robust foundation for shaping my federal proposal. This examination will allow me to assess the effectiveness and practicality of these state-level alternatives, which can ultimately inform the development of a more comprehensive and effective federal solution. For instance, I would like to highlight a recent Alabama House bill that has been introduced, which proposes to "allow delayed incarceration for pregnant women" by implementing a system that extends pre-incarceration probation for a duration of [twelve] weeks. [113] This extension is designed to facilitate postpartum care in a setting outside of a correctional facility, thus prioritizing the health and

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[112] Laine et al., *supra* note 10.

[113] Ralph Chapoco, *Alabama House Bill Would Allow Delayed Incarceration for Pregnant Women*, ALA. REFLECTOR (Apr. 16, 2024, at 06:58 CT), https://alabamareflector.com/2024/04/16/alabama-house-bill-would-allow-delayed-incarceration-for-pregnant-women/ [https://perma.cc/5LHV-QJF2].

well-being of both the mother and the newborn. By examining existing state-level alternatives, I aim to create a federal framework that not only addresses the unique circumstances of pregnant inmates but also promotes rehabilitation and family cohesion during a critical period of their lives. This section will also explore whether delayed incarceration has the potential to be more effective than these other alternatives.

As of March 2023, a total of twelve states in the U.S. have enacted laws that provide specific alternatives to incarceration for individuals who are pregnant or postpartum.[114] The primary alternatives to incarceration for pregnant and postpartum women include (1) alternative sentencing, (2) prison nursery programs, and (3) community-based programs.[115]

Alternative sentencing laws in certain states allow for either permanent or temporary sentences that diverge from traditional incarceration for pregnant individuals and women with young children.[116] Currently, only three states have implemented such laws.[117] Most states typically intervene after a woman has already been sentenced; however, Illinois stands out for its proactive approach by permitting electronic home monitoring as a condition of pretrial release.[118] This initiative aims to lower the number of pregnant individuals who are incarcerated before trial.[119] In Tennessee, Section 41-21-227(h)(1) of the Tennessee Code Annotated grants pregnant women a temporary furlough lasting up to six months.[120] However, this furlough is not available if the pregnancy occurs during incarceration.[121] Maryland offers a measure akin to delayed incarceration; their law empowers the governor to grant executive clemency to pregnant individuals, allowing for parole, reductions in sentence length, or transitions to alternative residential settings during pregnancy.[122] Nevertheless,

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[114] Laine et al., *supra* note 10.
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] TENN. CODE ANN. § 41-21-227(h)(1) (2025); *see also* Laine et al., *supra* note 10.
[121] TENN. CODE ANN. § 41-21-227 (2025).
[122] Laine et al., *supra* note 10.

postpartum individuals are mandated to return to a correctional facility as soon as their health permits after giving birth.[123]

Three states—New York, Ohio, and West Virginia—have instituted laws establishing or authorizing prison nursery programs.[124] These laws provide an essential opportunity for postpartum individuals to reside in a correctional facility alongside their newborns, designed to prevent the distressing separation that occurs during childbirth.[125] To maintain their eligibility, participants in these programs often must meet specific criteria, including educational and counseling obligations.[126]

A total of six states—California, Minnesota, Missouri, New Jersey, Texas, and Wisconsin—have developed community-based programs that enable pregnant and postpartum individuals to live outside of jails or prisons with their babies after giving birth.[127] For instance, the Minnesota Healthy Start Act facilitates the conditional release of pregnant women and new mothers serving short sentences in state prison for the duration of their pregnancy and up to a year following childbirth.[128] It is noteworthy that while some community-based programs are rooted in legislation, others operate without formal legislative mandates, reflecting a variety of approaches across the states to support the parenting needs of incarcerated individuals.[129]

It is essential to evaluate the effectiveness of these alternatives. Recent scholarly research has provided compelling evidence that prison nursery programs serve as a viable and effective solution for this demographic.[130] One study found that

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[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] Angela Rose Myers & Carley Mossbrook Addy, *Minnesota and the Healthy Start Act Report*, CHILD. OF INCARCERATED CAREGIVERS, https://cicmn.org/wp-content/uploads/2024/01/FINAL-MN-Healthy-Start-Act.pdf [https://perma.cc/6VSK-5Q3L] (last visited Nov. 10, 2024).

[129] Laine et al., *supra* note 10.

[130] Analisa Johnson, *The Benefits of Prison Nursery Programs: Spreading Awareness to Correctional Administrators Through Informative Conferences and Nursery Program Site Visits*, BOS. UNIV. ARTS & SCIS. WRITING PROGRAM, https://www.bu.edu/writingprogram/journal/past-issues/issue-9/johnson/ [https://perma.cc/ZQ44-9KKS] (last visited Nov. 10, 2024).

