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*Part III: Essay #1*

Female offenders are the “fastest growing segment of the United States criminal justice system and this trend shows no signs of slowing.”<sup>1</sup> This phenomenon is not limited to adult offenders, as the number of female juveniles far outpaces male juveniles.<sup>2</sup> With these growing numbers, more pregnant young women are finding themselves incarcerated, most of them for non-violent crimes.<sup>3</sup> Recent studies suggest that approximately 14% of young women are pregnant at the time of their detention.<sup>4</sup>

As the demographics change, new laws are necessary to provide for the unique issues young mothers face. The Center of Young Women’s Development – Young Mothers United, a youth-led advocacy project focused on the plight of pregnant inmates, created a “Young Mothers Bill of Rights” (the “Bill”) to foster stronger family ties, rehabilitation, and safety for young incarcerated pregnant women.<sup>5</sup> The Bill reads as follows:

We have the right to be treated with dignity and respect.

... [T]o be mothers and not be discriminated against because of our age, and status of offense.

... [T]o regular checkups and proper prenatal care and nutrition.

... [T]o have somebody with us while we’re having our babies.

... [T]o not be handcuffed and shackled during labor.

... [T]o recovery in the hospital after birth.

... [T]o see, touch, and speak with our children.

... [T]o be informed about our children’s well-being and safety.

... [T]o have support and advocacy while incarcerated and the right to know our rights as parents.

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<sup>1</sup> Leslie Acoca & Myrna S. Raeder, *Severing Family Ties: The Plight of Nonviolent Female Offenders and Their Children*, 11 STAN. L. & POL’Y REV. 133, 134 (1999).

<sup>2</sup> Liz Watson & Peter Edelman, *Improving the Juvenile Justice System for Girls: Lessons from the States*, Georgetown Center on Poverty, Inequality and Public Policy, 1 (October 2012) (available at <http://alturl.com/5o3yx>).

<sup>3</sup> PAUL GUERINO, PAIGE M. HARRISON, & WILLIAM J. SABOL, S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010, app. tbl. 17b (Dec. 2011), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/p10.pdf>.

<sup>4</sup> PHYSICIANS FOR HUMAN RIGHTS, UNIQUE NEEDS OF GIRLS IN THE JUVENILE SYSTEM, 1-2 (2009), *available at* <http://alturl.com/78apj> (last visited Jan. 11, 2012).

<sup>5</sup> Young Mothers United, *Young Mother’s Bill of Rights*, YO! Youth Outlook Motion Picture (2009), <http://vimeo.com/6937573>.

... [T]o have access to information and education, such as prenatal and parenting classes . . . .<sup>6</sup>

All states should enact the Bill as drafted in order to expressly recognize the rights retained by incarcerated mothers—codifying a clear legislative policy in the criminal justice system. Implementation of specifically three provisions of the Bill would greatly benefit women’s communities. These include: visitation, access, and information rights. Certain states have enacted select provisions, but much of the affected population remains vulnerable and underserved.<sup>7</sup>

### Visitation Rights

In 2004, more than half of parents in state correctional facilities went without a personal visit from their children.<sup>8</sup> Frequency of contact between children and incarcerated parents has dropped since 1997; monthly contact by 28%.<sup>9</sup> This decline is coupled with a 17% increase in reports of no visitation.<sup>10</sup> Because facilities only allow mothers a few days contact with infants at birth,<sup>11</sup> the mother and baby have little opportunity to form critical developmental bonds.<sup>12</sup> According to one estimate, 70% of young children with incarcerated mothers had emotional or psychological problems.<sup>13</sup>

The unseen (and often un- or under-protected) victims of a mother’s incarceration are the children. Many mothers are placed in facilities far away from their children. Rules about eligibility for, amount of, and time of visitation then deter family members and caregivers from visiting.<sup>14</sup> Many of these conditions flow from cultural and institutional beliefs that detained individuals do not deserve such privileges.<sup>15</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *See generally infra* note 20, 28, 35.

<sup>8</sup> Sarah Schirmer, Ashley Nellis, and Mark Mauer, *Incarcerated Parents and Their Children: Trends 1991-2007*, The Sentencing Project, 8 (Feb. 2009) *available at* <http://alturl.com/txrr9>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ross D. Parke & K. Alison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, 5 (2002) *available at* <http://aspe.hhs.gov/hsp/prison2home02/parke%26stewart.pdf>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 6.

<sup>14</sup> Parke *supra* note 11 at 7.

<sup>15</sup> *Id.* at 8.

But by providing for laws facilitating visitation, states can preserve familial bonds. One of the major determinants of child adjustment during the period of incarceration is the opportunity to maintain contact with the absent parent.<sup>16</sup> Facility placement is key.<sup>17</sup> Only twenty state corrections departments, however, surveyed reported visitation assistance for the families of inmates.<sup>18</sup> A good example is New York's "Family Reunion Program" which provides private, on-site accommodations for the overnight use of inmate mothers and their children.<sup>19</sup>

### **Access Rights**

Many states do not provide adequate medical care for pregnant women. Only eight states explicitly include medical examinations as a component of prenatal care.<sup>20</sup> Doctor visits are often infrequent.<sup>21</sup> Of the women reportedly pregnant at admission, 93% reported having an obstetric exam, but only 54% reported additional pregnancy care.<sup>22</sup> Most juvenile facilities lack prenatal or gynecological services for young women.<sup>23</sup> California is one of the few states which guarantee medical care for pregnant women before and after giving birth.<sup>24</sup>

Additionally, pregnant women are often subjected to restraints.<sup>25</sup> They are routinely shackled when traveling to medical appointments and court appearances.<sup>26</sup> The American

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<sup>16</sup> *Id.* at 7.

