



Access to Adequate Reproductive Care in Florida's Women's Prisons and Jails

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Abstract

Mass incarceration is a pervasive issue in the United States, with women, particularly women of color, becoming the fastest-growing population in prisons. Despite this, many carceral institutions lack the infrastructure to provide incarcerated women with adequate reproductive healthcare, and states often lack policies providing adequate reproductive care. This paper utilizes both policy and written accounts of incarcerated women to examine the women's prisons and jails of Florida, serving as both an analysis of the care offered to prisoners and the policies that have been passed in the state legislature. Additionally, it examines the potential impacts of the Supreme Court's 2022 decision to overturn *Roe v. Wade* and Florida's subsequent legislation restricting abortion access. Through this analysis, this paper finds that more protections are needed at both the state and the institutional level for reproductive healthcare in Florida's women's prisons and jails, particularly after the overturning of *Roe v. Wade*.

Keywords: Florida, women's prisons and jails, reproductive healthcare, mass incarceration, *Roe v. Wade*

Introduction

Women are the fastest-growing prison population in the United States today, growing at a rate of 908% between 1977 and 2014 (Fedock, 2018). This is particularly true for Black women and other women of color, who represent 30% of the women's prison population despite being only 13% of women in the country (LeFlouria, 2021). While incarcerated, these women face a variety of unique issues, including increased mental health disorders from past physical and/or sexual assault, increased rates of diseases such as Hepatitis C and HIV/AIDS, and disproportionate rates of sexual assault by prison staff (Fedock, 2018).

One pervasive issue facing female prisoners is access to adequate reproductive care while incarcerated. A report from the Bureau of Justice Statistics found that four percent of women reported being pregnant at the time of their incarceration in state prison, while three percent of women reported being pregnant at the time of incarceration in federal prison (Maruschak, 2008).

Once incarcerated, these women often have trouble accessing prenatal care and are placed in restraints or shackles, a practice that has been condemned by organizations like the American Civil Liberties Union and the American College of Obstetricians and Gynecologists for its tendency to increase fall risk and decrease mobility (Hatters Friedman et al., 2020). While policies exist in some states to protect incarcerated women and provide reproductive care, there is little standardization or oversight.

The purpose of this study is to examine the level of access to adequate reproductive care in Florida's women's prisons and jails. It will analyze current and proposed policies affecting access to reproductive care for incarcerated women in Florida, assess their shortcomings, and suggest how more equitable policy can be achieved moving forward. Home to the largest female correctional institution in the country, Florida provides an interesting case study into both the conditions and policy surrounding reproductive care for female prisoners. Focus will be placed on how state policy has evolved, such as with the passage of the 2019 Tammy Jackson Health Pregnancies for Incarcerated Women Act (944.241 FS), one of the first major reforms to carceral reproductive healthcare policy in the state's history. Beyond just examining policy, this study will look at accounts of incarcerated women to determine the efficacy of reforms. Additionally, this paper will include an analysis of the effects of the Supreme Court's 2022 decision to overturn *Roe v. Wade* and the potential ramifications this has on reproductive healthcare in Florida's women's prisons, particularly as it relates to abortion access.

Conditions in Florida's Women's Prisons and Jails Pre-Tammy Jackson Act

All pregnant women sentenced to prison in Florida are sent to Lowell Correctional Institution (CI) in Ocala. The Lowell CI is currently the largest female correctional institution in the country, with a population of nearly 3,000 women. Lowell has a history of allegations of misconduct and abuse towards prisoners, as well as federal investigations into sexual misconduct at the facility.

In 2015, the *Miami Herald* published a series of articles about the conditions in the Lowell CI. Among the issues found in the investigation was a history of inadequate medical facilities, including misdiagnoses, delays in treatment and medication, and cuts in spending on prison healthcare (Brown, 2015a). This demonstrates a concerning situation for pregnant prisoners, as the services they rely upon while incarcerated at Lowell have historically been poor. This is

particularly clear in the case of Liane Lastra, who received a positive pregnancy test upon her arrival at Lowell showing that she was eight to twelve weeks along. After weeks of requesting and being denied care by nurses, Lastra miscarried (Brown, 2015a). Pregnant prisoners like Lastra are placed under immense stress while incarcerated, and in the past have been denied the reproductive care they need to maintain a healthy pregnancy.