"the recidivism rate within three years of women exiting the prison nursery programs was found to be a mere [four and three-tenths percent] for a new offense and [nine and four-tenths percent] for a parole violation."[131] Remarkably, "[eighty-six and three-tenths percent] of women remained in the community three years following their release from a prison nursery program."[132] Another study indicated that "[c]hildren who spent time with their mothers in a prison nursery exhibited significantly lower mean scores for anxious/depressed and withdrawn behaviors compared to children who were separated from their mothers during infancy or toddlerhood due to incarceration."[133] However, the limited availability of these programs across states restricts their broader impact and raises questions about their scalability and sustainability across varied correctional environments.

There is a notable deficiency in comprehensive data and research when it comes to assessing the effectiveness of community-based programs and alternative sentencing laws. This gap in information poses serious challenges for effectively evaluating the outcomes related to the delayed incarceration of pregnant women. Without sufficient evidence, it becomes difficult to determine the impact of these programs on both the individuals involved and the broader community, ultimately raising questions about the best approaches for addressing the needs of pregnant women within the justice system. Furthermore, the lack of clarity surrounding these issues may hinder the development of a federal statute of delayed incarceration.

Delaying incarceration for pregnant women could potentially address some limitations found in existing alternatives. Unlike these options, delayed incarceration allows pregnant women to avoid the prison environment entirely during their pregnancy and for some time after childbirth. This approach may have a positive impact on their physical and mental health. It can also help reduce the stress and trauma often associated with giving birth and raising an infant in a correctional facility, ultimately benefiting both the mother and child. However, delayed incarceration may not be feasible in all cases, particularly for

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131 *Id.*
132 *Id.*
133 *Id.*

those involving serious offenses or high-risk pregnancies without reliable community support systems. In such situations, prison nurseries or structured community programs might provide a more controlled environment to ensure safety and access to necessary health services.

4. Nationalized Healthcare Standards for Correctional Facilities

It is crucial to acknowledge and evaluate the alternative solution proposed by numerous scholars: the establishment of nationalized healthcare standards specifically designed for correctional facilities.[134] While this approach could ostensibly provide a structured framework, it arguably often falls short in effectively protecting the health and welfare of pregnant inmates and their unborn children. The inherent challenges faced by this vulnerable group require not only generalized guidelines but also detailed and immediate interventions that can address their unique and pressing needs. Current national healthcare standards may overlook the complexities of pregnancy within the restrictive environment of correctional facilities, which can lead to inadequate medical care and support. For instance, the lack of specialized prenatal care, insufficient access to nutritious food, and inadequate mental health resources can severely compromise the health outcomes for both pregnant inmates and their babies.

Moreover, correctional facilities often lack the financial resources to provide adequate healthcare for their pregnant inmates. The average out-of-pocket cost for healthcare during pregnancy, childbirth, and postpartum care is approximately $19,000 per person.[135] Each year, around 58,000 pregnant women are incarcerated,[136] resulting in a collective healthcare cost of about $1.1 billion for U.S. correctional facilities. This scenario

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[134] *See* Victoria K. Mastrofilippo, *A Call to Action: The Need for Uniform Healthcare Standards for Incarcerated Pregnant Women in U.S. Jails & Prisons*, HEALTH L. OUTLOOK, Aug. 2024, at 29.

[135] Aubrey Winger et al., *Health Costs Associated with Pregnancy, Childbirth, and Infant Care*, KFF (Sep. 9, 2025), https://www.kff.org/health-costs/health-costs-associated-with-pregnancy-childbirth-and-postpartum-care/ [https://perma.cc/QUJ9-8MSG].

[136] Kramer et al., *supra* note 36.

requires the Bureau of Prisons ("BOP") and other private prisons to allocate a significant portion of their funds specifically for pregnancy healthcare, which could considerably divert resources from different areas of funding. To illustrate this impact, in fiscal year 2015, departments of corrections collectively spent $8.1 billion on healthcare services for incarcerated individuals.[137] The healthcare costs for pregnant women alone would account for twelve and five-tenths percent of this budget today. Therefore, incarcerated pregnant women and the implementation of national healthcare standards would likely impose significant financial burdens on correctional facilities and taxpayers.

By removing pregnant women from the prison system through delayed incarceration, the demand for costly and standardized national healthcare for pregnant inmates would significantly diminish, easing the financial and logistical burdens on correctional facilities. This approach not only reduces the need for specialized medical infrastructure inside prisons but also allows pregnant women to access community-based healthcare services, which are often better equipped to meet their prenatal needs. Furthermore, it mitigates the risks associated with in-custody births, such as inadequate medical care, mental health challenges, and the trauma of being separated from newborns immediately after delivery.

