

The Intersection of Abortion and Criminalization: Abortion Access for People in Prisons

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Abstract

Most incarcerated women are of reproductive age, and more than a third of women will have an abortion during their reproductive years. Although women are the fastest growing population in Canadian prisons, no one has studied the effect of their incarceration on access to abortion services. Studies outside of Canada indicate rates of abortion are higher among people experiencing incarceration than in the general population, and that abortion access is often problematic. Although international standards for abortion care among incarcerated populations exist, there conversely appear to be no Canadian guidelines or procedures to facilitate unintended pregnancy prevention or management. Barriers to abortion care inequitably restrict people with unintended pregnancy from attaining education and employment opportunities, cause entrenchment in violent relationships, and prevent people from choosing to parent when they are ready and able. Understanding and facilitating equitable access to abortion care for incarcerated people is critical to address structural, gender-, and race-based reproductive health inequities, and to promote reproductive justice. There is an urgent need for research in this area to direct best practices in clinical care and support policies capable to ensure equal access to abortion care for incarcerated people.

Keywords

- ▶ abortion
- ▶ criminalization
- ▶ justice system
- ▶ Canada
- ▶ health equity

In recent years, there have been persistent and often successful campaigns both to decriminalize abortion—such as in Ireland (2018), New Zealand (2020), Columbia (2022), and several Australian states (2017, 2019 and 2022), or re-criminalize it, as is happening across many parts of the United States. How the experience of abortion and of criminalization intersect the abortion access of people in prisons is understudied. For example, while Canada is one of the only countries in the world where abortion is completely decriminalized, it has one of the highest rates of incarceration in the Western world,¹ and no study has examined abortion among people who have experienced incarceration.

Globally, women are the fastest growing population in prisons, and most incarcerated women are of reproductive age (15–49 years old). Yet, women remain a small subset of incarcerated people, for example, only ~6% of federal prisoners in Canada.² Although state provision of essential health care is required by international law,³ prison health services are often ill-prepared to meet gendered health needs. Over the last few years, numerous news stories from Australia, Britain and Canada have demonstrated the reproductive health dangers of prison, with incarcerated women and their newborns being refused care during miscarriage, birth, and the postpartum period.^{4–6} Despite international obligations⁷

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for states to routinely collect reproductive health information about incarcerated people, this information is largely unavailable, including in Canada. Furthermore, the Office of the Correctional Investigator, the Canadian federal prison watchdog, does not report on prison conditions with respect to reproductive health. Despite the progressive policy position toward abortion in Canada, the frequency of or approaches to abortion care for incarcerated people are not publicly known.

Abortion Rate in Prisons

The US-based *Pregnancy in Prison* project found that only 1% of pregnancies among federally incarcerated women resulted in abortion.⁸ A 2021 study of pregnancy outcomes in state prisons and county jails found an abortion rate of 4.2%,⁹ while yet another study among county jails found a rate of 15%.¹⁰ In 2019 the CDC found that 16% of pregnancies that did not miscarry ended in abortion among the general US population¹¹—a rate vastly higher than what was observed in the federal prisons. The type of and location of custody for incarcerated people creates different barriers to care.

Several international studies have found lifetime rate of abortion among incarcerated women to be higher than what is usually observed in the general population. A Brazilian study of the health records of incarcerated women found 41% had had between 1 to 3 abortions.¹² A United States study found a lifetime abortion rate of 35% among surveyed incarcerated women.¹³ A survey of women in a Canadian jail found close to two-thirds (57%) of respondents had experienced abortion at some point in their lives.¹⁴ These compare with the Canadian⁸ and global average of one-third of women.¹⁵ Abortion is often a consequence for those experiencing unintended pregnancy as a result of systemic discrimination, racism and colonialism.¹⁶ Incarcerated people may seek abortion to protect themselves from anticipated traumas of experiencing pregnancy in prison and from separation from children at or soon after birth.¹⁷ Among incarcerated people are high rates of intimate partner violence and sexual assault, mental and physical illness, substance use disorder,¹⁸ sex work,¹⁹ and sexually transmitted and blood borne infections including HIV and hepatitis C virus²⁰; these experiences may also affect reproductive decision-making.

Understanding and facilitating access to abortion care for incarcerated people is critical to address structural, gender-, and race-based reproductive health inequities.²¹ International research suggests regulatory and financial restrictions act as significant barriers to abortion access for people in prison.^{22–28} In many health systems, including Canada, the direct costs of medication and aspiration abortion procedures are covered by Medicare. However, patients may face supplemental private costs, such as travel, which are inequitably experienced.²⁹ Correctional Services Canada, the federal prison service, does not mention abortion in the public Commissioner's Directive governing health,³⁰ and a 2021 Access to Information and Privacy request did not identify an

internal CSC policy with respect to abortion. The lack of a policy does not indicate a lack of restrictions.

