


# The Criminal Justice System and Substance Use in Women

**CTN Web Seminar Series**  
**December 9, 2022**

Facilitator: Ank Nijhawan, MD MPH  
*UT Southwestern Medical Center*

Presenter: Jaimie Meyer, MD, MS, FACP  
*Yale University*

Presenter: Mishka Terplan, MD, MPH, FACOG, DFASAM  
*Friends Research Institute*



# WHAT IS THE CRIMINAL LEGAL SYSTEM AND WHY SHOULD I CARE?

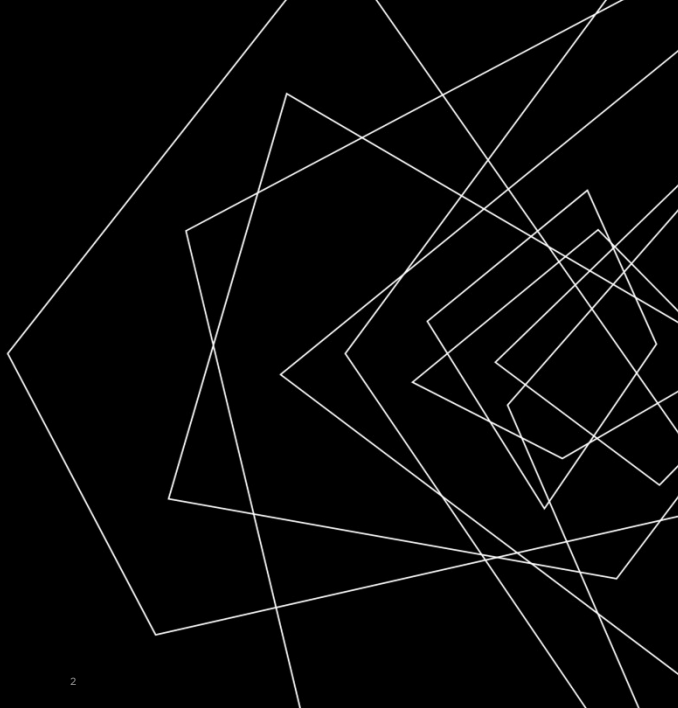
Jaimie P. Meyer, MD, MS, FACP  
Yale AIDS Program  
December 9, 2022

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## DISCLOSURES

I have received research support  
from Gilead Sciences, Inc.

I have no conflicts of interest to  
declare.



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“WHAT’S A NICE GIRL LIKE YOU DOING IN A PLACE LIKE THIS?”



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## GOALS AND OBJECTIVES

1

Introduce the landscape of the U.S. criminal legal system

2

Bust some key myths about the criminal legal system

3

Describe key considerations for women involved in the criminal legal system, treatment of substance use disorders

4

Describe key considerations for involvement in research for people involved in the criminal legal system

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## Epidemic of mass incarceration

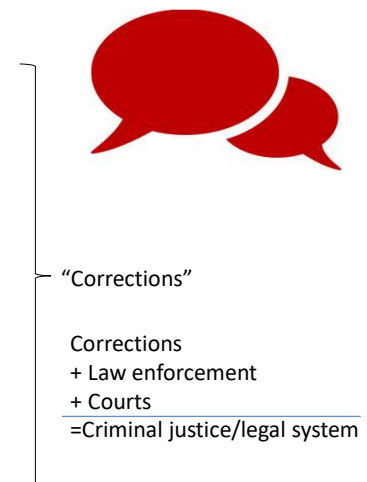
- The U.S. incarcerates more of its citizens than any other developed nation worldwide.
- 1 in 37 U.S. adults are currently behind bars or on probation or parole
- Disproportionately impacts young Black men in urban centers
  - Compounds other health disparities