Additionally, the *Herald* investigation documented a history of sexual abuse and coercion at Lowell. Guards would force female prisoners to perform sex acts, threatening them with confinement or loss of visitation privileges (Brown, 2015b). In some cases, the sexual abuse would result in pregnancy, such as with Anquanette Woodall, a Black prisoner who was raped by a guard. Under Florida Department of Corrections policy, Woodall was told that if she decided to have an abortion she would have to pay the cost herself, as it was not considered a necessary procedure (Penney, 2019). This investigation revealed shortcomings in the enforcement of provisions meant to protect prisoners, such as the Prison Rape Elimination Act (PREA) which was designed to study and lower rates of prison rape, as there is often little oversight for facilities. It also demonstrated how prisoners like Woodall may be denied reproductive care because of their socioeconomic backgrounds, as they are unable to afford procedures like abortions.

In 2020, the Civil Rights Division of the Department of Justice (DOJ) released an investigative report into the Lowell CI, documenting years of staff sexual abuse and failures to properly enforce the PREA. The DOJ found that the Florida Department of Corrections and Lowell failed to protect incarcerated women from abuse, thus violating the Eighth Amendment protection against cruel and unusual punishment, and described numerous accounts of prisoners being assaulted and officers not being disciplined (Department of Justice, 2020). The report called for remedial measures to be taken, including holding officers accountable for abuse and establishing systems for prisoners to report abuse (Department of Justice, 2020). However, whether these measures have been undertaken is up for debate, as prisoners continue to report intimidation and abuse from officers within Lowell (Rabines, 2022). This has left prisoners at Lowell in dire circumstances, as they are housed in an environment where abuse is pervasive yet are not given adequate access to care for that abuse.

All of this has occurred in an environment where there has been a historical lack of legal protection for prisoners, particularly when it comes to reproductive care. While Congress passed the PREA in 2003, the DOJ report demonstrates how these protections were not enforced at Lowell. Additionally, the *Miami Herald* investigation reveals how women were often denied access to basic care, such as sanitary pads or doctor's visits, while housed at Lowell. To address some of these concerns, the Florida Legislature passed the first Dignity for Incarcerated Women Act in 2019. The bill (H.B. 49), which received unanimous bipartisan support and follows similar measures in states like Delaware and Louisiana, requires correctional institutions to provide women with feminine hygiene products, adequate food, dietary supplements, and restricts male guards from being able to conduct pat downs or cavity searches of female prisoners (Dignity for Incarcerated Women Act, 2019). These are among the first protections ever established at the statewide level in Florida for female prisoners and represent an important step forward in providing incarcerated women with adequate reproductive care and protection from sexual abuse.

However, while these reforms were certainly important, they alone were not enough to stop the many issues facing incarcerated women. Beyond just the provision of feminine hygiene products, many incarcerated women, particularly incarcerated pregnant women, require access to care that was not established by the Dignity for Incarcerated Women Act. The next section of this paper will demonstrate the consequences of this lack of protection by examining the Tammy Jackson case and its ramifications on state policy.

The Tammy Jackson Act and Movements for Reform

On April 10, 2019, a Black woman named Tammy Jackson went into labor while incarcerated at the North Broward Bureau, a jail in Broward County, Florida. Ms. Jackson was placed in an isolation cell due to her pregnancy, and reports describe her screaming for help. Despite this, Ms. Jackson's lawyers claim it was nearly seven hours before the staff contacted medical personnel, after she was found with the baby in her arms (Garcia, 2019). The case immediately garnered national attention and prompted an internal investigation by the Broward County Sheriff's Office. While the Broward Sheriff's Office (BSO) concluded in its internal report that there was "no evidence that any BSO employee mistreated or neglected Jackson, or failed to provide proper care," it also stated that the jail's medical provider Wellpath had fired a

doctor and a nurse in connection to the incident (2019). Additionally, the Tammy Jackson case prompted Wellpath to change its policies, which now require that medical personnel remain with incarcerated women at all times if they are to be transported to a hospital, new trainings for officers pertaining specifically to pregnant prisoners, and that prisoners with a positive pregnancy test be sent to a healthcare provider (Broward County Sheriff's Office, 2019).

The Tammy Jackson case provides insight into some of the disparities between resources for pregnant prisoners in prisons versus jails. In prisons like the Lowell Correctional Institution, incarcerated women often have access to infirmary staff and medical treatment on-site (Garcia, 2019). However this is not the case in jails, and incarcerated women are offered less access to care. For example, Ms. Jackson never saw an OB-GYN at the North Broward Bureau leading up to childbirth, as she arrived at the facility one day after the doctor's bi-monthly visit (Livingston, 2020). This lack of oversight prompted Wellpath to change its policy after the case to send pregnant prisoners to a healthcare provider, thus creating more avenues for reproductive care.

