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Jennifer Warner

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# Infants in Orange: An International Model-Based Approach to Prison Nurseries

*Jennifer Warner\**

## I. INTRODUCTION

The topic of incarcerated mothers hit popular media when *Orange is the New Black* was released as a new, controversial Netflix series. In the middle of the first season, supporting character Maria Ruiz goes into labor while incarcerated, is sent to a hospital for the birth, and returns with empty arms to receive much sympathy from her fellow inmates.<sup>1</sup> *Orange is the New Black* did not explicitly critique the prison policy, but it seems evident from Maria Ruiz's outward depression and the other women's conduct that both viewers and incarcerated women alike view this as a painful process.<sup>2</sup> This scene was not just for our entertainment—it is a reality for over one thousand female inmates in the United States annually.<sup>3</sup> Specifically, 4.1 percent of state prison inmates and 2.9 percent of federal prison inmates are pregnant at the time of admission.<sup>4</sup> Commonly, “women in the U.S. who have babies while in prison are separated from them within a few days.”<sup>5</sup>

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\*Executive Editor, 2014-2015; J.D. Candidate 2015, University of California, Hastings College of the Law; B.S., Political Science, Santa Clara University, 2012. I would like to thank Professor Hadar Aviram for her guidance through the writing process and inspiring me to research prison nurseries from an international perspective. Special thanks to my parents, family, and friends for their love and support.

1. *Orange Is the New Black: Episode 8, Moscow Mule* (Netflix, July 11, 2013). *Orange is the New Black* is an American comedy-drama series, which revolves around Piper Chapman, an upper-middle class woman who was sent to prison ten years after smuggling drugs. *Id.* Once in prison, Piper reunites with her former girlfriend and experiences the realities of being an incarcerated woman. *Id.*

2. Beatrice Codianni, *Former Prisoner: “Orange Is The New Black” Is Not Funny*, TRUTHOUT (Sept. 3, 2014, 9:31 AM), <http://www.truth-out.org/opinion/item/25957-former-inmate-orange-is-the-new-black-is-not-funny>. Although Codianni's article stresses that “‘Orange is the New Black’ is painfully far from the truth,” she also points out that the writers forgot to include the “bit of truth” associated with losing their children “because of our nation's failed war on drugs.” *Id.*

3. In 1998, 1,400 female inmates gave birth while incarcerated. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO/GGD-00-02, WOMEN IN PRISON: ISSUES AND CHALLENGES CONFRONTING U.S. CORRECTIONAL SYSTEMS 58 (1999), available at <http://www.gao.gov/archive/2000/gg00022.pdf> [hereinafter GAO REPORT].

4. *Medical Problems of Prisoners*, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/content/pub/html/mpp/tables/mppt10.cfm> (last visited Oct. 8, 2014).

5. Joseph R. Carlson Jr., *Prison Nurseries: A Pathway to Crime-Free Futures*, 34 CORRECTIONS COMPENDIUM 1, 17 (2009), available at <http://www.castonline.ilstu.edu/>

Although Maria Ruiz's experience is very common in the United States,<sup>6</sup> a few American states<sup>7</sup> and most foreign countries operate prison nurseries for pregnant inmates.<sup>8</sup>

Prison nurseries allow an inmate mother to parent her newborn child within a prison or jail for a certain period of time. In most states within the United States, prison nurseries are not offered at all.<sup>9</sup> In other countries, mothers can keep their newborns with them until they turn two years old.<sup>10</sup> Outside of the United States, only a few countries lack prison nurseries<sup>11</sup> and most have prison nurseries that allow mothers to keep their newborns for an extended period of time.<sup>12</sup> Generally, all incarcerated women who wish to participate in a prison nursery program in the United States must have committed a non-violent crime and have no history of child abuse or neglect.<sup>13</sup> For all of the United States prison nursery programs, a child must have been born while the mother is in custody in order to be considered for participation.<sup>14</sup> Depending on the facility and location of the prison nursery, sometimes the nurseries are on-site in a wing separate from the general population and other times they are completely off-site.<sup>15</sup> In

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krienert/readings/Carlson\_2009.pdf. Sometimes incarcerated mothers are given twenty-four hours with their newborns in the hospital before the mother returns to prison and the newborn is placed with relatives, into foster care, or given up for adoption if the mother remains incarcerated for too long. Jennifer G. Clarke & Rachel E. Simon, *Shackling and Separation: Motherhood in Prison*, 15 VIRTUAL MENTOR 779, 781 (Sept. 2013), available at <http://virtualmentor.ama-assn.org/2013/09/pdf/pfor2-1309.pdf>.