*Pew Charitable Trusts 2009; 2017*

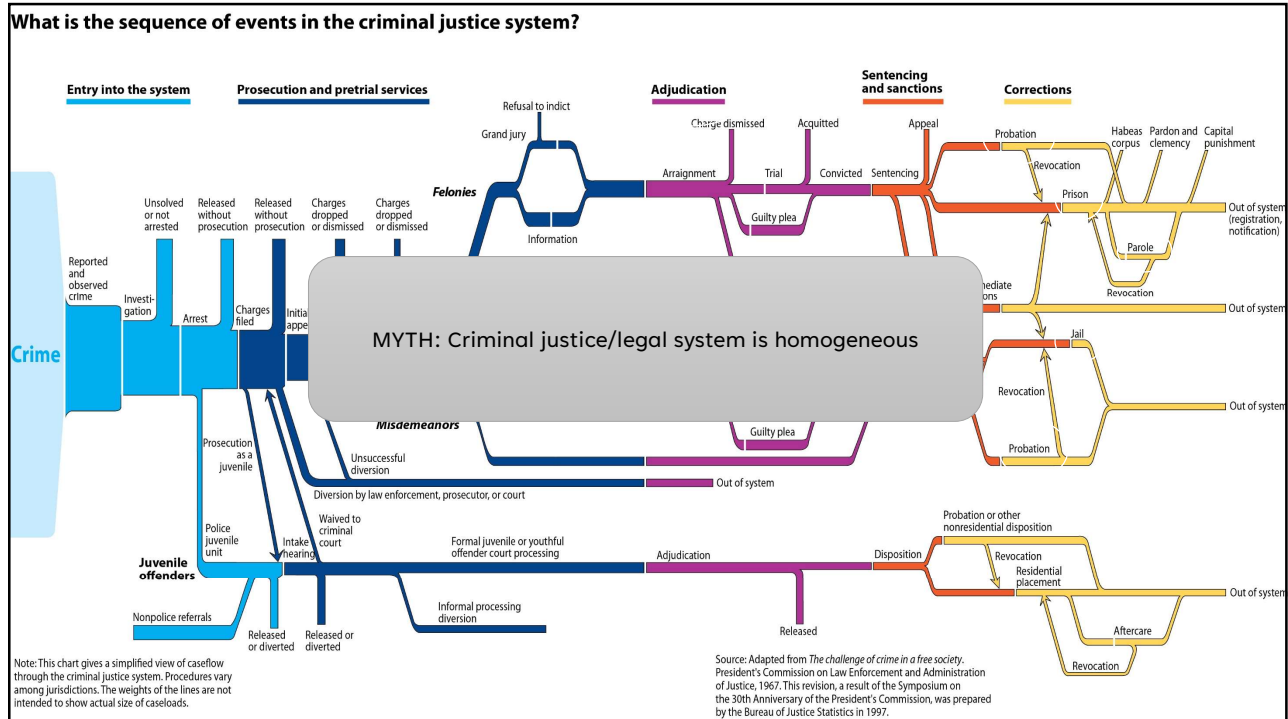
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## Using accurate (and non-stigmatizing) language

- **Jails**
  - Facilities where people are incarcerated while awaiting sentencing (pre-adjudication) or sentenced generally to short-term (<1 year)
  - Under jurisdiction of sheriff, county, state, federal
- **Prisons**
  - Facilities where people are incarcerated following sentencing
  - Under jurisdiction of state (Departments of Corrections), federal (Bureau of Prisons)
- **Probation**
  - System of community supervision for people who are sentenced to it (often as "alternative to incarceration" or "jail diversion")
  - Under jurisdiction of state, federal
- **Parole**
  - System of community supervision for people who have completed a period of incarceration (often as a condition of sentence completion)
  - Under jurisdiction of state, federal
- **Person in prison or jail, person who is incarcerated, person on probation or parole**
  - NOT inmate, criminal, felon, offender



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## Of the 5,500,600 persons under supervision at year-end 2020...

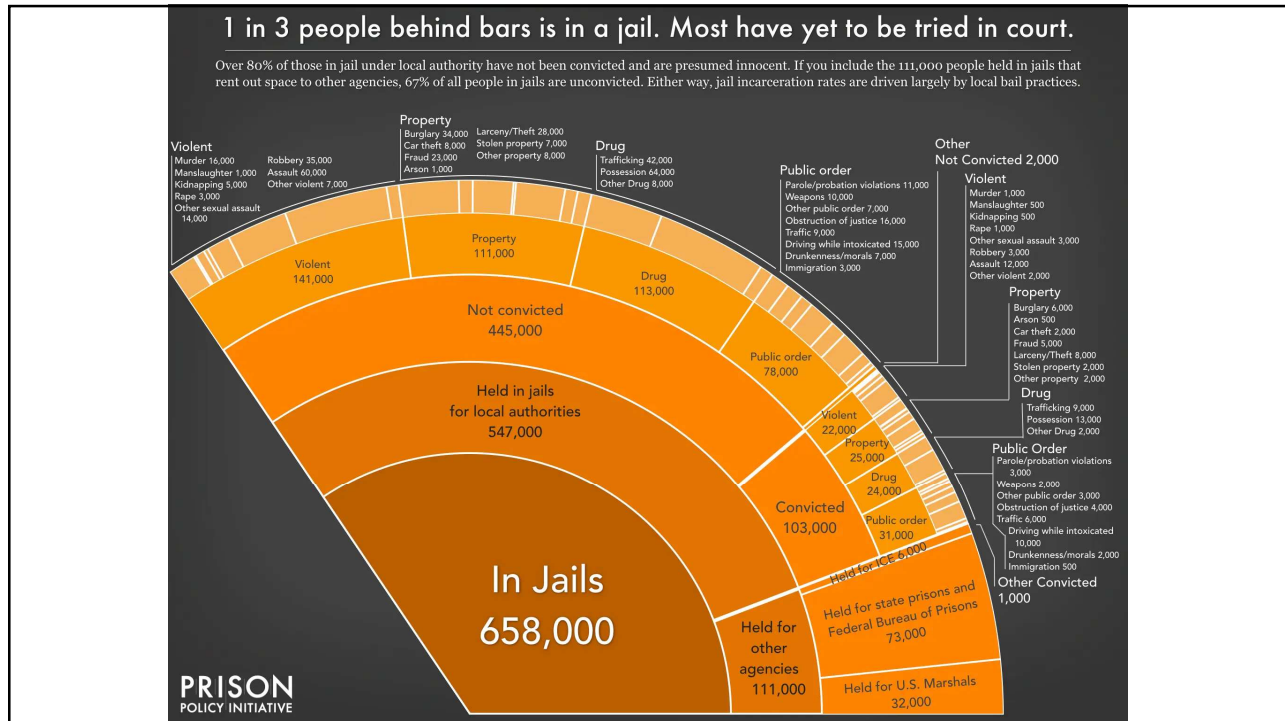
**CORRECTIONAL POPULATIONS IN THE US 2020**