In response to the case, members of the Florida legislature began working on new policies addressing the lack of adequate reproductive care for incarcerated women. In 2020, the state passed the second Dignity for Incarcerated Women Act, later renamed the Tammy Jackson Healthy Pregnancies for Incarcerated Women Act (Tammy Jackson Act). Whereas the first Dignity for Incarcerated Women Act required that incarcerated women be given access to things like feminine hygiene products, the Tammy Jackson Act created direct protections for pregnant prisoners, including limiting the circumstances in which they can be placed in restrictive housing and requiring that those in restrictive housing be visited by a medical professional at least once every 24 hours (2020). These are among the first protections ever passed for pregnant prisoners in Florida and mirror the guidance of the U.S. Government Accountability Office. Like the first Dignity for Incarcerated Women Act, the Tammy Jackson Act passed in the Florida legislature with unanimous bipartisan support.

However, the passage of the Tammy Jackson Act has not stopped reports of inadequate care or conditions in carceral institutions. In a series of videos sent to her family and posted to TikTok in 2021, Lowell CI prisoner Keiko Kopp described how she was denied access to prenatal care while pregnant with her unborn child. An incarcerated single mother of four other children, Kopp described being denied access to prenatal vitamins and supplemental nutrition and waiting

months for antibiotics to treat a vaginal infection. She also showed that pregnant women were being housed in a dormitory undergoing construction (Hyson, 2021). Once she went into labor, the prison doctor placed her under observation instead of taking her to delivery, despite the baby having anencephaly and having a high risk of dying during childbirth. It was hours before she was transferred to a hospital, and although Kopp requested a cesarian section due to the baby's condition, doctors told her that they would not do it for a non-viable life (Hyson, 2021). The baby's brain was crushed by vaginal delivery, and Kopp's child died an hour after birth due to the trauma.

Cases like Keiko Kopp's reveal the gaps between passed legislation and the actual conditions present in Florida's women's prisons. Despite laws requiring access to care for pregnant prisoners, in practice, there are issues with enforcement and oversight. Additionally, it is often dependent on the women themselves to draw attention to the inadequacies of care, and when they do they are often threatened for coming forward. In Kopp's case, she described being threatened by the prison administration with confinement over her TikTok videos and her attorney received a letter from the Florida Department of Corrections threatening loss of visitation privileges if she did not stop posting (Walser, 2021). This creates a culture of fear within the prisons, potentially stopping those facing mistreatment from coming forward in the future.

Lack of adequate reproductive care has also not been limited to Lowell. In 2021, a woman named Erica Thompson was arrested and brought to Alachua County Jail. At the time she was experiencing contractions and had gone into labor, three months before her due date. Thompson described requesting authorities for medical attention, but emergency services were not called until hours later (Maxwell, 2021). Emergency medical services (EMS) arrived 10 minutes after Thompson had given birth, and the baby later died at the hospital. The case spawned protests within Alachua County, and Thompson sued the Alachua County Jail over her treatment. Thompson's attorneys argue that had she been given medical attention sooner as requested, the baby could have been saved (Maxwell, 2021).

In response to the Thompson case, Florida lawmakers in 2022 proposed the Pregnant Women in Custody Act, renamed Ava's Law in honor of Thompson's baby that died. The law would require that all women arrested and not released on bond be administered a pregnancy test within 72 hours, and would allow sentencing courts to stay the beginning of incarceration for pregnant

women (Ava's Law, 2022). This would allow pregnant women to delay the beginning of their sentences until after childbirth, thus increasing avenues to care outside of carceral institutions. However, while the bill did garner some bipartisan support, it eventually failed. It is now under consideration again in the 2023 legislative session, and whether enough support can be gathered for passage remains to be seen.

While Ava's Law failed, there have been smaller-scale reforms within institutions that promote access to reproductive care. In response to the Thompson case, the Alachua County Sheriff implemented several reforms in jails, including that pregnant arrestees be cleared with a hospital before being admitted into the jail and that medical staff provide a pregnancy test to any prisoner that requests one (Breske, 2022). These would protect incarcerated women like Thompson, as her premature labor could have been detected had she been cleared by a hospital. Additionally, the Lowell CI launched a program in 2022 for postpartum women, providing lactation support for new mothers and allowing them to stay in a special dormitory (Wilson, 2022). While these programs are not enough to provide adequate support for incarcerated mothers on their own, they represent a movement towards more reproductive care at the institutional level than has previously existed and pave the way for possible statewide expansion.