In light of these shortcomings, I propose an alternative strategy: the implementation of delayed incarceration for pregnant individuals. Arguably, this proposal undermines the need for nationalized healthcare standards for pregnant inmates. This approach would allow them to remain in community settings until they give birth, thereby significantly mitigating the health risks associated with confinement during pregnancy. By prioritizing the health and well-being of pregnant individuals and their newborns, we can create a more compassionate and effective response within the criminal justice system. Delaying incarceration could provide pregnant individuals with access to essential prenatal care and supportive environments that foster healthy pregnancies. This benefits the mothers and increases the

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[137] PEW TRUSTS, PRISON HEALTH CARE: COSTS AND QUALITY 3 (2017), HTTPS://WWW.PEWTRUSTS.ORG/EN/RESEARCH-AND-ANALYSIS/REPORTS/2017/10/PRISON-HEALTH-CARE-COSTS-AND-QUALITY [HTTPS://PERMA.CC/7S5X-Y344].

likelihood of favorable health outcomes for their children. A shift towards this model would not only address the immediate needs of pregnant inmates but could also reduce the long-term costs associated with healthcare in prisons and jails, ultimately leading to a more humane and just system for all involved.

5. Examining the Gaps in State Laws on Solitary Confinement, Shackling, and Prenatal Care for Pregnant Inmates

This Comment provides an analysis and comparison of several current state laws related to solitary confinement, shackling, and prenatal care for pregnant inmates. Although these laws were instituted to protect the health and well-being of both mothers and their unborn children, I will illustrate how they often fall short of achieving these goals. Many of these regulations are riddled with loopholes or are consistently ignored by correctional staff, undermining their effectiveness. For example, even though numerous states have formally prohibited the solitary confinement of pregnant inmates, they still allow for these women to be placed in isolation within a cell or hospital room if they are perceived as a risk to the fetus.[138]

This approach is problematic because it fails to consider the adverse effects of isolation. Solitary confinement can have a significant negative impact on an individual's mental health, which can lead to complications affecting the fetus as well.[139] Research has shown that heightened stress and anxiety in pregnant women can result in severe consequences, including developmental issues, low birth weight, and increased risk of preterm labor.[140] Thus, while the laws may be intended to safeguard mothers and their unborn children, the reality is that they often neglect the broader implications of isolation on mental health, ultimately failing to provide the protection these vulnerable individuals require.

Laws and policies on the treatment of pregnant inmates, including regulations on solitary confinement and shackling, differ

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[138] Yunus, *supra* note 98, at 144.

[139] *ACOG Committee Opinion No. 830*, *supra* note 61, at 31.

[140] *Stress and Pregnancy*, MARCH OF DIMES (Feb. 2023), https://www.marchofdimes.org/find-support/topics/pregnancy/stress-and-pregnancy [https://perma.cc/9A4P-28DW].

significantly from state to state, resulting in a wide range of protections (or lack thereof) for pregnant women in prison. A stark contrast can be seen in the varying approaches of states like California, Alabama, and Georgia regarding solitary confinement.

California currently does not have a law in place that prohibits the solitary confinement of pregnant inmates.[141] On the other hand, Section 14-6-19.1(j) of the Alabama Code addresses the treatment of female inmates who are pregnant or in immediate postpartum period and states that "[n]othing in this section shall prohibit the placement of a woman in a cell or hospital room by herself to ensure the medical safety of the unborn child, a pregnant woman, or a woman in the immediate postpartum period."[142] Section 42-1-11.3(e) of the Georgia Code Annotated states that "[a] pregnant woman or woman who is in the immediate postpartum period shall not be placed in solitary confinement, in administrative segregation, or for medical observation in a solitary confinement setting; provided, however, that this shall not prevent the placement of such woman in a cell or hospital room by herself."[143]

In California, pregnant inmates can still be subjected to solitary confinement without restriction, whereas Alabama and Georgia prohibit this practice. However, despite these legal safeguards, the policies in Alabama and Georgia continue to pose significant risks to pregnant women. These inmates can still be isolated in a cell or hospital room alone, which is arguably equivalent to solitary confinement. This form of isolation carries the same harmful effects for both the mothers and their unborn children. This is just one of many examples that highlight the inconsistencies in state legislation governing the treatment of pregnant inmates.

States such as Michigan, Montana, and North Dakota have not enacted laws to limit the shackling of pregnant inmates.[144]

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[141] Piper French, *On Solitary Confinement, California Officials Side with the Prison System—Again*, BOLTS (Nov. 19, 2024), https://boltsmag.org/california-solitary-confinement-laws-2024/ [https://perma.cc/QU3L-HCBG].

[142] ALA. CODE § 14-6-19.1(j) (2025).

[143] GA. CODE ANN. § 42-1-11.3(e) (2025).