**MYTH: Most people involved in the CJS are in prison. (Or charged with a new offense)**

Category	Percentage
Probation	54%
Prison	21%
Jail	(Small slice)

Kluckow, Zeng (Bureau of Justice Statistics). March 2022 NCJ 303184.

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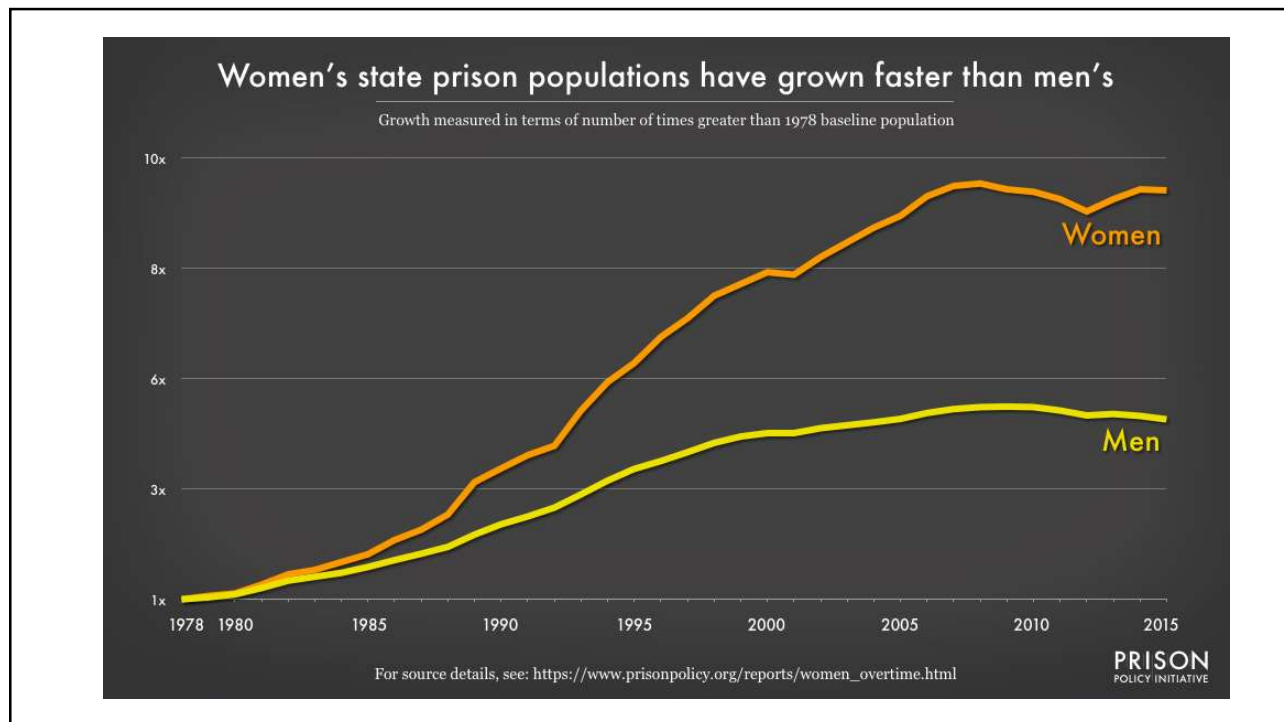
The United States incarcerates more women than any other country worldwide.

**MYTH: Only men are involved in the CJS**

**5% OF WORLD'S WOMEN  
30% OF WORLD'S INCARCERATED WOMEN.**

Int Center for Prison Studies 2014; [www.prisonpolicy.org/global/women](http://www.prisonpolicy.org/global/women)

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Incarcerated women are often an  
afterthought

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**231,000** Women and girls currently incarcerated in the U.S.