6. WOMEN'S PRISON ASSOCIATION, *MOTHERS, INFANTS AND IMPRISONMENT: A NATIONAL LOOK AT PRISON NURSERIES AND COMMUNITY-BASED ALTERNATIVES 4* (May 2009) [hereinafter WPA REPORT]; see also Carlson, *supra* note 5, at 17. It was estimated that there are 2,000 children born to American prisoners annually and only nine states equipped to handle the idea of prison nurseries. Adam Liptak, *Prisons Often Shackle Inmates in Labor*, N.Y. TIMES, Mar. 2, 2006, <http://www.nytimes.com/2006/03/02/national/02shackles.html?pagewanted=all>.

7. Sarah Diamond, *Prison Nursery Programs: Literature Review and Fact Sheet for CT*, DIAMOND RESEARCH CONSULTING (2012), available at <http://www.cga.ct.gov/2013/JUDdata/Tmy/2013HB-06642-R000401-Sarah%20Diamond%20%20Director%20Diamond%20Research%20Consulting-TMY.PDF>.

8. *Laws on Children Residing with Parents in Prison*, LAW LIBRARY OF CONGRESS, <http://www.loc.gov/law/help/children-residing-with-parents-in-prison/foreign.php> (last visited Sept. 25, 2014).

9. Only ten states allow women to keep their babies, for between 30 days and 24 months. Carlson, *supra* note 5, at 18.

10. Carlson, *supra* note 5, at 17.

11. J. MARK EDDY & JULIE POEHLMANN, *CHILDREN OF INCARCERATED PARENTS: A HANDBOOK FOR RESEARCHERS AND PRACTITIONERS* 162 (2010).

12. *Laws on Children Residing with Parents in Prison*, *supra* note 8.

13. GAO REPORT, *supra* note 3, at 61.

14. WPA REPORT, *supra* note 6, at 9. All United States prison nurseries do not allow children born pre-incarceration from participating in the programs. Although there are other options for incarcerated mothers to spend time with their children born pre-incarceration, which is briefly discussed in Part V, this topic exceeds the scope of this Note.

15. Deborah Jiang Stein, *Babies Behind Bars, Nurseries for Incarcerated Mothers and Their Children*, CHILDREN'S VOICE (July/Aug. 2010), available at <http://www.cwla.org/babies-behind-bars/>.

addition to providing a safe haven for mothers and their newborns, many of these nurseries also offer parenting classes, substance abuse treatment, counseling, life skills training, and general education.<sup>16</sup>

For the locations that have implemented prison nurseries, the goal is that the special kind of bond that a mother establishes with her newborn child during the first few months of life will result in lower recidivism rates.<sup>17</sup> Alternatively, the majority of American states and handful of countries that do not accept the prison nursery model believe that putting a baby behind bars with their criminal mother could be extremely damaging when there are alternatives such as adoption,<sup>18</sup> foster care, or placing the child with extended family. In addition, those against prison nursery programs believe that prisons are for punishment and not for rehabilitation.<sup>19</sup> In the United States, there is no national policy that dictates what happens to newborn children born to incarcerated mothers.<sup>20</sup>

This Note discusses three different prison nursery models, or lack thereof, and the routes that other countries have chosen to pursue. Part II discusses the model according to which children are separated from their mothers immediately at birth because prison nurseries are unavailable. Specifically, this model concentrates on the majority of United States prisons and outlines the history of American prison nurseries. Part III discusses the model according to which prison nurseries allow incarcerated mothers and their children to remain together for up to eighteen months. This model concentrates on specific states within the United States and the United Kingdom. Part IV discusses the model according to which prison nurseries allow incarcerated mothers and their children to remain together for over eighteen months. This model concentrates on Germany, counties throughout Latin America, Kenya, and Canada, which have age limits ranging from three to twelve years old. Part V highlights the major issues that surface throughout all of the prison nursery models and will compare and contrast the different countries' viewpoints. Lastly, Part VI discusses future recommendations for the United States prison system by examining the efficacy of these three models and their international use.