[144] Veronica Brawley & Emma Kurnat-Thoma, *Use of Shackles on Incarcerated Pregnant Women*, 53 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 79, 85 (2023); Mahima Krishnamoorthi et al., *Anti-Shackling Laws*, ADVOC. & RSCH. ON

Among the states that have regulations regarding this practice, there is significant variation in the nature of the laws. For example, Maryland, Mississippi, Nebraska, and Ohio have implemented a total ban on shackling pregnant inmates.[145] Their laws expressly prohibit shackling during pregnancy, labor, childbirth, and the postpartum period.[146] Additionally, these states grant medical professionals the authority to remove shackles and restrict the use of waist restraints.[147]

In 2021, Mississippi enacted the Dignity for Incarcerated Women Act.[148] According to Mississippi Code Annotated Section 47-5-1507, once a correctional facility is informed of an inmate's pregnancy—or when the pregnancy is diagnosed—certain restraints cannot be applied.[149] These prohibitions last throughout the pregnancy and thirty days following the inmate's delivery.[150] The Department of Corrections and its employees may not use the following restraints on pregnant inmates unless they have a reasonable belief that the inmate poses a risk of harm to herself, her fetus, or others or poses a substantial flight risk: (a) leg restraints; (b) handcuffs or other wrist restraints, except when restraining the inmate's wrists in front of her; and (c) restraints connecting to other inmates.[151] Furthermore, the law stipulates that no restraints may be used on any pregnant inmate while she is in labor or during delivery except under the same reasonable belief conditions mentioned above.[152]

For Nebraska, Nebraska Revised Statutes Section 47-1004 states that "[a] detention facility shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, delivery, or postpartum recovery or during transport to a medical facility or birth center, unless the administrator makes an individualized determination that there are extraordinary

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REPRODUCTIVE WELLNESS INCARCERATED PEOPLE (June 2025), https://arrwip.org/anti-shackling-laws/ [https://perma.cc/U336-RQ3J].

145 Brawley & Kurnat-Thoma, *supra* note 144, at 85.

146 *Id.*

147 *Id.*

148 H.B. 196, 2021 Gen. Assemb., Reg. Sess. (Miss. 2021).

149 MISS. CODE ANN. § 47-5-1507 (2025).

150 *Id.* § 47-5-1507(1).

151 *Id.*

152 *Id.* § 47-5-1507(2).

circumstances."[153] In Maryland, the Annotated Code of Maryland, Correctional Services Section 9-601 specifies that "[a] physical restraint may not be used on an incarcerated individual known to be pregnant or in postpartum recovery[,]" unless it is determined that "a physical restraint is required to ensure the safety and security of the incarcerated individual, the staff of the correctional facility or medical facility, other incarcerated individuals, or the public."[154] In such cases, physical restraints should not include waist or leg restraints and should be the least restrictive option necessary.[155]

In contrast, states such as Nevada, New Jersey, and New Mexico have implemented laws that limit the use of physical restraints on inmates. However, these laws offer very little protection for pregnant inmates.[156] Specifically, these states prohibit shackling during labor, childbirth, and the postpartum period, but they still allow shackling during pregnancy and the use of waist restraints.[157]

At present, there are no federal regulations that explicitly focus on prenatal nutrition for individuals who are pregnant and incarcerated.[158] This lack of oversight leaves a significant gap in the healthcare provisions available to this vulnerable group. In addition, it is noteworthy that fewer than one-third of the states in the United States have established laws that require the implementation of health-promoting nutrition policies tailored explicitly for incarcerated pregnant individuals.[159] Among the sixteen states that have taken steps to pass such legislation, none have achieved full compliance with national recommendations that aim to secure adequate nutritional standards for pregnant individuals in correctional facilities.[160]

A total of fifteen states have enacted statutes that address the provision of adequate nutrition for pregnant individuals who

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153 NEB. REV. STAT. ANN. § 47-1004(1) (West 2025).
154 MD. CODE ANN., CORR. SERVS. § 9-601(f)(2)(i) (West 2025).
155 *Id.* § 9-601(f)(2)(ii).
156 Brawley & Kurnat-Thoma, *supra* note 144, at 85.
157 *Id.*
158 Shalev et al., *supra* note 75.
159 *Id.*
160 *Id.*

are incarcerated.[161] These laws aim to ensure that pregnant people receive a diet that meets their unique nutritional needs during pregnancy, recognizing the importance of proper nourishment for both maternal and fetal health. Furthermore, eleven states specifically have regulations in place that mandate access to prenatal vitamins and dietary supplements, which are critical for supporting healthy pregnancies.[162] However, to date, no states have established statutes concerning the provision of additional hydration or increased access to water for pregnant individuals within the prison system.[163] This gap indicates a lack of attention to the importance of adequate hydration, a vital component of a healthy pregnancy.