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**2 million** Women jailed annually

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**58%** of women in U.S. prisons are mothers

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**80%** of women in U.S. jails are mothers

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**58,000** pregnant people enter jails and prisons each year

Prison Policy Initiative

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## Getting “tough on crime” War on (People who use) Drugs

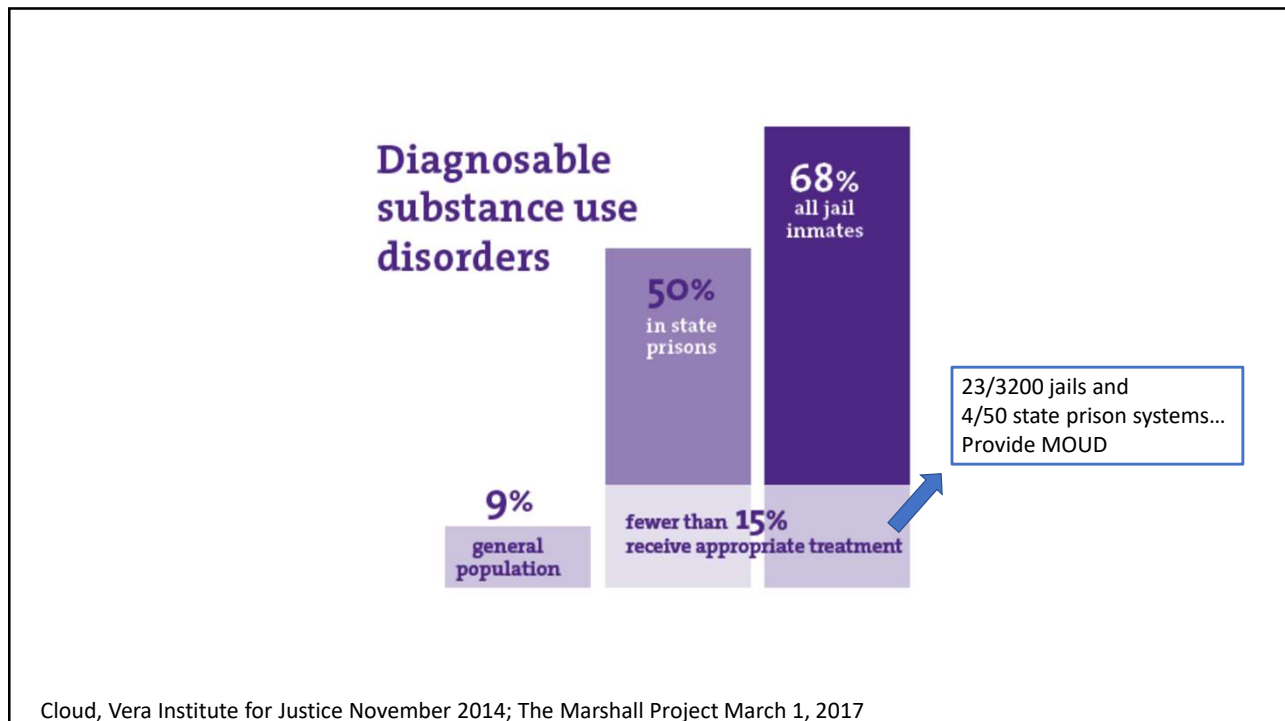
MYTH: Incarceration is effective “drug treatment”



**Jeff Sessions will double down on failed drug war**

“You have to be able to arrest people and then you’re intervening in their destructive habit,” [Sessions said](#). “Many people never ever recover from addiction — except by the grave.”

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Cloud, Vera Institute for Justice November 2014; The Marshall Project March 1, 2017

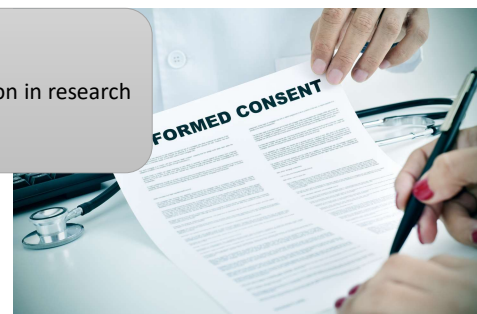
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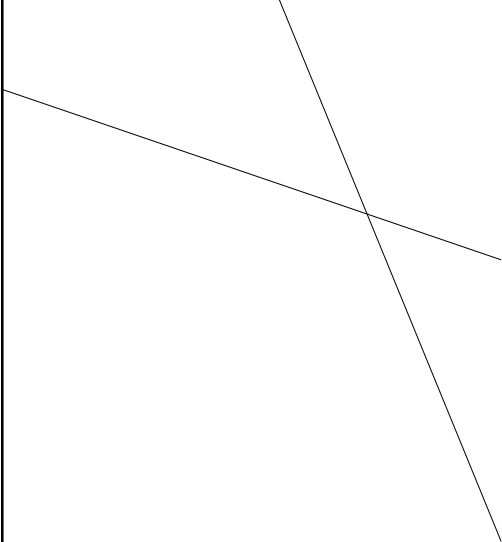
## Consideration of “prisoners” as a special population for clinical research

- Belmont Report 1979: established protections for research participants, safeguards needed for special populations
  - Concerns about informed consent and autonomy
  - MYTH: People in prison can't consent to participation in research
- Clinical trials and experimental research
  - Risk of exclusion
- Who is considered a prisoner? (IOM 2006 report)
- Participation can be informed, deliberate and voluntary
  - “Nothing about us without us”- people need the opportunity to inform design, interpretation of findings, dissemination



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## SUMMARY

CJS is heterogeneous and complex. Use appropriate terminology to reduce stigma and shame about CJS involvement.