Threats to Access to Reproductive Care in the Post-*Roe* Era

In 2022, the Supreme Court overturned *Roe v. Wade*, thus ending the precedent allowing for a constitutional right to abortion in the United States. Within weeks, Republican-controlled legislatures began proposing and passing abortion bans. In Florida, a 15-week ban was passed and went into effect on July 1, 2022. Unlike similar laws in states like Mississippi or Georgia, the Florida bill did not make exceptions for rape, incest, or human trafficking (HB 5, 2022). While legal challenges to the bill are ongoing, Florida Republicans proposed a 6-week abortion ban on March 7, 2023, with Governor Ron DeSantis indicating his willingness to sign the bill into law (S.B. 300; Durkee, 2023).

These laws hold several potential impacts when it comes to reproductive care. With the laws in place, it is a third-degree felony to attempt to perform or participate in an abortion that violates the current restrictions (HB 5, 2022). Thus, women may be imprisoned for receiving an abortion after 15 weeks, or after six weeks if S.B. 300 passes. This also increases the likelihood that

pregnant women may become imprisoned for attempting to seek an abortion, creating stress on systems already ill-equipped to provide reproductive healthcare.

Additionally, there are concerns about access to care for women already incarcerated. Even if the pregnancy is discovered before the 6-week period, in many cases under the new restrictions the cost of the abortion must be covered by the patient, including for prisoners. Since many incarcerated women come from lower socioeconomic backgrounds, they may not be able to afford abortions, thus increasing the number of unwanted pregnancies. There are also concerns about incarcerated women being raped by male guards, thus resulting in unwanted pregnancies. As mentioned above in the discussion of the Anquanette Woodall case, there have been multiple previous instances of rape at the Lowell Correctional Institution. Under the current standards of the Prison Rape Elimination Act, it is required that victims be provided with “information about, and access to, all lawful pregnancy-related medical services” (2003). However, since abortion would no longer be lawful after a certain period, it increases the likelihood that abortion will not even be presented as an option to victims in Florida.

Ultimately, the full ramifications of the legislative changes in Florida are yet to be seen. A study by Carolyn Sufrin, a professor of Gynecology and Obstetrics at Johns Hopkins University, found that 15% of pregnancies in jails ended in abortion (Sufrin, 2021). With the overturning of *Roe v. Wade* and the restriction of abortion access, this number is likely to decline, as incarcerated women will not be given abortion as a reproductive care option.

Conclusion

Florida’s women’s prisons and jails provide an interesting case study when examining access to reproductive healthcare for incarcerated women. Home to the largest women’s prison in the country and a Republican supermajority in the state legislature, Florida has nevertheless been able to pass multiple bipartisan measures that have expanded access to reproductive care. Since 2019, the legislature has passed measures guaranteeing access to feminine hygiene products and creating standards of care for pregnant women, which had never existed at a statewide level. However, this paper has shown that more protections are needed to provide incarcerated women with adequate reproductive care.

The passage of Ava's Law would relieve stress on both pregnant mothers and carceral institutions, as it would give sentencing judges the power to delay sentences until after the mother has given birth. Thus, mothers are more likely to access reproductive healthcare providers directly and do not have to worry about either being denied care or receiving delayed care. At the institutional level, more steps can be taken to create safe channels for prisoners to report and receive care for sexual abuse without having to fear retaliation from prison officials. Prison officials can also work with the American College of Obstetricians and Gynecologists (ACOG), which has been attempting to expand care in carceral institutions and provide advice to prison healthcare providers. This will be particularly important as abortion continues to be restricted in Florida, as the ACOG will be able to provide prisoners and facilities with all available care options.

Further research can analyze how the policies in Florida compare to those in other states. Since specific policies differ between states, analysis of these differences would be important to understanding how different standards of care cause varying reproductive health outcomes. It would be particularly important to examine states with Democratic-controlled legislatures, as comparisons can be made in efficacy and type of policy. Since mass incarceration remains a pervasive issue throughout the United States, analyzing these policies will provide researchers with a framework for determining which policies provide the most aid to incarcerated women.

The analysis developed in this paper contributes to the body of literature on reproductive healthcare in women's prisons and jails. While a great deal of literature has been devoted to the issue of mass incarceration, there is a dearth of scholarship when it comes to specific issues facing incarcerated women, particularly reproductive care. Beyond just providing a quantitative analysis of reproductive outcomes, this paper provides an analysis of legislation passed in Florida and specific cases of women affected by these policies. This paper's findings can help implement better and more compassionate reproductive policy in women's prisons and jails in Florida and the United States, creating a more just system for incarcerated women and their families. As options for reproductive care continue to be restricted for all women in states like Florida, it is necessary to examine how reproductive policy outcomes affect those that are most vulnerable.

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