Kentucky and Maryland have established laws that only mandate that pregnant individuals who are incarcerated receive "adequate nutrition" that specifically addresses their unique nutritional needs during pregnancy.[164] In contrast, Colorado's legislation is less comprehensive; it only requires that incarcerated pregnant individuals be offered "healthy foods" without further stipulations about the adequacy or nutritional quality of these foods.[165] This difference highlights varying degrees of attention to the needs of pregnant inmates across states. Among the eleven states that have enacted laws concerning the dietary provisions for pregnant incarcerated individuals, only five states stipulate that any medically approved diet provided must adhere to established prenatal nutritional standards.[166]

California distinguishes itself by mandating that prenatal vitamins and supplements be provided daily to pregnant inmates.[167] Despite this requirement, no state statutes detail the specific content, ingredients, or dosages of these vitamins and supplements, leaving room for inconsistency and potential gaps in necessary nutritional support.[168] Additionally, Florida and

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161 *Id.*
162 *Id.*
163 Shalev et al., *supra* note 75.
164 *Id.*
165 *Id.*
166 *Id.*
167 *Id.*
168 Shalev et al., *supra* note 75.

Tennessee's regulations include ambiguous terms such as "supplemental provisions between meals."[169] However, these phrases fall short of clearly outlining the expected nutritional content or specifying any additional daily caloric intake that may be required to support the health of pregnant inmates,[170] reflecting a lack of clarity in addressing the comprehensive nutritional needs of this vulnerable population.

6. Delayed Incarceration & Foreign Law

In this section, I will examine various countries that have implemented delayed incarceration policies. I will explore the different frameworks they have established and the outcomes resulting from these initiatives. By analyzing the experiences of these nations, I aim to uncover valuable insights that could inform how such strategies might be adapted or improved to better support pregnant inmates in the U.S. context. This comparative analysis will highlight successful practices and identify potential pitfalls, providing a comprehensive overview that could guide future reform efforts in the treatment of pregnant women within the criminal justice system.

Italy and Portugal serve as notable examples of countries that have enacted laws offering legal protections to pregnant women, aiming to prevent their incarceration and safeguard their health and well-being during pregnancy.[171] In fact, eleven countries either prohibit or significantly restrict the imprisonment of pregnant women altogether.[172] These countries include Russia, Ukraine, Georgia, Brazil, Mexico, and Colombia, which have developed alternative measures such as house arrest, electronic monitoring, and probation supervision in lieu of imprisonment.[173]

Historically, the Italian government implemented legislation designed to protect the rights of pregnant women and new mothers. Initially, this legislation mandated an automatic deferral

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[169] *Id.*

[170] *Id.*

[171] *Why are Pregnant Women in Prison?*, COVENTRY L. SCH. (Mar. 11, 2022), https://law.coventry.domains/academic-research/why-are-pregnant-women-in-prison/ [https://perma.cc/AA8J-XARH].

[172] *Id.*

[173] *Id.*

of prison sentences for women who were pregnant or had babies under the age of twelve months.[174] However, in a notable shift, the Italian government passed a new bill on September 12, 2024, altering the legal landscape.[175] This updated legislation makes the postponement of sentences optional rather than mandatory, raising concerns about the future treatment of pregnant women and mothers with infants in the justice system.[176]

In Portugal, there has long been "a preference for non-custodial sanctions in general, regardless of any category of offender[,]" including pregnant women.[177] Since 2007, the country has allowed home detention for offenders with sentences up to one year, extending this option to two years for pregnant women.[178] Norway has similarly established policies that accommodate pregnant inmates by permitting delayed incarceration or temporary release, allowing them to complete their sentences after giving birth.[179] This approach ensures that correctional systems prioritize the rights and health of both the mother and child throughout incarceration. In 2018, Brazil enacted significant legislation allowing pregnant inmates to give birth outside prison under specific conditions, with the Brazilian Constitution generally exempting pregnant women from incarceration except in exceptional circumstances.[180]

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[174] Olivia Cleal, *Laws in Italy Have Stopped Pregnant Women from Going to Jail. Those Laws Have Now Been Scrapped*, WOMEN'S AGENDA (Aug. 9, 2024), https://womensagenda.com.au/latest/laws-in-italy-have-stopped-pregnant-women-from-going-to-jail-those-laws-have-now-been-scrapped/ [https://perma.cc/PX87-G6MV]; *see also* Hannah Roberts, *Italy to Jail Babies and Pregnant Women, to Campaigners' Dismay*, POLITICO (Aug. 8, 2024, at 19:26 CT), https://www.politico.eu/article/italy-law-jail-pregnant-woman-and-babies/ [https://perma.cc/CG47-SRVN].