Most people's involvement in the CJS is in the community. These are your patients, clients, participants.

Women in the CJS are often neglected and ignored.

People involved in the CJS often have SUDs that are undermanaged during incarceration- leading to high rates of CJS involvement and overdose deaths following return to communities.

People involved in the CJS can also be involved in research!

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## THANK YOU

Any questions?

Please feel free to reach out:

[Jaimie.meyer@yale.edu](mailto:Jaimie.meyer@yale.edu)

20XX PRESENTATION TITLE 18

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# Pregnancy and the Criminal Legal System

Mishka Terplan MD MPH  
Medical Director and Senior Research Scientist, Friends Research Institute  
Adjunct Faculty and Substance Use Warmline Clinician, UCSF

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### Judge Orders Drug-Addicted Mother of 4 to Not Get Pregnant Again

by The Associated Press | 6:02 pm, February 14th, 2017



A New York judge has ordered a drug-addicted mother of four who has worked as a prostitute not to get pregnant again until she has gained custody of her infant son.


Family Court Judge Patricia Gallaher wrote that the order is meant to improve the woman's chances of being rehabilitated and reunited with the boy "without a newer baby making that less likely to happen."

All of the woman's children are being raised by other people.

"Society and its problems are changing, especially with the incredible rise in the use of heroin, and this court needs to adjust its response."

The San Diego Union-Tribune

### Attorneys: Sterilizations were part of plea deal talks



By THE ASSOCIATED PRESS

March 28, 2016, 7:50 am


True Crime

### Judge suggests drug-addicted woman get sterilized before sentencing, and she does

By Tom Jackman February 9 • Filed the author


UPDATE, 6:05 p.m. Thursday: The judge issued findings at the sentencing hearing, noted below, and sentenced Creel to 12 months in prison.

In her 34 years, Summer Thyme Creel has passed a lot of bad checks, taken a lot of drugs and borne a lot of children (seven). After her sentencing today in federal court in Oklahoma, her involvement with checks and drugs will stop at least temporarily, but she will never have another baby. That's because the judge in her case suggested, in writing, that Creel consider getting herself sterilized before the sentencing, and Creel proceeded to do just that.



Summer Creel, captured

### Don't let a pregnancy ruin your drug habit.



What C.R.A.C.K. Can Offer You

We can't stop you from doing drugs, but we can help you prevent any future drug-addicted pregnancies.

If you are a man or woman addicted to — or abusing drugs — we want to help you have unprotected sex with a woman who is long term drug control.

Call C.R.A.C.K. now at 1-888-30-CRACK

**Hotline: 1-888-30-CRACK**

P.O. BOX 74  
STANTON, CA 95688  
THE CRACK PROJECT

California and the West


### Woman Offers Payment if Addicts Get Sterilization

Drugs: She says she has first taker in plan to cut number of crack-ravaged babies. Critics call idea 'exploitative.'

October 24, 1997 | ROBERT OURLIAN | TIMES STAFF WRITER

STANTON — First Barbara Harris tried to persuade the district attorney to prosecute pregnant women who use drugs. When that didn't work, she pushed a bill to make it a crime.

Unsuccessful again, Harris, who has adopted four siblings who were born addicted to crack, has taken a



HE HAS HER DADDY'S EYES.

AND HER MOMMY'S HEROIN ADDICTION.

HELP PREVENT BABIES FROM BEING BORN ADDICTED TO DRUGS.

Visit [www.projectprevention.org](http://www.projectprevention.org) and make your tax dollars work together. We can prevent a human tragedy.

