Original Research

Abortion Access for Incarcerated People

Incidence of Abortion and Policies at U.S. Prisons and Jails

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OBJECTIVE: To understand abortion incidence among incarcerated people and the relation to prison and jail pregnancy policies.

METHODS: We collected abortion numbers and policy data from convenience sample of 22 state prison systems, all Federal Bureau of Prisons sites, and six county jails that voluntarily reported monthly, aggregate pregnancy outcomes for 12 months in 2016–2017. Sites also completed a baseline survey of institution characteristics and pregnancy policies, including abortion. We reported facility policies and abortion incidence according to state-level abortion characteristics.

RESULTS: Only half of state prisons in the study allowed abortion in both the first and second trimesters, and 14% did not allow abortion at all. Of the 19 state prisons permitting abortion, two thirds required the incarcerated woman to pay. Four jails of the six study jails (67%) allowed abortions in the first and second trimesters, and 25% of those required the incarcerated woman to pay for the procedure. The three prisons and two jails that did not allow abortions were in states considered hostile to abortion access. In the state and federal prisons studied, 11 of the 816 pregnancies (1.3%) that ended during the study time period were abortions. Of the 224 pregnancies that ended at study jails, 33 were abortions (15%), with more than half of those (55%) occurring in the first trimester. The abortion ratio (proportion of pregnancies ending in abortion) was 1.4% for prisons and 18% for jails.

CONCLUSION: Although some incarcerated individuals have abortions, many prisons and jails have restrictive policies surrounding abortion, either through self-payment requirements or explicit prohibition. Findings from this study should prompt further inquiry into abortion incidence in these settings and address interventions to ensure incarcerated people, in accordance with legal requirements and health equity, have access to abortion.

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Every year, tens of thousands of women enter jail or prison while they are pregnant.[1,2] The courts have consistently affirmed that incarcerated people retain their constitutional right to abortion.[3] Yet available evidence from state prisons and local jails shows that the right to abortion is not consistently realized, whether through official policies that do not permit abortion or practical barriers in payment, transportation, and other logistics.[4–6] For instance, Medicaid is suspended when someone becomes incarcerated, so, even if state Medicaid would fund abortion in the community, it does not cover abortion for those in custody[7]; pregnant people in federal custody needing abortions are limited by the financial restrictions of

the Hyde Amendment.[8] Prisons and jails, although both institutions are intended to confine and punish people, have numerous differences that affect health care access, as described further below.

The challenges to abortion access in the community, which disproportionately affect people of color, those living in rural areas, and low-income individuals,[9,10] are amplified for people confined in prisons and jails, whose autonomy is constrained. Given the forces of systemic racism that are endemic to mass incarceration in the United States,[11] evaluating abortion incidence and access for incarcerated individuals is part of broader efforts to address reproductive health inequities.

To understand abortion incidence in relation to prison and jail pregnancy policies, we prospectively collected 1 year of pregnancy outcomes data, including abortion, from a sample of state and federal prisons and county jails across the United States that voluntarily reported these outcomes for this study. Participating sites also completed a cross-sectional survey reporting their policies related to accessing abortion while in custody.

METHODS

Data for these analyses come from the Pregnancy in Prison Statistics study; other results from this study are published elsewhere.[1,2] Between 2016 and 2017, we conducted a prospective epidemiologic surveillance study of pregnancy outcomes in all federal prisons and 22 state prison systems, as well as six county jails. We enrolled the Federal Bureau of Prisons, which reported outcomes for all 26 U.S. federal prisons housing females. Due to study resource constraints, we could not recruit state prison systems from all 50 states. Instead, we targeted recruitment to the 18 states whose prison systems housed more than 2,000 females in 2016.[12] We also used snowball sampling through our networks with the National Institute of Corrections and the National Resource Center on Justice Involved Women to broaden the sample of state prison systems of any size. This recruitment strategy yielded a sample of 22 state prison systems (out of 33 eligible systems); we report details of which states declined enrollment elsewhere.[1] All but one of these states reported state-level data for their entire state; Wisconsin's data represent numbers from one of three state prisons that housed pregnant people, though it is the largest prison housing females in the state. We also recruited the nation's five largest jails–all located in large, urban centers–and enrolled a smaller jail that requested to participate. We did not recruit more jails because there was no comprehensive registry of the more than 3,000 jails in the United States and because our study team resources could not recruit such a large number of sites. Participating study sites listed in Box 1 represented 58% of women in U.S. prisons in 2016 and 5% in U.S. jails.[1,2]

Jails and prisons are distinct types of institutions with differences that are important for understanding abortion access in these contexts. Prisons incarcerate people who have been convicted and are generally serving sentences longer than 1 year (on average 2.6 years)[13]; they operate under state and federal administration through each state's department of corrections and the Federal Bureau of Prisons, respectively. In contrast, jails are under local jurisdiction and generally house people for shorter durations (on average 26 days)[14]; a majority of people detained in jails have not been convicted and are awaiting adjudication to be released, serve a sentence in jail, or be sent to prison to serve a longer sentence.