[175] Bernard Rorke, *Italy: Scandal of Newborns in Prison – Far-Right Jubilant as Meloni's 'Anti-Roma' Law Gets Passed*, EUR. ROMA RTS. CTR. (Sep. 19, 2024), https://www.errc.org/news/italy-scandal-of-newborns-in-prison—-far-right-jubilant-as-melonis-anti-roma-law-gets-passed [https://perma.cc/DL6C-WDCG].

[176] *Id.*

[177] ANABELA MIRANDA RODRIGUES ET AL., PROMOTING NON-DISCRIMINATORY ALTERNATIVES TO IMPRISONMENT ACROSS EUROPE: NON-CUSTODIAL SANCTIONS AND MEASURES IN THE MEMBER STATES OF THE EUROPEAN UNION (2021).

[178] *Id.*

[179] Laura Abbott et al., *Institutional Thoughtlessness and the Incarcerated Pregnancy*, 2024 CRIMINOLOGY & CRIM. JUST. 1, 2.

[180] *Id.*

These examples illustrate how certain countries have prioritized the well-being of pregnant women and their unborn children by implementing alternatives to incarceration. Such policies have improved health outcomes and fostered a more humane approach to criminal justice. Although data on the effectiveness of these programs remains limited, the long-standing practice of delaying incarceration in several countries suggests that it has been beneficial. However, Italy's recent decision to end mandatory delayed incarceration for pregnant women raises concerns about the government's motivations, especially in light of public opposition to this policy change. Without long-term studies, it's challenging to assess the full impact of these policies on recidivism rates and child welfare, leaving questions about their actual efficacy and sustainability.

IV. CRITIQUES

I acknowledge that my proposal for a federal statute regarding delayed incarceration for pregnant offenders is not without its limitations and complexities that demand careful consideration. Consequently, this section of the Comment will highlight several critiques and potential issues surrounding this proposed solution.

One pressing concern is the possibility that some women might seek to become pregnant solely as a tactic to postpone their incarceration. This strategic manipulation of circumstances could undermine the integrity of the justice system and raise ethical questions about the motivations behind the conception of a child. Additionally, we must consider the implications for cases involving pregnant women facing capital punishment or those who have committed serious violent offenses, such as murder or armed robbery. How do we navigate the balance between accountability for heinous crimes and compassion for the unborn child?

Another critical issue revolves around the socioeconomic status of the mothers granted delayed incarceration. It is crucial to assess whether these individuals possess the financial means to access comprehensive healthcare for themselves and their unborn children. Many pregnant women may struggle with inadequate insurance or lack the necessary resources, which could compromise their health and the health of the developing fetus.

Moreover, releasing pregnant women who are struggling with severe mental health issues, substance dependencies, or who lack a reliable support system poses serious risks. If these women live in unstable or violent environments, the effectiveness and safety of delayed incarceration must be carefully evaluated. The potential for recidivism or further victimization should be a significant consideration in any final decisions.

Furthermore, pertinent questions emerge around the duration of the bonding period that a mother should have with her newborn after giving birth, and when it is deemed appropriate for a postpartum mother to re-enter the prison system. This includes addressing scenarios where a mother may choose to place her child for adoption and subsequently does not retain custody. Such circumstances should play a significant role in assessing her eligibility for delayed incarceration, as they fundamentally affect the mother's emotional and psychological well-being.

Additionally, crucial Eighth Amendment concerns warrant attention regarding the separation of a mother from her child.[181] We must consider whether this physical separation could be construed as cruel and unusual punishment, particularly if it subjects the mother to further emotional distress during a vulnerable time.

Implementing policies for delayed incarceration may also necessitate substantial investments in monitoring and healthcare services. Ensuring access to prenatal care, mental health support, and addiction treatment services—if needed—can impose a considerable financial strain on state resources. It is essential to weigh these costs against the potential benefits of such a program.

The proposal for the delayed incarceration of pregnant offenders introduces a compassionate approach that acknowledges the unique circumstances faced by this vulnerable population. However, it also brings forth several complex challenges that require thorough investigation and nuanced understanding. Given the multifaceted nature of the issues at hand, it can be challenging to expect a single solution to address all the diverse

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[181] *See* Ruth Chan, *Tearing Children Away from Their Incarcerated Mothers: An 8th Amendment Violation?*, UNIV. ILL. CHI. L. REV. (June 25, 2021), https://lawreview.law.uic.edu/news-stories/tearing-children-away-from-their-incarcerated-mothers-an-8th-amendment-violation/ [https://perma.cc/2XZA-UZG7].

concerns related to pregnant inmates effectively. This complexity does not render the proposal inherently flawed; rather, it suggests that while this approach may not be universally applicable, it offers a potentially safer and more supportive alternative for pregnant women in the criminal justice system. It is critical to emphasize the various challenges accompanying delayed incarceration, as these factors play a significant role in shaping policy decision-making and practical application.