## II. NO PRISON NURSERIES: COMPLETE SEPARATION OF INCARCERATED MOTHER AND CHILD

This section discusses jurisdictions that lack prison nurseries, which consequently forces incarcerated mothers and their children to be separated at birth. Incarcerated mothers must decide between putting their child up

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16. GAO REPORT, *supra* note 3, at 61.

17. Carlson, *supra* note 5, at 17–18.

18. See James G. Dwyer, *Jailing Black Babies*, UTAH L. REV. (forthcoming 2014), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2231562](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231562) (arguing against prison nurseries on the basis of child welfare).

19. Carlson, *supra* note 5, at 17.

20. WPA REPORT, *supra* note 6, at 4.

for adoption, putting them into the foster care system, or placing them with family members. Specifically, this section focuses on the United States, where a majority of the states do not offer prison nurseries for their sizeable population of female inmates that are pregnant at the time of sentencing.

As of 2010, only nine states have prison nurseries (New York, Nebraska, South Dakota, Ohio, Washington, Illinois, Indiana, California, and West Virginia); as a result, the practice of separating a mother from her newborn child is extremely common.<sup>21</sup> Until the 1950s, prison nurseries were commonplace at most facilities across the United States, but were slowly closed down due to dwindling budgets, low female inmate populations, and cheaper alternatives.<sup>22</sup> A handful of nurseries have reopened within the past twenty years, with the exception of Bedford Hills Correctional Facility for Women, which has remained open since 1901.<sup>23</sup> The reopening of these prison nurseries across the United States is attributed to the shocking female inmate population increase that began in the 1990s.<sup>24</sup> Despite the sharp increase in the female prison population, the United States remains one of only four countries that commonly separate female inmates from their newborn children.<sup>25</sup>

Within the United States, the number of female inmates increased by 587 percent between 1980 and 2011 with a rise from about 15,000 inmates to 111,000.<sup>26</sup> In the most recent survey by the Bureau of Justice Statistics from 2012, there were 108,866 female inmates nationwide.<sup>27</sup> The sharp increase was likely a result of harsher drug laws, mandatory minimum sentences, and repeat offender statutes.<sup>28</sup> Since 2008, which marked the highest number of incarcerated women at 114,612, the female prison population has slowly decreased each year.<sup>29</sup>

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21. Diamond, *supra* note 7.

22. WPA REPORT, *supra* note 6, at 8.

23. *Id.* at 5.

24. THE SENTENCING PROJECT, INCARCERATED WOMEN FACTSHEET (2012), [http://www.sentencingproject.org/doc/publications/cc\\_Incarcerated\\_Women\\_Factsheet\\_Dec\\_2012final.pdf](http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Dec_2012final.pdf); Allison Ford, *Bonding Behind Bars: Do Prison Nurseries Help or Hinder Parenting?*, DIVINE CAROLINE, [www.divinecaroline.com/life-etc/culture-causes/bonding-behind-bars-do-prison-nurseries-help-or-hinder-parenting](http://www.divinecaroline.com/life-etc/culture-causes/bonding-behind-bars-do-prison-nurseries-help-or-hinder-parenting) (last visited Sept. 19, 2014).

25. EDDY & POEHLMANN, *supra* note 11, at 162. Other countries that commonly separate incarcerated women from their newborn children are the Bahamas, Liberia, and Suriname. *Id.*

26. *Incarcerated Women*, *supra* note 24.

27. E. ANN CARSON & DANIELA GOLINELLI, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2012 – ADVANCE COUNTS 2 (2013), <http://www.bjs.gov/content/pub/pdf/p12ac.pdf>.