Barriers to Care

Incarceration presents multiple potential barriers to abortion care. Physical distance between prisons and care providers represents a concrete barrier. US researchers have found the distance between prisons and the nearest abortion provider varied from 0.5 to 383 miles.³¹ In Canada, most aspiration (surgical) abortion care is limited to major urban centres.³² Prisons are largely located *outside* of major urban centers, introducing transportation challenges.^{33,34} Frequent staffing shortages in prisons³⁵ prevent prisons from arranging escorts for patients to receive off-site care.³⁶ A further barrier is information. Incarcerated people experience complex health histories and restrictions to health information and services.^{19,37,38} If incarcerated people and prison staff lack knowledge about access pathways and important considerations such as gestational age limits to medication abortion or for local surgical services, patients may miss the window for care.^{39,40} These issues may impact patient understanding of options and decision-making. Stigma presents another barrier.⁴¹ Fear of judgment, privacy, and confidentiality violations, or even punishment may be particularly acute for people who are incarcerated.

Despite international availability for several decades, mifepristone, the drug used for medication abortion, was only available in Canada since 2017. While medication abortion has significantly shifted the landscape of abortion access,⁴² its use may be prohibitively difficult in prison. The privacy and convenience benefits of medication abortion through telemedicine may not translate in the context of correctional procedures and environments. The requirement that the pills be taken 24–48 hours apart is cumbersome in a system highly structured around mandatory activities such as “count,” work and program hours, and “med line”—a daily queue, sometimes situated outdoors, to receive medication. Heavy bleeding and pain may be especially challenging for patients in prisons due to lack of menstrual supplies,⁴³ unhygienic and isolating contexts,⁴⁴ and restrictions on accessing over-the-counter analgesics.

Access to abortion for people in prison must be addressed from a reproductive justice perspective, expanding the legal framework of reproductive rights to examine the intersectional human rights and equity implications of reproductive decisions.^{45–48} Reproductive justice recognizes that autonomy and “choice” are constrained by oppressive and discriminatory structures including racism, colonialism, classism, and transphobia/homophobia—structures that also shape and define the prison system.⁴⁹

International Obligations

The United Nations Minimum Standards for the Treatment of Women Prisoners,⁷ known as the Bangkok Rules, includes multiple stipulations relevant to reproductive care. Rule 6 requires clinical screening on admission to prison, including

reproductive health history. Rule 8 requires respect for medical confidentiality at all times. Rule 10 specifies gender-specific health-care services be provided at least at a level equivalent to what is available in the community. Correctional facilities must be assessed for compliance with these minimum standards, starting with the 72 prisons and jails designated for women and girls across Canada.³³

Conclusion

Barriers to abortion care inequitably restrict people who can get pregnant¹⁷ from attaining education and employment opportunities, cause entrenchment in violent relationships, and prevent people from choosing to parent when they are ready and able. Incarceration itself restricts people from living healthy, safe, and autonomous lives. There is an urgent need for research in this area to direct best practices in clinical care and support policies capable of ensuring equal access to abortion care for incarcerated people.

Conflicts of Interests

None declared.