We collected monthly data on pregnancy outcomes for 1 year. Each site had a designated staff member who tracked and reported aggregate monthly data at the end of each month either using the secure, web-based application REDCap (Research Electronic Data Capture) or with an electronic PDF.[15] Monthly outcomes included number of pregnant people admitted, and number of live births, miscarriages (first and second trimester), abortions (first and second trimester), stillbirths, and ectopic pregnancies. We did not ask sites to differentiate between surgical abortions or medical abortion (terminating a pregnancy by taking pills, usually done for pregnancies at less than 11 weeks of gestation). Additionally, we asked sites to report the number of women who requested an

Box 1. Participating U.S. State Prisons and Jails

State prison systems (n=22)*

Alabama, Arizona, Colorado, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin

Jail systems, by county and state (n=6)

Cook County (Illinois), Dallas County (Texas), Hampden County (Massachusetts), Harris County (Texas), Los Angeles County (California), New York City (New York)

*Wisconsin reported data from one of three prisons in the state that houses pregnant people, reporting for the largest of these.

abortion each month over a 6-month period; although we did not inquire about the process for women to request an abortion, requests for health care in general at many prisons and jails require the incarcerated person to submit a written form.[16] We report the proportion of pregnancies that ended in abortion both including and excluding miscarriage from the denominator; we adopted this strategy to make comparisons to the Guttmacher Institute's nationally reported abortion ratio, defined as the number of abortions per 100 pregnancies ending in abortion or live birth, and which does not include miscarriages in the denominator.[17]

We also collected information on a range of pregnancy care policies from the state prisons and jails, including whether abortion was allowed, whether there was a written policy about it, who paid for abortions, if prenatal care was available, pregnancy testing policies, and arrangements for childbirth. As part of the agreement for their participation in the study, the Federal Bureau of Prisons did not complete the policy survey, so we do not report federal policies here. However, according to the Federal Bureau of Prisons' publicly available policy, the agency does arrange abortion access for pregnant people, with payment according to Hyde Amendment restrictions, which prohibits the use of federal funds to pay for abortion except to save the life of the pregnant person or if the pregnancy resulted from rape or incest.[8] We conducted a number of univariate and bivariate analyses. We first present descriptive characteristics of the state prisons and jails by a number of characteristics, including whether the institution was located in a state characterized as "hostile" to abortion rights according to the Guttmacher Institute[18]; and whether the institution was in a state where state Medicaid covers abortions for nonincarcerated individuals.[19] Although Medicaid cannot be used for any health care for incarcerated individuals, this last measure allowed us to assess facilities' abortion payment practices in the context of the broader state abortion funding landscape. We also include a measure examining whether or not the institution was less than 10 miles from an abortion caregiver.[20]

We analyzed the count of all pregnancies by outcome, including abortion by trimester, overall and by selected institution and state characteristics. This is a descriptive study, and we did not assess for any statistical associations. We conducted all analyses using Stata 15.1. The Johns Hopkins Institutional Review Board deemed this study nonhuman subjects research because it collected aggregate, de-identified data.

Our survey instruments asked respondents about "women" for each outcome. We use this terminology when reporting study results and also when citing prior studies that reported results this term. We otherwise use gender inclusive language, as some people who are pregnant do not identify as women.

RESULTS

Participating state prisons typically incarcerated 1,001–5,000 (46%) women as their daily census and were geographically diverse, with the largest number of prisons (39%) being in the South (Table 1). The majority of study state prisons (59%, n=13) were in states considered hostile to abortion. More than three quarters of state prisons were located more than 10 miles from an abortion caregiver, and three were located more than 50 miles from an abortion caregiver (not shown). Eight state prisons (36%) did not administer pregnancy tests to women at the time of intake; 50% of prisons contracted with private corporations to deliver their prison's health care services. All study prisons and jails provided routine prenatal care either on-site or off-site and all had arrangements with hospitals if a pregnant person needed care for childbirth (not shown).