28. MYRNA RAEDER, U.S. DEP'T OF JUSTICE, 027701, PREGNANCY- AND CHILD-RELATED LEGAL AND POLICY ISSUES CONCERNING JUSTICE-INVOLVED WOMEN 33 (2013). Women are increasingly subject to "punitive law enforcement and sentencing practices, despite the fact that women are less likely than men to play a central role in the drug trade." *Women in the Criminal Justice System*, THE SENTENCING PROJECT 4 (May 2007), [http://www.sentencingproject.org/doc/publications/womenincj\\_total.pdf](http://www.sentencingproject.org/doc/publications/womenincj_total.pdf).

29. CARSON & GOLINELLI, *supra* note 27.

In addition, the types of offenses that females commit differ greatly from their male counterparts. Women are much more likely to be in prison for drug and property offenses, while men are more likely to be incarcerated for violent crimes. For example, the most recent survey measured 27.8 percent of females are incarcerated for property offenses and 25.1 percent are incarcerated for drug offenses compared to 17.7 percent of males incarcerated for property offenses and 16.2 percent for drug offenses.<sup>30</sup> This is important when considering that, as previously noted, nursery programs for incarcerated mothers are restricted by type of offense. Based on these statistics, nearly half of incarcerated women meet the mandate of being nonviolent offenders and would therefore initially qualify for prison nursery participation.

Aside from the sheer number of incarcerated women, it is also important to discuss the high percentage of these women who are mothers. Although the female prison population may not be as great or vast as the male prison population, that does not mean that prisons can ignore the natural necessities that arise when incarcerated women are mothers. Natural necessities, especially for mothers in prison, include adequate nutrition and exercise, better cleanliness and hygiene standards throughout facilities, and amplified mental health services.<sup>31</sup> At least seventy percent of incarcerated women have at least one child under eighteen, and most have two or three children.<sup>32</sup> In addition, reports suggest that about ten percent of female inmates are pregnant on any given day.<sup>33</sup> Further, “[i]t is not uncommon for women in prison to discover that they are both pregnant and HIV infected.”<sup>34</sup>

Despite the high number of women incarcerated in the United States, the majority of states lack prison nurseries; as a result, the majority of female inmates are separated immediately from their newborn.<sup>35</sup> New mothers that give birth while incarcerated have few choices if a prison nursery is unavailable or if they are unqualified to participate: put the newborn up for adoption, put the newborn into foster care, or give their newborn to relatives until they are released.<sup>36</sup> In choosing any of the aforementioned options, the mother faces a high risk of terminating her parental rights, which is why the establishment of prison nurseries marks

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30. CARSON & GOLINELLI, *supra* note 27.

31. Robert Kravitz, *Women in Prisons*, CORRECTIONS.COM (April 5, 2010), <http://www.corrections.com/news/article/23873-women-in-prisons>.

32. RUSS IMMARIGEON, *WOMEN AND GIRLS IN THE CRIMINAL JUSTICE SYSTEM: POLICY ISSUES AND PRACTICE STRATEGIES* 19-2 (2006).

33. *Id.* at 19-3.

34. Kravitz, *supra* note 31.

35. Carlson, *supra* note 5, at 17. As of 2012, the Sentencing Project estimated that there were 113,605 women incarcerated for that year. *Women in the Justice System*, THE SENTENCING PROJECT, <http://www.sentencingproject.org/template/page.cfm?id=138> (last visited Sept. 19, 2014).

36. Carlson, *supra* note 5, at 17.

such a significant turning point for the rights of women in prison. First, adoption can sometimes require termination of the parental rights of the biological parents, which creates parental rights in the adoptive parents; accordingly, the biological mother would have no parental rights upon release from prison.<sup>37</sup> Second, placing a child into foster care while a woman serves her sentence proves to be an especially tricky and risky route since the creation of the Adoption and Safe Families Act.