<sup>17</sup> SERVICES FOR FAMILIES OF PRISON INMATES, U.S. DEP'T OF JUSTICE NAT'L. INST. OF CORR., 4 (2002), *available at* <http://www.nicic.org/pubs/2002/017272.pdf>.

<sup>18</sup> *Id.* at 5.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *State Standards for Pregnancy-Related Health Care and Abortion for Women in Prison*, ACLU, <http://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-map> (*last visited* Jan. 13, 2012) (California, Massachusetts, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Texas).

<sup>21</sup> Jennifer G. Clarke, Megan R. Herber, Cynthia Rosengard, Jennifer S. Rose, Kristen M. DaSilva & Michael D. Stein, *Reproductive Health Care and Family Planning Needs Among Incarcerated Women*, 96 AM. J. OF PUB. HEALTH 834, 834 (2006).

<sup>22</sup> LAURA M. MARUSCHAK, BUREAU OF JUST. STAT., U.S. DEPT. OF JUST., PROBLEMS OF JAIL INMATES 1 (Nov. 2006), *available at* <http://bjs.ojp.usdoj.gov/content/pub/pdf/mpji.pdf>.

<sup>23</sup> Physicians for Human Rights *supra* note 4 at 1.

<sup>24</sup> *Id.*

<sup>25</sup> Anna Clark, *Giving Birth in Chains: The Shackling of Incarcerated Women During Labor and Delivery*, RH REALITY CHECK, (July 6, 2008) *available at* <http://www.rhrealitycheck.org/blog/2009/07/06/giving-birth-chains-the-shackling-incarcerated-women-during-labor-and-delivery>.

College of Obstetricians and Gynecologists supports anti-shackling legislation, explaining that physical restraints interfere with the ability of physicians to assess the physical condition of the mother and baby, and have made the delivery process more difficult, thus putting the health and lives of the women and unborn children at risk.<sup>27</sup> Since 2000, sixteen states have passed legislation to limit the use of restraints on pregnant women.<sup>28</sup>

## Information Rights

Although the Supreme Court affords deference to certain regulations imposed by the criminal justice system, the Court has also held that prison does not bar constitutional protection.<sup>29</sup> Further, the Court has held that the right to make child-rearing decisions is a fundamental constitutional right.<sup>30</sup> In *Troxel v. Granville*, the Court upheld a mother's "fundamental right to make decisions concerning the care, custody and control of [her] children."<sup>31</sup> Young women in detention, many who are uninformed and vulnerable, have the right to know of these parental rights. The federal Adoption and Safe Families Act (ASFA) provides that if a child has been in foster care for at least 15 of the last 22 months, the state must petition for termination of parental rights.<sup>32</sup> As a compelling contrast, incarcerated mothers serve, on average, 49 months state prison.<sup>33</sup>

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<sup>26</sup> *Words from Prison – Did you Know...?*, ACLU (June 12, 2006), *available at* <http://www.aclu.org/womensrights/violence/25829res20060612.html>.

<sup>27</sup> Press Release, ACOG-IX, ACOG-IX Supports Skinner Legislation to Prohibit the Practice of Shackling Incarcerated Pregnant Women (Mar. 1, 2011) (*available at* <http://www.acog.org/~media/Districts/District%20IX/20110301Release.pdf?dmc=1&ts=20120709T1839408210>).

<sup>28</sup> *Reproductive Justice in the Prison System*, Law Students for Reproductive Justice(2012) *available at* [http://lsrj.org/documents/factsheets/12\\_RJ%20in%20the%20Prison%20System.pdf](http://lsrj.org/documents/factsheets/12_RJ%20in%20the%20Prison%20System.pdf) (Arizona, Colorado, Florida, Hawaii, Idaho, Illinois, Louisiana, New Mexico, New York, Nevada, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and West Virginia).

<sup>29</sup> Jennifer L. Fiorica, *How the Constitution Can Preserve the Strength of Existing Familial Bonds and Foster New Relationships Between Female Inmates and Their Children*, 29 WOMEN'S RTS. L. REP. 49, 55 (2007).

<sup>30</sup> *Troxel v. Granville*, 530 U.S. 57, 65-67, 72 (2000) (The court cited cases where the right of parents to rear their children were upheld. Although not dealing with incarcerated parents, nothing in the opinion suggests that a parent's incarcerated status would warrant an exception to this right.).

<sup>31</sup> *Id.*

<sup>32</sup> Mark Hardin, *Impact of the Adoption and Safe Families Act (ASFA) on Judicial Resources and Procedures*, Am. Bar Ass'n Center on Children and the Law (1998), *available at* <http://courts.michigan.gov/scao/services/cws/Materials/07-23-09-3ASFARevisitedOverview.pdf>.

<sup>33</sup> Parke *supra* note 11 at 4.

Some states are passing laws requiring the State to advise pregnant women about the standards and policies governing pregnant inmates as soon as the pregnancy is confirmed.<sup>34</sup> For example, California provides for “Childbirth Education” for women who give birth after receipt by the Department of Corrections.<sup>35</sup>

## Conclusion

The positive reforms from the Bill’s passage are widespread, including protecting an at-risk population’s mental and physical health. Society too, benefit for the Bill’s provisions, as inmates who maintain strong familial ties are less likely to “accept norms and behavioral patterns of hardened criminals.”<sup>36</sup> Thus, adopting the Young Women’s Bill of Rights, as written, will improve the lives of incarcerated females.

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<sup>34</sup> *Id.*

<sup>35</sup> CAL. PENAL CODE § 3419 (2006).

<sup>36</sup> Shirley R. Klein, *Inmate Family Functioning*, 46 INT’L J. OF OFFENDER THERAPY AND COMP. CRIMINOLOGY 95, 99 (2002).