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# How a Health Problem Becomes a Crime and How Clinical Care Becomes Complicit with Policing

## Crack Babies: The Worst Threat Is Mom Herself

By Douglas J. Besharov

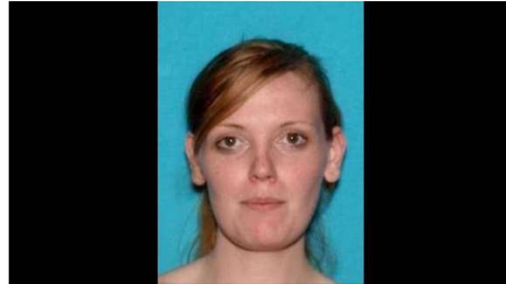
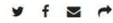
**L**AST WEEK in this city, Greater Southeast Community Hospital released a 7-week-old baby to her homeless, drug-addicted mother even though the child was at severe risk of pulmonary arrest. The hospital's explanation: "Because [the mother] demanded that the baby be released."  
The hospital provided the mother with an apnea monitor to warn her if the baby stopped breathing while asleep, and trained her in CPR. But on the very first night, the mother went out drinking and left the child at a friend's house—without the monitor. Within seven hours, the baby was dead. Like Dooney Waters, the 6-year-old living in his mother's drug den, whose shocking story was reported in The Washington Post last week, this child was all but abandoned by the authorities.

CRIME

### Kings County baby dies with meth in system. Mom sought on murder charge

BY JIM GUY

NOVEMBER 04, 2019 11:13 AM, UPDATED NOVEMBER 04, 2019 12:50 PM

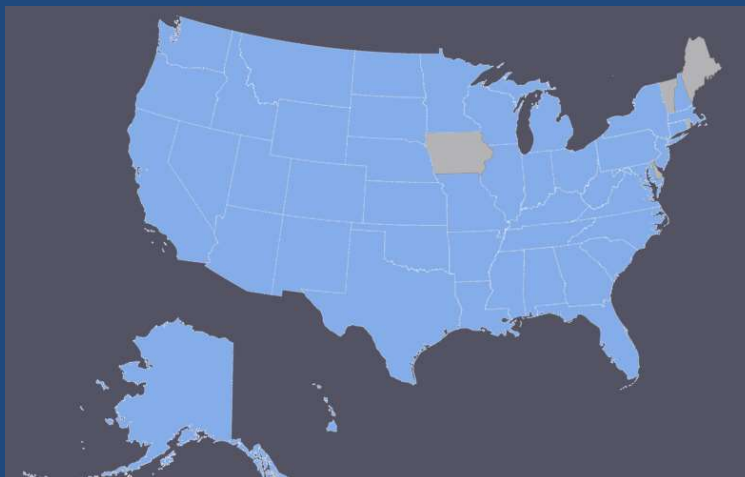


Chelsea Cheyenne Becker HANFORD POLICE DEPARTMENT

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## States where pregnant people have been prosecuted for drug use

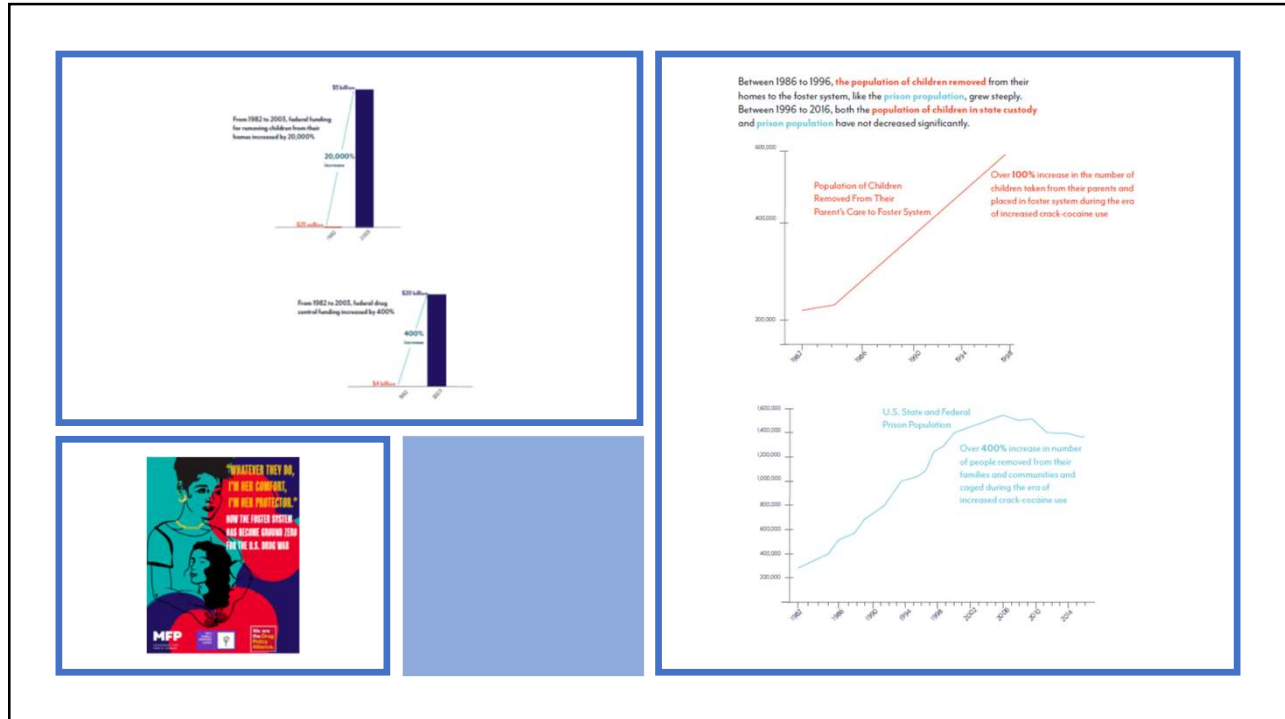
The first known indictment of a person for drug use in pregnancy was in California in 1977