The Adoption and Safe Families Act (ASFA) shortened the timeline for termination of parental rights when placed into foster care, which now means that even a short eighteen-month sentence could create a lifetime of separation between a biological mother and her child.<sup>38</sup> A termination proceeding is “mandated if a child spends 15 out of 22 months in foster care unless the child is in the care of a relative, the family has been provided with reunification services, or a compelling reason exists as to why it is not in the best interest of the child to terminate the parental relationship.”<sup>39</sup> Although the exceptions may provide some flexibility and hope for extraordinary cases, most inmates do not qualify. Essentially,

[t]he question whether these children will be reunited successfully with their mothers, be adopted, or grow up in the system has always depended as a practical matter on a number of factors, including the length of the mother’s sentence, the nature of her offense, her participation and progress in rehabilitative programming, the age of the child, the quality and strength of the mother’s relationship with the child, and the attitudes of the case worker and foster parent toward the mother.<sup>40</sup>

Lastly, even for those mothers that have a family member who will care for their newborn, where termination of parental rights is not an initial concern, family members sometimes decide they are unable to take care of the child and the child still ends up in foster care subject to ASFA. Placing a child with family while they are incarcerated proves to be an especially challenging feat for women because they are typically single mothers and the child’s father is usually absent.<sup>41</sup> About eighty-eight percent of

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37. See generally Pamela Lewis, *Behind the Glass Wall: Barriers that Incarcerated Parents Face Regarding the Care, Custody and Control of their Children*, 19 J. AM. ACAD. MATRIMONIAL LAW. 97 (2004). Specifics of the adoption, or whether it will be an open or closed adoption, can be negotiated between the parties. See *Impact of Adoption on Birth Parents*, CHILD WELFARE INFORMATION GATEWAY 6–7 (Aug. 2013), [https://www.childwelfare.gov/pubs/f\\_impact/f\\_impact.pdf](https://www.childwelfare.gov/pubs/f_impact/f_impact.pdf).

38. Raeder, *supra* note 28, at 33.

39. *Id.*

40. IMMARIGEON, *supra* note 32, at 15-1–2.

41. Gina McGalliard, *Record Numbers of Incarcerated Mothers Bad News for Women, Children, Communities*, TRUTHOUT (Jan. 27, 2012), <http://www.truth-out.org/news/item/5871:record-numbers-of-incarcerated-mothers-bad-news-for-women-children-communities>. The act of placing a child with relatives is not in any way a legal process. Incarcerated mothers typically choose the child’s maternal grandparents, paternal grandparents, or father,

incarcerated fathers have reported that at least one of their children was with the child's mother, while only thirty-seven percent of mothers reported a father as the current caregiver.<sup>42</sup> As the statistics demonstrate, many women cannot rely on their child's father while they are imprisoned, and are left in a very tough spot. "As a result, the children of female inmates are five times more likely to be placed in foster care than the children of male inmates."<sup>43</sup> Even if an incarcerated mother is lucky enough to have loving family take care of her newborn, visitation rights can be restricted depending on the facility visitation regulations, best interests of the child, or conduct violations.<sup>44</sup>

### III. PRISON NURSERIES: CHILDREN ALLOWED FOR UP TO EIGHTEEN MONTHS

This section will discuss countries that have prison nurseries for incarcerated mothers and their children until they reach eighteen months of age. The two major countries that follow this model are the United States and the United Kingdom. The section discussing the United States will review the few states that have prison nurseries and focus on the most developed and established prison nurseries in the country. The section discussing the United Kingdom will review the overall policies in the area and focus on a specific prison nursery in England. Both the United States and United Kingdom have very similar characteristics, but the United Kingdom differs in allowing all incarcerated mothers, not just those who gave birth while imprisoned, to participate in the prison nursery programs.

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and then depend on those relatives to care for their child during the length of their sentence. Samuel C. Baxter & Stacey E. Palm, *Mothers in Prison, Another Crumbling Brick in the Family's Foundation*, THE REAL TRUTH, <http://realtruth.org/articles/080905-003-society.html> (last visited Sept. 19, 2014).