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References

- Public Safety Canada. Corrections and conditional release statistical overview. 2020. Accessed October 27, 2022 at: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2019/index-en.aspx#a3>
- Correctional Services Canada. Statistics and research on women offenders. 2019. Accessed October 27, 2022 at: <https://www.csc-scc.gc.ca/women/002002-0008-en.shtml>
- United Nations Office on Drugs and Crime. The United Nations Standard Minimum Rules for the Treatment of Prisoners. United Nations: . Accessed October 27, 2022 at: 2015. https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
- Seymour A. Pregnant prisoner suffers miscarriage in Ottawa cell while her cries for help were ignored. Ottawa Citizen. Accessed October 27, 2022 at: 2017. <https://ottawacitizen.com/news/local-news/pregnant-prisoner-suffers-miscarriage-in-ottawa-cell-while-her-cries-for-help-were-ignored>
- Flower W. Prisoners who helplessly watched 'Baby A' die while jail staff refused to perform CPR will front a coronial inquest - as shocking new details about the newborn's death emerge. The Daily Mail. Accessed October 27, 2022 at: 2022. <https://www.dailymail.co.uk/news/article-11209899/Prisoners-watch-newborn-baby-die-inside-Dame-Phyllis-Frost-evidence-Melbourne.html>
- Devlin H, Taylor D. Baby dies in UK prison after inmate 'gives birth alone in cell'. The Guardian. Accessed October 27, 2022 at:2019. <https://www.theguardian.com/society/2019/oct/04/baby-dies-in-uk-prison-after-inmate-gives-birth-alone-in-cell>
- United Nations Office on Drugs and Crime. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders with their Commentary. 2011. Accessed October 27, 2022 at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf
- Sufrin C, Beal L, Clarke J, Jones R, Mosher WD. Pregnancy Outcomes in US Prisons, 2016–2017. *Am J Public Health* 2019;109(05):799–805. Doi: 10.2105/AJPH.2019.305006
- Sufrin C, Jones RK, Beal L, Mosher WD, Bell S. Abortion access for incarcerated people: incidence of abortion and policies at U.S. prisons and jails. *Obstet Gynecol* 2021;138(03):330–337. Doi: 10.1097/AOG.0000000000004497
- Sufrin C, Jones RK, Mosher WD, Beal L. Pregnancy prevalence and outcomes in U.S. jails. *Obstet Gynecol* 2020;135(05):1177–1183. Doi: 10.1097/AOG.0000000000003834
- Kortsmit K, Mandel MG, Reeves JA, et al. Abortion Surveillance - United States, 2019. *MMWR Surveill Summ* 2021;70(9; SS-9) 1–29. Doi: 10.15585/mmwr.ss7009a1
- Ribeiro SG, Lessa PRA, Monte AS, et al. Gynecologic and obstetric profile of state imprisoned females. *Texto Contexto Enferm* 2013; 22(01):13–21. Doi: 10.1590/S0104-07072013000100002
- Clarke JG, Rosengard C, Rose J, et al. Pregnancy attitudes and contraceptive plans among women entering jail. *Women Health* 2006a; 43(02):111–130. Doi: 10.1300/J013v43n02_07
- Liauw J, Foran J, Dineley B, Costescu D, Kouyoumdjian FG. The unmet contraceptive need of incarcerated women in Ontario. *J Obstet Gynaecol Can* 2016;38(09):820–826
- Norman WV. Induced abortion in Canada 1974–2005: trends over the first generation with legal access. *Contraception* 2012;85(02): 185–191
- Bearak JM, Popinchalk A, Beavin C, et al. Country-specific estimates of unintended pregnancy and abortion incidence: a global comparative analysis of levels in 2015–2019. *BMJ Glob Health* 2022;7(03):e007151
- United Nations Population Fund. State of the World Population 2022: Seeing the Unseen. 2022. Accessed October 27, 2022 at: https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWP22%20report_0.pdf
- Paynter M, Heggie C, Matheson L, Rillie C, Beals D, Bray M. Maternal incarceration in a provincial prison in Canada: A qualitative study. *J Adv Nurs* 2022;78(07):2123–2138. Doi: 10.1111/jan.15154
- Kouyoumdjian F, Schuler A, Matheson FI, Hwang SW. Health status of prisoners in Canada: Narrative review. *Can Fam Physician* 2016;62(03):215–222
- Socias ME, Deering K, Horton M, et al. Social and structural factors shaping high rates of incarceration among sex workers in a Canadian setting. *J Urban Health* 2015;92(05):966–979
- El-Mowafi IM, Yalahow A, Idriss-Wheeler D, Yaya S. The politeist form of racism: sexual and reproductive health and rights paradigm in Canada. *Reprod Health* 2021;18(01):59. Doi: 10.1186/s12978-021-01117-8
- Budnitz E. Not part of her sentence: Applying the Supreme Court's Johnson v. California to prison abortion policies. *Brooklyn Law Rev* 2006;71(03):1291–1332
- Kasdan D. Abortion access for incarcerated women: are correctional health practices in conflict with constitutional standards. *Perspect Sex Reprod Health* 2009;41(01):59–62
- Kot Y. The fundamental right to sexual autonomy in prison. *Am Crim Law Rev* 2019;56(02):511
- Roth R. Do prisoners have abortion rights? *Fem Stud* 2004;30(02): 353–381
- Tankersley S. Reproductive freedom: Abortion rights of incarcerated and non-incarcerated women. *KY Law J* 1996;85(01):2
- Sufrin C. When the punishment is pregnancy: Carceral Restriction of Abortion in the United States. *Cult Anthropol* 2019;34(01): 34–40