There was substantial variation in abortion policies among the 22 state prison systems (Table 1). The majority of state prisons (n=19, 86%) allowed abortion, with most of these (58%) permitting both first- and second-trimester abortions. Three facilities did not allow abortions at all and did not indicate exceptions for rape or incest (not shown). Seven prisons (32%) did not have a written policy about abortion.

At two thirds of the facilities that allowed abortion, the incarcerated person had to pay for this care. Of the 19 state prison systems that allowed abortion, the majority (n=12, 63%) were in states where Medicaid does not cover abortions for nonincarcerated people (Table 2). Most prison systems in these states required incarcerated women to pay for abortion procedures themselves. Additionally, three of the seven prison systems in states where Medicaid covers nonincarcerated individuals' abortions required incarcerated people to pay for the procedure.

The majority of state prison systems in states hostile to abortion (n=10, 77%) allowed abortion, including five in the second trimester (Table 3). All nine state prisons systems in states not considered to be hostile to abortion allowed incarcerated people access to the procedure, and two thirds of these did so in both first and second trimester.

Consistent with our targeted recruitment of large jails, all but one of the study jails housed more than

Table 1. Characteristics and Abortion Policies of Sampled State Prisons (n=22) and Jails (n=6)

	Prisons	Jails
Site characteristics		
Facility size (average daily census)		
500 or less	3 (14)	1 (17)
501–1,000	8 (36)	3 (50)
1,001–5,000	10 (46)	2 (33)
More than 5,000	1 (5)	0 (0)
Region		
West	3 (13)	1 (17)
Midwest	6 (26)	1 (17)
South	8 (39)	2 (33)
Northeast	5 (22)	2 (33)
Abortion-hostile state		
No	9 (41)	4 (67)
Yes	13 (59)	2 (33)
Abortion caregiver less than 10 miles from facility		
No	17 (77)	1 (17)
Yes	5 (23)	5 (83)
Pregnancy test at intake		
No	8 (36)	1 (17)
Yes	14 (63)	5 (83)
Privately contracted health care		
No	11 (50)	6 (100)
Yes	11 (50)	0 (0)
Abortion policies		
Abortion allowed	19 (86)	4 (67)
1st trimester only	8 (42)	0 (0)
1st and 2nd trimester	11 (58)	4 (100)
Incarcerated person funds abortion	13 (68)	1 (25)
State where Medicaid covers abortion for nonincarcerated people	7 (37)	4 (100)
No written abortion policy	7 (32)	1 (17)
Abortion allowed, 1st trimester only	2 (29)	0 (0)
Abortion allowed, 1st and 2nd trimester	2 (29)	0 (0)
Abortion not allowed	3 (43)	1 (100)

Data are n (%).

501 women (Table 1). Most jails (n=4) were in states not considered hostile to abortion and all but one were located less than 10 miles from an abortion caregiver. Only one jail did not routinely administer pregnancy tests at the time of intake, and no study jails contracted health care services to a private entity.

Four jails allowed abortion, all permitting first- and second-trimester abortions and all by written policy. Of the two jails that did not permit abortion, one had a written policy explicitly prohibiting it and one did not have a written policy at all; neither indicated providing exceptions in cases of rape or incest (not shown).

Both of the jails that did not allow abortion were in the same abortion-hostile state, Texas, and all four study jails in nonhostile states allowed abortion (Table 3). Of the four study jails located in states where Medicaid would cover abortion for nonincarcerated individuals, one of these jails required that the incarcerated woman contribute to the cost of the abortion (Table 2)–though indicated that the individual and the jail jointly covered the cost (not shown). The other three jails would cover the cost of abortion care.

During the study time period, there were 1,396 admissions of pregnant people to all study prisons, and 816 pregnancies ended while the individual was in custody (Table 4). There were 11 abortions overall (1.3% of pregnancies that ended), accounting for 3% of pregnancies in the federal prisons and 1% in the state prisons systems. When removing miscarriages from the denominator to calculate the abortion ratio, abortions represented a similar percentage of pregnancy outcomes, 1.4. Abortions occurred at six of the 19 (32%) state prison systems that indicated abortion was allowed (not shown). Eight of the nine (89%) abortions in state prisons were in the first trimester (74%).

Table 2. Institution Abortion Payment Policies Among State Prisons (n=19) and Jails (n=4) That Allow Abortion, by Whether Facility is Located in a State Where Medicaid Covers Abortion for Nonincarcerated Individuals

	Facility in State Where Medicaid Covers Abortion	
Abortion Payment Policy	Yes	No
Prisons	n=7	n=12
Incarcerated woman funds own abortion	3 (43)	10 (83)
Prison pays for abortion	4 (57)	2 (17)
Jails	n=4	n=0
Incarcerated woman funds own abortion*	1 (25)	0 (0)
Jail pays for or arranges for payment for abortion†	3 (75)	0 (0)

Data are n (%).
* One jail indicated that both the jail and the incarcerated woman pay for the abortion.
† One jail indicated that "Planned Parenthood" pays for abortion, and another indicated that an "outside source" pays for abortion.