42. Raeder, *supra* note 28, at 34. "Amazingly, children are more likely to be sent to live with their grandfather before their own father!" Baxter & Palm, *supra* note 41. In addition, about sixty-four percent of incarcerated mothers in state prisons lived with their children prior to being sentenced, compared to only forty-four percent of incarcerated men. *Id.*

43. Raeder, *supra* note 28, at 34. "Mothers are more likely than fathers to be their children's primary caretaker and to be single parents, so the mother's incarceration inevitably disrupts the lives of their children..." McGalliard, *supra* note 41. The mothers who end up in prison may not have strong family ties because they may have been already single mothers or have histories of childhood abuse. *Id.* Family ties for women in prison are often weaker than those of their male counterparts, so women are less able to rely on members of their family to care for their children while incarcerated. *Id.* Eleven percent of incarcerated mothers report placing their children into foster care and forty-two percent reported their children were living with their grandmother. *Id.*

44. Raeder, *supra* note 28, at 27.



## A. UNITED STATES

Of the nine states that offer prison nurseries, six allow incarcerated mothers and their newborns to remain together for up to eighteen months.<sup>45</sup> These prison nurseries range in capacity from ten mother and infant pairs at Indiana's Wee Ones Nursery Program to twenty-nine mother and infant pairs at New York's Bedford Hills Correctional Facility.<sup>46</sup> To qualify for prison nursery programs, mothers must have the child while incarcerated, be a non-violent offender without history of child abuse, and have a pristine prison record.<sup>47</sup>

New York's Bedford Hills Correctional Facility Nursery Program allows incarcerated mothers to keep their newborns for up to one year or a maximum of eighteen months if the mother will be paroled by then.<sup>48</sup> All pregnant women incarcerated in New York are sent to this facility, the oldest in the country, and it has served as the model for other states' prison nurseries. In addition to providing the substantial nursery program, Bedford Hills provides "daily parenting classes, daycare, crisis intervention, advocacy, child placement assistance and discharge assistance."<sup>49</sup> While mothers participate in mandated drug counseling or anger management programs, children are sent to a daycare that is staffed by inmates who graduated from a two-year Early Childhood vocational program.<sup>50</sup> Mothers at Bedford Hills live with their newborns in unlocked rooms decorated with colorful posters and donated toys, which give them the freedom to warm bottles, do laundry, and comfort their crying children.<sup>51</sup> The children and their mothers are not behind bars and the housing looks more like a children's nursery or daycare.<sup>52</sup>

A 1997 study by the New York Department of Correctional Services found that nursery participants had a lower recidivism rate compared to nonparticipants.<sup>53</sup> "For the first year after release, 5 percent of program

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45. WPA REPORT, *supra* note 6, at 27–29. Two of the other states allow children to stay for over eighteen months and the other prison nursery in South Dakota allows children to stay for a maximum of thirty days. *Id.*

46. *Id.*

47. *Id.* at 9.

48. *Id.* at 28.

49. *Ministerial, Family and Volunteer Services*, NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, <http://www.doccs.ny.gov/ProgramServices/ministerial.html#fsp> (last visited Sept. 19, 2014).

50. Beth Schwartzapfel, *Lullabies Behind Bars*, MS. MAGAZINE, Fall 2008, available at <http://www.msmagazine.com/Fall2008/LullabiesBehindBars.asp>.

51. *Id.*

52. *Id.*

53. Carlson, *supra* note 5, at 18. Numerous studies have based the lower recidivism rates on the idea that mothers who participate in the prison nursery programs will likely want to continue the bond with their children once they are released. Diamond, *supra* note 7, at 3. The parenting programs place mothers on the right track to maintain a relationship with their children and avoid crimes that could separate them. *Id.* In addition, mental health issues arise when mothers are unable to participate in prison nursery programs, so when mothers

participants were returned compared to 8 percent of all female inmates released. After the second year, the recidivism rate was 7 percent compared with 19 percent, and on the third year it was 13 percent compared with 26 percent.”<sup>54</sup> Aside from the Bedford Hills Facility, New York also offers a prison nursery in their Rikers Island jail, which is the only jail in the nation to offer the program.<sup>55</sup>