V. HYPOTHETICALS

In this section, I will present various hypothetical scenarios that illustrate how delayed incarceration for pregnant inmates could function under different circumstances. These examples will demonstrate how this proposal can effectively address issues such as ensuring proper prenatal care and fostering the bond between mother and child while highlighting potential limitations.

By exploring cases where delayed incarceration might succeed or fall short—such as with serious offenders posing a public safety risk—this analysis will provide a nuanced understanding of both the benefits and challenges of implementing this policy. It will also offer a perspective on the cost-benefit analysis of delayed incarceration. Hypothetical situations may include non-violent offenders who are early in their pregnancy, pregnant offenders with high-risk pregnancies, violent pregnant offenders who pose a threat to public safety, offenders with substance abuse issues, pregnant inmates lacking a support network or facing challenges related to postpartum custody, and pregnant women sentenced to capital punishment. Below, I will provide a deeper analysis of some of these scenarios.

A. Pregnant Offenders with High-Risk Pregnancies

In a hypothetical scenario where a pregnant offender with a high-risk pregnancy is granted delayed incarceration, both the mother and child could benefit significantly. Allowing the mother to remain outside of a correctional facility provides her with consistent, specialized prenatal care tailored to manage her high-risk condition. This can help reduce the likelihood of complications

such as preterm birth or low birth weight.[182] The home environment, coupled with access to proper nutrition and rest, offers a safer and more stable setting than prison, where resources for high-risk pregnancies are often inadequate. For the child, the opportunity for delayed incarceration ensures a healthier start to life. The mother's access to medical care and reduced stress levels can positively influence fetal development. Additionally, this approach allows for a postpartum bonding period, fostering early emotional connections that are vital for the child's cognitive and emotional growth.[183]

However, several challenges could arise. The risk of the offender reoffending or posing a threat to public safety is a concern, especially if they have a history of violence. Logistical and financial issues could emerge, as monitoring compliance with the terms of delayed incarceration—such as attending medical appointments and avoiding further legal trouble—requires significant resources. Furthermore, if the mother lacks a stable support system or lives in an unsafe environment, the effectiveness of delayed incarceration could be severely compromised. Finally, the eventual separation of the mother and child upon the resumption of incarceration could lead to emotional distress and developmental challenges for the child.[184] This raises questions about how best to support both individuals in the long term, as some mothers may not wish to bond with their child, knowing that inevitable separation is looming.

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[182] *See* Carolyn Sufrin, *Pregnancy and Postpartum Care in Correctional Settings*, NAT'L COMM'N ON CORR. HEALTH CARE (Jan. 2018), https://www.ncchc.org/wp-content/uploads/Pregnancy-and-Postpartum-Care-2018.pdf [https://perma.cc/NWH2-M6PV]; *State Approaches to Ensuring Healthy Pregnancies Through Prenatal Care*, NAT'L CONF. STATE LEGISLATURES (Apr. 10, 2025), https://www.ncsl.org/health/state-approaches-to-ensuring-healthy-pregnancies-through-prenatal-care [https://perma.cc/648J-WGMA].

[183] Karolina Lutkiewicz et al., *Maternal–Infant Bonding and Its Relationships with Maternal Depressive Symptoms, Stress and Anxiety in the Early Postpartum Period in a Polish Sample*, INT'L J. ENV'T. RSCH. & PUB. HEALTH (July 28, 2020), https://pubmed.ncbi.nlm.nih.gov/32731490/ [https://perma.cc/55L5-ZCUA].

[184] Sarah Beresford, Nancy Loucks & Ben Raikes, *The Health Impact on Children Affected by Parental Imprisonment*, PUBMED CENT. (Feb. 10, 2020), https://pmc.ncbi.nlm.nih.gov/articles/PMC7047477/#:~:text=Children%20with%20a%20parent%20in,symptoms%20of%20post%2Dtraumatic%20stress.&text=In%20a%20North%20American%20study,the%20death%20of%20a%20parent [https://perma.cc/936S-AS8J].

B. Pregnant Offenders Convicted of a Violent Crime

In a hypothetical scenario where a pregnant offender is convicted of a violent crime—such as aggravated assault—and is granted delayed incarceration, there are significant public safety concerns. Given her history of violence and the potential risk she poses to others, strict conditions must be imposed to balance her health needs with public safety. Instead of being released into the general population, the offender could be admitted to a secure medical facility where she can receive specialized prenatal care under constant supervision. Alternatively, she might be placed under house arrest with electronic monitoring, requiring frequent check-ins with law enforcement and supervised contact with others to minimize any risk of harm. This arrangement would prioritize her access to proper prenatal care, ensuring a safer pregnancy outcome while implementing strict measures to address her potential danger to society.