The majority (59%, Table 1) of study state prisons were in abortion-hostile states. Seventy-five percent of the 742 pregnancies that ended in state prisons were in states considered hostile to abortion (not shown). Still, most of the nine abortions that occurred in state prisons were at facilities in nonhostile states (n=7), that did not require the incarcerated woman to pay for her abortion (n=8), and that administered a pregnancy test at intake (n=6) (not shown). Six of the nine abortions occurred at state prisons located more than 10 miles from an abortion caregiver. There were more miscarriages at state prisons that tested for pregnancy at intake than at prisons that did not test at intake (n=32, 8% vs n=10, 3%, not shown).

At the study jails, there were 1,622 admissions of pregnant people, and 224 pregnancies ended while the person was in custody. Thirty-three abortions occurred at the four jails whose policies permitted abortion, with nearly half (46%) occurring in the second trimester (Table 4). Nearly 15% of pregnancy outcomes at all study jails were abortions, with an abortion ratio of 18% when we excluded miscarriages from the denominator. When we excluded outcomes at the two jails that did not allow abortion, the abortion ratio was 33% at these four jails (not shown). All 33 abortions occurred at jails in states that were not hostile to abortion, and all at jails that had policies to test for pregnancy at intake. Slightly more than half (58%) were at jails where women had to contribute to funding their own abortions (not shown).

During the 6 months in which we asked about the monthly number of requests for abortion, there were 572 pregnant women admitted to state prisons, seven requests for abortions, and three abortions that occurred (not shown). Correspondingly, at the jails, there were 680 pregnant women admitted, 33 abortion requests, and 16 abortions. When we asked about discrepancies between abortions requested and abortions received, respondents indicated three

Table 3. Institution Abortion Policies for State Prisons and Jails, by Whether Facility is Located in an Abortion-Hostile or Abortion-Nonhostile State*

Abortion Policy	Facility in Hostile State	Facility in Nonhostile State
Prisons	n=13	n=9
Abortion not allowed	3 (23)	0 (0)
Abortion allowed		
1st trimester only	5 (39)	3 (33)
1st and 2nd trimester	5 (39)	6 (67)
Jails	n=2	n=4
Abortion not allowed	2 (100)	0 (0)
Abortion allowed		
1st trimester only	0 (0)	0 (0)
1st and 2nd trimester	0 (0)	4 (100)

Data are n (%).
*Categorization of states as hostile or nonhostile was derived from existing policy analysis.[17]

Table 4. Pregnancy Outcomes at Prisons and Jails

	Total No. of Pregnancy Admissions	Total No. of Pregnancies That Ended During Custody	Live Birth	Abortion	Miscarriage	Stillbirth	Ectopic
Prisons							
State and federal combined	1,396	816	753 (92)	11 (1.3)	46 (6)	4 (0.5)	2 (0.2)
Federal prisons	172	74	68 (92)	2 (3)	4 (5)	0 (0)	0 (0)
State prisons	1,224	742	685 (92)	9 (1.2)	42 (6)	4 (0.5)	2 (0.3)
1st trimester*	—	—	—	8 (89)	31 (78)	—	2 (100)
2nd trimester*	—	—	—	1 (11)	9 (23)	—	—
Jails	1,622	224	144 (64)	33 (15)	41 (18)	2 (0.9)	4 (1.8)
1st trimester*	—	—	—	18 (55)	35 (85)	—	4 (100)
2nd trimester*	—	—	—	15 (46)	6 (15)	—	—

Data are n (%) unless otherwise specified.
* Proportions reported are for the overall outcome of miscarriage or abortion.

main reasons: the woman requesting the abortion changed her mind; the abortion happened in the subsequent month after the request; and the woman was released from custody before the abortion appointment.

DISCUSSION

Incarcerated individuals have a constitutional right to access abortion.[3] Most prisons and jails in our study had policies that allowed abortion, though some policies required individuals to pay for this care, and some sites expressly did not permit abortion. Our findings show that, although there are abortions occurring in carceral settings, abortion is relatively uncommon in U.S. prisons over a 1-year period.