Nebraska’s Prison Nursery Program is the second oldest prison nursery currently open and houses fifteen mother and infant pairs for up to eighteen months after birth.<sup>56</sup> The prison nursery is part of a larger parenting program that includes parenting classes, overnight on-grounds child visits, and extended day visits.<sup>57</sup> Pregnant women must meet strict eligibility requirements that usually involve screening each case prior to placement into the nursery.<sup>58</sup> Eligibility requirements include having a tentative release date of no more than eighteen months after birth, no history of violence or child abuse, planning to be the primary caregiver of the child upon release, completing a GED if needed, and even refraining from smoking.<sup>59</sup> Since many women are incarcerated for drug-related crimes, participants are subject to randomized urine testing and are removed if they test positive.<sup>60</sup> During the past ten years, none of the participants have tested positive for drugs.<sup>61</sup> Typically, reasons for removal from the program range from misconduct and fighting, to receiving full-time work.<sup>62</sup> In addition to the prison nursery program, the facility allows children from one to six years old to spend up to five nights per month with mothers in a separate living unit.<sup>63</sup> The prison nursery program resulted in a 33.2 percent decrease in recidivism for program participants compared to pregnant inmate nonparticipants during a ten-year period.<sup>64</sup>

Opened in 1998, South Dakota’s Prison Nursery Program is different from the other nurseries in the United States because it allows an unlimited number of mother and infant pairs to stay together for only up to thirty

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are able to stay with their children and participate in the programs, mothers are better equipped to handle integration back into the community. Diamond, *supra* note 7, at 3. There is also some indirect evidence that these programs may even reduce criminal involvement by the children of incarcerated mothers. *Id.*

54. Carlson, *supra* note 5, at 18.

55. WPA REPORT, *supra* note 6, at 33.

56. *Id.* at 28.

57. *Parenting Program/Prison Nursery*, NATIONAL INSTITUTE OF CORRECTIONS, <http://nicic.gov/WODP/Program/266-parenting-programprison-nursery> (last updated Jan. 5, 2012).

58. *Nebraska Correctional Center for Women*, NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES, <http://www.corrections.state.ne.us/nccw.html> (last visited Sept. 19, 2014); see also WPA REPORT, *supra* note 6, at 28.

59. Carlson, *supra* note 5, at 19–20.

60. *Id.* at 20.

61. *Id.*

62. *Id.*

63. *Parenting Program/Prison Nursery*, *supra* note 57.

64. Carlson, *supra* note 5, at 18.

days.<sup>65</sup> Unlike other prison nurseries, the only requirement to participate in the program is that the mother is non-violent.<sup>66</sup> Regardless of an inmate's total sentence, any pregnant inmate can pay 288 dollars to keep their baby with them for up to thirty days in order to take advantage of the initial bonding period that is so essential to newborns.<sup>67</sup> Although most inmates secure their spot in the program by asking family for the participation fee, many inmates do not have family to help or the funds to participate.<sup>68</sup> If inmates are unable to come up with the money, a local church group assists to make sure inmates can participate.<sup>69</sup> Different from other prison nurseries, mother and infant pairs live in separate rooms within the general population, but infants are still not allowed to be in the presence of other general population inmates.<sup>70</sup> Compared to other states that have no prison nursery program at all, this program is a step in the right direction to give mothers a chance to bond with their newborns, instead of only giving them the usual twenty-four hours before they are separated.

#### B. UNITED KINGDOM

The United Kingdom utilizes prison nurseries for children between nine and eighteen months old, depending on the institution.<sup>71</sup> Prison nurseries in the United Kingdom are referred to as mother and baby units, or MBUs.<sup>72</sup> "Women represent around 5% of the overall prison population in the UK" and, similar to the United States' increase in female prison population, in the UK "between 1995 and 2010 the female prison population increased... 115%."<sup>73</sup> "It is estimated that four out of 10 young women in prison are mothers."<sup>74</sup> In order to account for the rising number of women and mothers in UK prisons, there are eight MBUs across England and approximately 100 babies in prisons with their mothers.<sup>75</sup> Wales, another country in the United Kingdom, offers no female prisons so all of the female inmates are sent to England's prisons.<sup>76</sup> Similar to United States nurseries, incarcerated mothers and their newborns are kept in

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65. WPA REPORT, *supra* note 6, at 29.