People prosecuted for drug use during pregnancy in all states but: DE, IO, ME, RI, VT

<https://projects.propublica.org/graphics/maternity-drug-policies-by-state>

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Throughout the USA, women become subject to unique forms of regulation when they become pregnant. While pregnant women remain subject to the same laws as anyone else, an additional set of legislation targets pregnant women, particularly those who are marginalized and those who use drugs, based on a belief that they have caused or risked harm to their fetus. Often known as “fetal assault”, “chemical endangerment” or “personhood” laws, these measures have been used to arrest and prosecute women who experience pregnancy complications and conditions such as drug dependence. A patchwork of evolving laws and practices impact women in every region and state.

This is an area of active legislative change and judicial review. In January and February 2017, 17 state legislatures introduced measures like the ones discussed in this report. These proposals come amidst an onslaught of measures designed to limit access to sexual and reproductive healthcare and a presidential administration that has ushered in a backlash against human rights, particularly those related to women’s bodily integrity and sexual and reproductive freedom.

Laws policing pregnant women’s actions and circumstances are collectively referred to as pregnancy criminalization laws throughout this report. The report provides a basic overview of the implications of these laws on women’s human rights and access to pregnancy related healthcare across the USA and focuses on specific criminal laws in two states: Alabama and Tennessee.

**CRIMINALIZING PREGNANCY**  
**POLICING PREGNANT WOMEN WHO USE DRUGS IN THE USA**

2017

AMNESTY INTERNATIONAL

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## Outline

- 1) Keeping incarcerated women and other people capable of pregnancy from getting pregnant
- 2) Treating (opioid) use disorder in jails and prisons
- 3) “Pregnancy Criminalization”: Increasingly restrictive reproductive health policies that further the criminalization of female bodies


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## Expanding Contraceptive Access for Women With Substance Use Disorders: Partnerships Between Public Health Departments and County Jails

Clea A. McNeely, DrPH; Sadie Hutson, PhD, MSN, APN; Tara L. Sturdivant, MD; Jennifer M. Jabson, PhD, MPH; Brittany S. Isabell, MPH

“Unfortunately, jails in Appalachian Tennessee – precisely the countries where incarceration of women is growing exponentially – have neither the necessary resources nor a legal mandate to provide preventive reproductive health care”

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## Annual Estimated Cost Savings

- 270-460 unplanned pregnancies prevented
- 40-52 cases of NASS prevented
- \$1.4 million Medicaid cost saving

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**Letter to the Editor**

### RE: Expanding Contraceptive Access for Women With Substance Use Disorders: Partnerships Between Public Health Departments and County Jails

Dear Dr Novick,

We were troubled by the publication "Expanding Contraceptive Access for Women With Substance Use Disorders: Partnerships Between Public Health Departments and County Jails."<sup>1</sup> While the title suggests an important goal—improving family planning service availability for a group of people with constrained access—the program's goal to reduce neonatal abstinence syndrome (NAS) and practice of not offering the full range of reversible birth control methods raises serious concerns for ethical, equitable, and just health care and public health practice.<sup>2</sup> The authors describe a state health department program providing family planning education and limited clinical services, accompanied by information about NAS, to women incarcerated in 15 rural Tennessee jails. The authors not only promote this intervention as increasing access to contraception but also justify it as reducing the financial burden to the state from babies born to people with opioid use disorder (OUD). This premise is deeply problematic.

First, the premise devalues the reproduction of people with OUD and sends the message that they should not be having babies, in historical continuity with eugenics campaigns that suppressed the reproduction of "undesirable" social groups.<sup>3</sup> Linking contraception and NAS education sends the message that some people should not reproduce. If people with OUD desire pregnancy, this should not be discouraged, even subtly, and particularly by a state agency from which they may obtain future care. All this in a state that has enacted legislation to criminalize drug use in pregnancy.<sup>4</sup>

dynamics of incarceration are such that unmonitored, self-determined bodily autonomy is unachievable. The authors' emphasis on transparent consent should not be confused with commitment to the human rights of individuals living behind bars. Furthermore, person-centered methods such as oral contraceptives were not available. The justification for this is specious. Other family planning programs have creatively navigated similar jail-imposed restrictions.<sup>5</sup> Only offering limited contraception—particularly long-acting reversible contraceptives—is, according to the American College of Obstetricians and Gynecologists, inherently coercive.<sup>6</sup> Withholding birth control methods that are woman-controlled impedes incarcerated people's human rights, which includes their sexual and reproductive rights.