The lack of written abortion policies at some study sites raises concerns about consistency and accountability. Without access formally documented in policy protocols, people needing abortions are subject to the discretion of carceral administrators and staff. The health care services that an individual state prison or jail chooses to provide access to are not subject to any system of mandatory oversight that would ensure that a certain standard set of services are provided[7]; this lack of national governance or accountability system is what enables some facilities to permit abortion and others not to. Most of the state prison abortions were in abortion-nonhostile states, though most study sites were in hostile states. All but one of the state prison abortions occurred at sites that paid for abortions. Although it is difficult to make conclusions from nine abortions, it is possible that the state abortion environment influenced access for incarcerated individuals, and that self-pay requirements may preclude abortion. Notably, regardless of abortion policies, all sites provided access to prenatal care and hospital births. The lack of and inconsistent written policies demonstrates the need to implement standardized protocols for offering pregnancy testing at intake to all people with the capacity to become pregnant and providing access to abortion and continuing pregnancy care, as recommended by the American College of Obstetricians and Gynecologists and the National Commission on Correctional Health Care.[21–23] The abortion ratio of 1.4% in study prisons was 13 times lower than the U.S. ratio of 18%.[17] It is possible that the abortion ratio in prisons was low because people arrived at prison at later gestations and were too late in the pregnancy for abortion. However, there were 31 first-trimester miscarriages in these settings (in addition to eight abortions), indicating that women do indeed arrive at prison early in pregnancy; moreover, first-trimester miscarriages were nearly four times more common than first-trimester abortion. Both abortions and miscarriages were more common at prisons that tested for pregnancy at intake. This practice may allow for earlier detection of pregnancies resulting in miscarriages that might otherwise not have been identified, as well as the ability for women who were known to be pregnant and needed an abortion to access this care.

This temporal difference of people coming to jail before prison may partially account for the higher abortion ratio in jails (18%), as people were likely earlier in pregnancy on arrival. However, we cannot over-interpret this finding. Most of the six jails in this study were in large urban areas in close proximity to abortion caregivers and, especially for the jails that allowed abortion, in nonhostile abortion states. Nearly half of the abortions in jails were in the second

trimester, and this, too, may reflect their proximity to second-trimester abortion providers as well as being in states that were not hostile to abortion.

Another practical barrier to abortion access for incarcerated people may include lack of geographic proximity to an abortion caregiver. The majority of study state prisons were located more than 10 miles from an abortion caregiver, and three were more than 50 miles from one. This likely reflects that prisons are commonly located, often intentionally, in rural areas.[24] Distance to an abortion caregiver presents challenges for many nonincarcerated U.S. individuals,[25] but this barrier is likely magnified for people in prison who rely on transportation availability from the prison.

We cannot assess from our study how many women actually needed abortions, and site reports of the number of requested abortions may undercount. However, the fact that the abortion ratio at the four study jails that allowed abortions was 33%—higher than that of the general U.S. population (18%)—suggests that pregnant incarcerated individuals, at least those entering jails, may actually have an increased need for abortion access.

Incarcerated pregnant individuals who cannot access needed abortions will have to continue unintended pregnancies in custody. Their pregnancies are subject to variable and often inadequate prenatal care in carceral facilities.[26,27] For those who give birth in custody, they will most likely do so without birth companion support, may be shackled in labor, and, in most cases, will be separated from their newborns when they return to prison or jail after childbirth.[27,28] These conditions of pregnancy and birth behind bars have traumatic and punitive dimensions.[16] The potential for coercion in incarcerated settings should also prompt us to ensure that additional safeguards are in place to avoid pressuring incarcerated pregnant individuals into having abortions, even as we work to expand access for them. Along this continuum of denigrating incarcerated people's reproductive autonomy, there are documented cases of forced sterilization of people in custody.[29,30] All of these reproductive care practices occur in a carceral system marked by institutionalized racism that disproportionately imprisons Black women.[31]

One study limitation is that we did not have the resources to collect data from all 50 states, and we cannot assume study findings are representative of abortion polices and abortion incidence of state prisons systems across the United States. Second, we could not determine gestational age at admission, which would have helped assess how many would have been eligible to request an abortion. Relatedly, our small sample of jails are not representative of the diversity of U.S. jails, including with respect to abortion access.

Nonetheless, this study contributes to the literature on abortion access in the United States, documenting abortion incidence and policies in a sample of prisons and jails that incarcerate tens of thousands of women. Our data show that, although some incarcerated individuals have abortions, many carceral institutions have policies that do not allow for this option. Efforts to ensure equity in abortion access must consider the unique circumstances of incarcerated people.

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