However, delayed incarceration in this context presents several challenges. Monitoring and enforcing compliance with strict conditions would require significant resources, potentially straining both law enforcement and healthcare systems. Providing the offender with prenatal care in a secure medical facility or under house arrest may also be logistically challenging, particularly in areas with limited access to medical specialists. One of the most concerning issues in this scenario is the risk of the offender reoffending during her delayed incarceration, which could jeopardize public safety, primarily if the imposed conditions are not adequately enforced.

C. Pregnant Offenders Sentenced to Capital Punishment

In a hypothetical scenario where a pregnant offender is sentenced to capital punishment, she would likely not qualify for any form of delayed incarceration, whether supervised or unsupervised, due to the serious safety risks she poses to the public. In this case, delaying her incarceration would not effectively address the ethical and logistical considerations necessary to protect both the mother and her unborn child. While the execution of her sentence would be postponed until after she gives birth, she would remain incarcerated throughout her

pregnancy to ensure public safety and uphold the integrity of the justice system. Once the child is born, the newborn would likely be placed with a pre-arranged guardian, in foster care, or put up for adoption, depending on the circumstances. The separation from the newborn immediately after birth could cause emotional distress for both the mother and the child.[185]

This hypothetical raises several issues regarding the concept of delayed incarceration. Allowing a pregnant woman on death row to defer her sentence presents significant ethical questions about the rights of the fetus versus the punishment of the mother. This scenario could polarize public opinion, with some viewing the delay as undue leniency in executing the sentence.

VI. NON-PARTISAN VIEWPOINT

This section elaborates on this Comment's primary objective: to serve as a non-partisan exploration of the topic at hand, striving to unite a spectrum of political perspectives. I intentionally avoid taking sides or aligning with any specific ideologies, whether feminist or non-feminist, conservative or liberal. By presenting the issues at play from a neutral, balanced standpoint, I aim to foster an environment that encourages constructive dialogue on a significant and urgent national concern.

The content is designed to illuminate the complexities of the issue without framing it through the lens of divisive ideologies. This approach is rooted in my belief that meaningful conversations can occur when individuals set aside their preconceived notions and engage with one another in good faith. By emphasizing the importance of transcending political divides, this Comment highlights the necessity of collaboration and understanding in addressing multifaceted policy challenges that affect society as a whole. Ultimately, the goal is to create a platform for dialogue that can lead to solutions benefiting all, regardless of political affiliation.

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[185] Clarke & Simon, *supra* note 17, at 781-82.

CONCLUSION

The current state of our prison system reveals significant shortcomings in addressing the unique challenges faced by pregnant women. With the increasing rate of female incarceration, it is crucial to recognize and respond to the specific health needs of this population. The lack of federal healthcare standards has resulted in inconsistent and often inadequate care for pregnant inmates, putting both their health and that of their unborn children at risk. Furthermore, the unique challenges faced by pregnant women in correctional facilities highlight the pressing need for reform within the criminal justice system. Implementing a federal law that allows for delayed incarceration could effectively prioritize the well-being of these women during this critical time.

While existing regulations concerning solitary confinement and shackling have progressed, their enforcement remains insufficient. By exploring alternative sentencing options and ensuring access to necessary healthcare, we can create a more supportive environment for pregnant inmates. Addressing these issues is essential for both justice and human rights within the correctional system.

This Comment details how delayed incarceration presents a viable alternative for pregnant women. This approach addresses the health and welfare of these vulnerable individuals and can potentially mitigate the financial burdens on correctional facilities associated with providing specialized healthcare. By enabling pregnant women to remain in community settings until childbirth, we can significantly improve access to prenatal care and reduce the emotional strains linked to incarceration. This strategy aims to foster a more humane environment for mothers and their children, promoting better health outcomes and preserving family bonds.

However, as this Comment demonstrates, delayed incarceration is not a perfect solution and presents challenges such as establishing proper supervision for pregnant women in the community and ensuring public safety. Despite these challenges, this approach can promote a more humane response to non-violent offenses, reduce unnecessary harm to both mother and child, and alleviate burdens on overcrowded and underfunded correctional

facilities, which often struggle to provide adequate prenatal care, while reducing the long-term psychological, emotional, and financial costs of incarcerating women during pregnancy and childbirth.

Allowing pregnant women to serve their sentences outside of traditional correctional settings until childbirth fosters a family-centered approach to justice. For many women, the birth of a child is pivotal, and providing mothers the opportunity to bond with their child could help mitigate some adverse effects of incarceration and reduce recidivism rates.

Ultimately, delayed incarceration for pregnant women is not just a policy reform; it reflects the broader need for changes in the criminal justice system that consider the unique circumstances of incarcerated individuals, especially women. To build a more just and equitable society, we must continue to advocate for changes that protect the health, safety, and dignity of all individuals, particularly those most vulnerable within the system.