- 28 Sufrin C, Kolbi-Molinas A, Roth R. Reproductive Justice, health disparities and incarcerated women in the United States. *Perspect Sex Reprod Health* 2015;47(04):213–219
- 29 Shankar M, Black KI, Goldstone P, et al. Access, equity and costs of induced abortion services in Australia: a cross-sectional study. *Aust N Z J Public Health* 2017;41(03):309–314. Doi: 10.1111/1753-6405.12641
- 30 Correctional Services Canada. Commissioner's Directive 800: Health Services. 2015. Accessed October 27, 2022 at: <https://www.csc-scc.gc.ca/politiques-etlois/800-cd-eng.shtml>
- 31 Gips J, Psoter KJ, Sufrin C. Does distance decrease healthcare options for pregnant, incarcerated people? Mapping the distance between abortion providers and prisons. *Contraception* 2020;101(04):266–272
- 32 Norman WV, Guilbert ER, Okpaleke C, et al. Abortion health services in Canada: Results of a 2012 national survey. *Can Fam Physician* 2016;62(04):e209–e217
- 33 Paynter MJ, Baggs ML, Heggie C. Invisible women: Carceral facilities for women and girls across Canada and proximity to maternal health care. *Int J Prison Health* 2020. Doi: 10.1108/IJPH-06-2020-0039
- 34 Schummers L, Norman WV. Abortion services in Canada: access and safety. *CMAJ* 2019;191(19):E517–E518
- 35 Jessiman-Perreault G, Smith PM, Gignac MAM. Why are workplace social support programs not improving the mental health of Canadian correctional officers? An examination of the theoretical concepts underpinning support. *Int J Environ Res Public Health* 2021;18(05):2665. Accessed October 27, 2022 at: <https://www.mdpi.com/1660-4601/18/5/2665>
- 36 Correctional Services Canada. Commissioner's Directive 566–6: Security Escorts. 2018. Accessed October 27, 2022 at: <https://www.csc-scc.gc.ca/lois-et-reglements/566-6-cd-en.shtml>
- 37 Kouyoumdjian FG, Cheng SY, Fung K, et al. Primary care utilization in people who experience imprisonment in Ontario, Canada: a retrospective cohort study. *BMC Health Serv Res* 2018;18(01):845
- 38 Scallan E, Lancaster K, Kouyoumdjian F. The “problem” of health: An analysis of health care provision in Canada's federal prisons. *Health* 2021;25(01):3–20
- 39 Health Canada. Regulatory decision summary: MIFEGYMISO. 2015. Accessed October 27, 2022 at: <https://hpr-rps.hres.ca/reg-content/regulatory-decisionsummary-detail.php?lang=en&linkID=RDS00294>
- 40 Health Canada. MIFEGYMISO. Health Canada updates prescribing and dispensing information for Mifegymiso. 2017. Accessed October 27, 2022 at: <https://www.healthycanadians.gc.ca/recall-alert-rappel-avis/hc-sc/2017/65034a-eng.php>
- 41 Erdman JN. The law of stigma, travel, and the abortion-free island. (Banishing Women: The Law and Politics of Abortion Travel). *Columbia J Gend Law* 2016;33(01):29
- 42 Ennis M, Renner R, Guilbert E, et al. Provision of first-trimester medication abortion in 2019: Results from the Canadian abortion provider survey. *Contraception* 2022;113:19–25. Doi: 10.1016/j.contraception.2022.03.020
- 43 Senate of Canada. Human Rights of Federally Sentenced Persons. 2021. Accessed October 27, 2022 at: <https://sencanada.ca/en/info-page/parl-43-2/ridr-federally-sentenced-persons/>
- 44 Parkes D, Bromwich R, Kilty J. Solitary confinement, prisoner litigation, and the possibility of a prison abolitionist lawyering ethic. *Can J Law Soc* 2017;32(02):165–185
- 45 Hayes CM, Sufrin C, Perritt JB. Reproductive Justice Disrupted: Mass Incarceration as a Driver of Reproductive Oppression. *Am J Public Health* 2020;110(51):S21–S24
- 46 Ross L, Solinger R. *Reproductive Justice: An Introduction*. University of California Press; 2017
- 47 Ross L. Reproductive Justice as intersectional feminist activism. *Souls* 2017;19(03):286–314
- 48 Shlafer RJ, Hardeman RR, Carlson EA. Reproductive justice for incarcerated mothers and advocacy for their infants and young children. *Infant Ment Health J* 2019;40(05):725–741
- 49 Paynter M, Jefferies K, Carrier L, Goshin L. Feminist abolitionist nursing. *ANS Adv Nurs Sci* 2022;45(01):53–68. Doi: 10.1097/ANS.0000000000000385