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Human Rights Granted to Children of Incarcerated Parents

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Human Rights of Children Born to Incarcerated Parents



INTRODUCTION

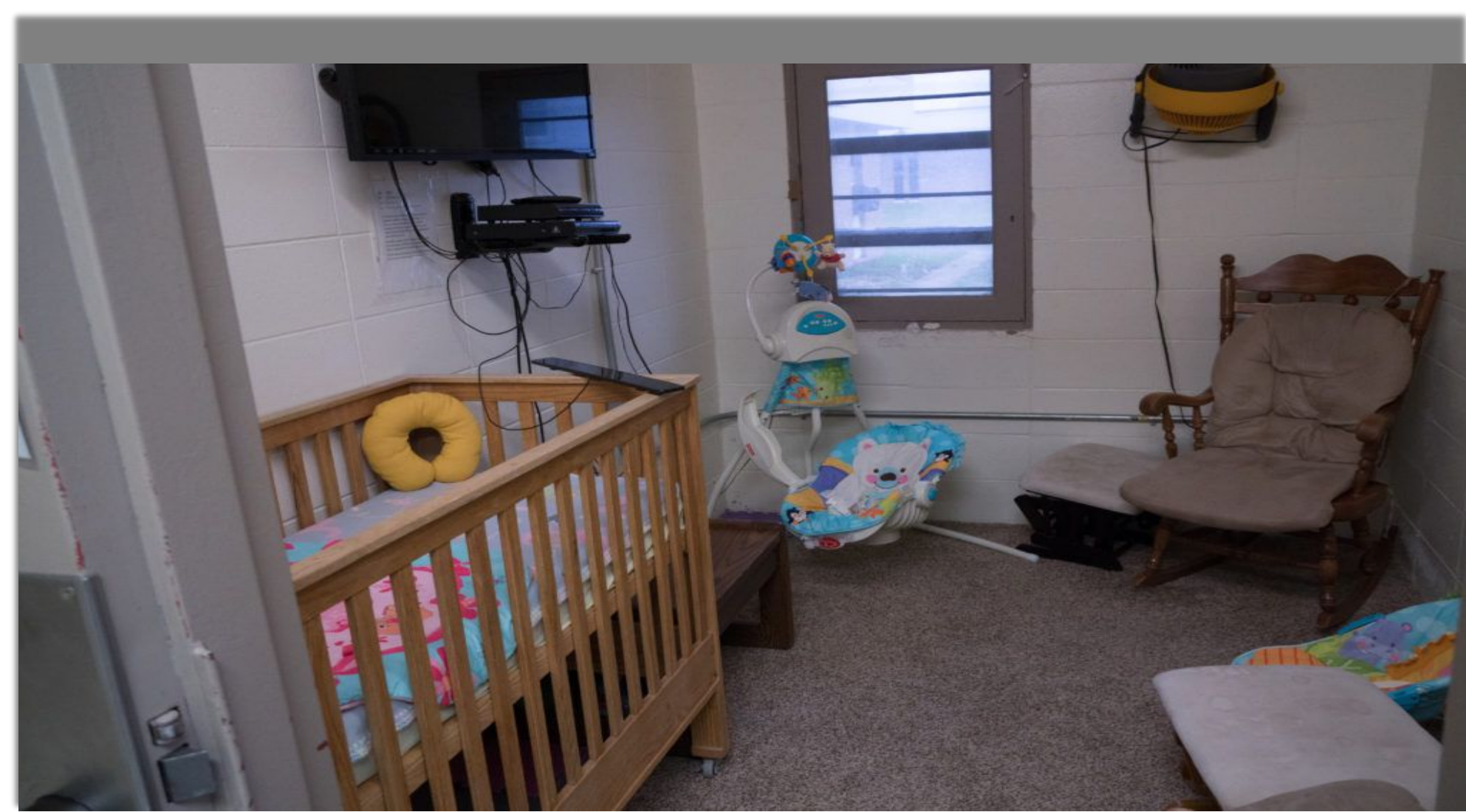
"62% of women incarcerated in state prison and 56% of women incarcerated in federal prison report being a parent"¹

- As the fastest growing incarcerated population in the United States, women face specific challenges, specifically regarding pregnancy and early motherhood.
- Once incarcerated women give birth, the rights granted to their children are less clear.
- **How can the human rights of children born to incarcerated parents be granted while giving mothers and their children the opportunity to form a relationship, without raising children as prisoners?**

NURSERY BASED INCARCERATION PROGRAMS

"A child so born may be returned with its mother to the correctional institution in which the mother is confined..."²

- Only 8 US states provide nursery based programs as an option
- Positive aspects to these programs –
 - The opportunity for incarcerated women to live with infant for up to a year (slightly different depending on location)
 - Many facilities offer parenting classes
 - Higher rates of success in breastfeeding
 - The opportunity to build a proper psychological attachment



Indiana jail nursery cell

Thompson, Megan, and Mori Rothman. "In One Indiana Prison, a Program Allows Incarcerated Moms to Raise Their Newborns." PBS, Public Broadcasting Service, May 12, 2018. <https://www.pbs.org/newshour/show/in-one-indiana-prison-a-program-allows-incarcerated-moms-to-raise-their-newborns>.

INTERNATIONAL LAW

Bill of Rights for Children of Incarcerated Parents:

1. To be kept safe and informed at the time of my parent's arrest;
2. To be heard when decisions are made about me;
3. To be considered when decisions are made about my parent;
4. To be well-cared for in my parent's absence;
5. To speak with, see and touch my parent;
6. To support as I face my parent's incarceration;
7. Not to be judged, blamed or labeled because my parent is incarcerated;
8. To a lifelong relationship with my parent"³

LEGAL FRAMEWORK

- **International Law** - International law, specifically CEDAW, the Mandela Principles and the Bill of Rights for Children of Incarcerated Parents all emphasize the importance of **prioritizing the child and distinguishing the child from the crime of their parents.**
- **United States Law** - Eight US states allow the option for prison nursery programs, but most often, babies are separated from their mothers after 72 hours.
 - Incarcerated parents retain custody of their children, excluding extenuating circumstances where the state becomes responsible.
 - When children reside with their parent in jail, appropriate measures are taken to ensure children are not treated as prisoners.

METHODOLOGY

- Analysis of international law, United States Federal law and specific state law on issues regarding incarcerated pregnant women, incarcerated mothers and children of incarcerated parents.
- Exploration of nursery based incarceration programs in comparison to separation following birth during the period of incarceration.

LIMITATIONS

- Since the rise of incarcerated mothers is still relatively recent, there is a gap in research on this topic in general, making it hard to find sufficient data on results of different practices for both the mothers and their children.
- On a legal level, there is a lack of both federal and state law on this specific topic.

WHY THIS MATTERS

- Without sufficient federal regulation on issues regarding incarcerated pregnant women and newborn mothers, women and their children's basic rights which protect their physical and mental wellbeing are often violated.
- As the numbers of incarcerated mothers continues to rise, more states should open prison nurseries to provide an alternative to separation.
- Decisions on pretrial detention, location of the sentencing and the waiting period should all be made with the child's best interests in mind.

WORKS CITED

Scan here for the full list of references