In this program in Appalachia, nearly every incarcerated person was white. Nationally, though, our system of mass incarceration is shaped by the white supremacist legacies of slavery and Jim Crow, and disproportionately incarcerates people of color—people who have also had their reproduction controlled and suppressed by targeted contraception campaigns.<sup>7</sup>

Third, addiction treatment is not mentioned by the authors. "Medications for opioid use disorder" (MOUD) is the evidence-based standard of care but is absent from both jail educational sessions and clinical services described. The emphasis on NAS prevention via contraception, rather than treatment, clearly deprioritizes the health of an actual adult whose chronic disease management benefits not just the individual but also her family and community. As the authors note, NAS does not have long-term health

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www.JFAPM.com E11

treatment shortcomings. Withholding MOUD from incarcerated individuals has recently been ruled in violation of the Americans with Disabilities Act.<sup>8</sup> To provide birth control without providing access to comprehensive reproductive and sexual health education, and to discuss NAS but not provide treatment for OUD, both miss the mark of providing care in line with reproductive justice—the human rights to have children, not to have children, a quality of life before and beyond the ability to give birth or parent, and the ability to parent with safety and dignity.<sup>9</sup>

Fourth, the authors argued that their program was a cost-saving strategy. The authors likely overestimated their cost savings by about half a million dollars as they assumed that all pregnancies result in births, when, in fact, about 40% of pregnancies end in miscarriage or abortion.<sup>10,11</sup> More importantly, making an economic argument—of reducing NAS costs—for suppressing incarcerated women's reproduction is discriminatory and reduces the complexities of reproduction to a monetary value—but only for some.

We hope that the state of Tennessee works to expand access to OUD treatment as well as quality family planning care for all people, including incarcerated women and other women of reproductive age. A reproductive justice, person-centered, and family-centered approach would not prioritize the short-term goal of NAS reduction, but instead treatment and supporting all people's reproductive goals, whether they want to avoid pregnancy or parent.

—Carolyn Sufrin, MD, PhD  
Johns Hopkins University  
Baltimore, Maryland

—Mishka Terplan, MD, MPH  
Virginia Commonwealth University  
Richmond, Virginia

—Cherise Scott  
Founder and CEO  
SisterReach  
Memphis, Tennessee

—Sarah Roberts, DrPH  
University of California, San Francisco  
San Francisco, California

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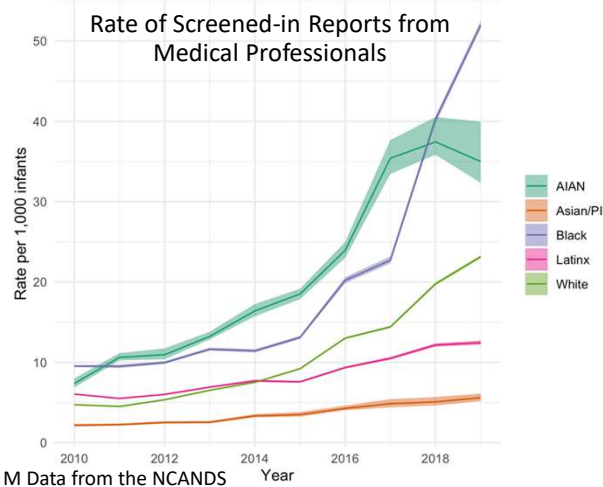
## Parenting as a Human Right vs. Family Separation: Provider Culpability

Most child welfare reports (<1yr) are from medical professionals during birthing hospitalization

Health Professional Reporting increased 400% in past decade

Driven by (misuse of) urine drug testing

Compounds racial inequities



Manuscript in preparation by Edwards F, Terplan M, Roberts S, Raz M Data from the NCANDS  
 HHS 2020 <https://www.childwelfare.gov/pubs/factsheets/cpswork/>  
 AAP 2015 <https://pediatrics.aappublications.org/content/135/5/948>

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## The Body Politic and Healthcare-Induced Violence: Information Sharing Contributes to the (Further) Criminalization of the Female Body

“Equating a positive toxicology test with child abuse or neglect is scientifically inaccurate and inappropriate, and can lead to an unnecessarily punitive approach, which harms clinician-patient trust and persons’ engagement with healthcare services.”

*ASAM Public Policy Statement on Substance Use and Substance Use Disorder Among Pregnant and Postpartum People, 10, 2022*

“The laws, regulations, and policies that require health care practitioners and human service workers to respond to substance use and substance use disorder in a primarily punitive way, require health care providers to function as agents of law enforcement.”

*ACOG, Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period: Statement of Policy, 11, 2020*

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## Conclusions and Thank you

- Need to be attentive to how structural sexism intersects with racialized drug policy across increasingly heterogeneous and punitive state policies in a landscape of chaotic hyper local child welfare