66. Carlson, *supra* note 5, at 19.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 20.

71. Oliver Robertson, *Collateral Convicts: Children of Incarcerated Parents*, QUAKER UNITED NATIONS OFFICE 76 (Mar. 2012), [http://www.quno.org/sites/default/files/resources/ENGLISH\\_Collateral%20Convicts\\_Recommendations%20and%20good%20practice.pdf](http://www.quno.org/sites/default/files/resources/ENGLISH_Collateral%20Convicts_Recommendations%20and%20good%20practice.pdf).

72. *The Treatment of Mothers and Babies in Prison*, PENAL REFORM INTERNATIONAL 1 (Mar. 2010), [http://www.penalreform.org/wp-content/uploads/2013/05/HMP-Eastwood-Par\\_k\\_Mother-and-Baby-Unit-2.pdf](http://www.penalreform.org/wp-content/uploads/2013/05/HMP-Eastwood-Par_k_Mother-and-Baby-Unit-2.pdf).

73. *Statistics*, WOMEN IN PRISON, <http://www.womeninprison.org.uk/statistics.php> (last modified Oct. 2013).

74. *Id.*

75. *The Treatment of Mothers and Babies in Prison*, *supra* note 72, at 2.

76. *Id.*

separate units, but unlike the United States, mothers in the United Kingdom have the option of bringing their children with them whether or not they were born in prison.<sup>77</sup> An MBU admissions board decides if it is best for the child to live in prison with their mother until they reach eighteen months old.<sup>78</sup>

Eastwood Park is a prison located in Gloucestershire, England that has an MBU that holds up to 12 women and 13 babies.<sup>79</sup> This particular MBU allows children to stay with their mothers up until their eighteen-month birthday, although stays can be extended if the mother's release date is close to the child turning 18 months.<sup>80</sup> The MBUs are very similar to the United States' prison nurseries where inmates' rooms are children friendly and usually remain unlocked by staff.<sup>81</sup> Similarly, "mothers have complete parental responsibility over their child."<sup>82</sup> Unlike the United States, "if mothers have to leave the prison for a hospital appointment or to give birth," they are transported without handcuffs in an open car or taxi.<sup>83</sup> MBU mothers drop off their children daily at the nursery so that staff can take the children outside of prison walls and mothers can participate in educational or vocational activities.<sup>84</sup> In addition, fathers are part of the plan at this England MBU, where they are able to participate in ante-natal classes carried out in the MBU.<sup>85</sup>

#### IV. PRISON NURSERIES: CHILDREN ALLOWED FOR OVER EIGHTEEN MONTHS

This section discusses the majority of the rest of the world that have prison nurseries, which allow children to stay with their mothers well over the age of eighteen months. First, I discuss Germany's unique Preungesheim prison, which has been the model for prison nurseries worldwide. Next, I review a few different prison nurseries in Mexico and across South America, including Bolivia and Colombia. Then I discuss Kenya's prison nurseries and the problems that many incarcerated mothers face while serving their time with their children. Lastly, I examine Canada's prison nursery programs.

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77. *Prison Life*, GOV.UK, <https://www.gov.uk/life-in-prison/pregnancy-and-childcare-in-prison> (last updated Nov. 8, 2013).

78. *Id.*

79. *The Treatment of Mothers and Babies in Prison*, *supra* note 72, at 1.

80. *Id.* at 2.

81. *Id.*

82. *Id.* at 3.

83. *Id.* at 2.

84. *Id.* at 3.

85. *Id.*

## A. GERMANY

Similar to the United Kingdom, about five percent of people incarcerated in Germany are women.<sup>86</sup> Although the female incarceration rate is consistent with many other European countries, Germany's prison nurseries are much more liberal and expansive. Whereas the United States' prison population ranges from 147 to 895 per 100,000 citizens depending on the state, Germany has only about 79 people in prison per 100,000 citizens.<sup>87</sup> Even though Germany imprisons fewer citizens than the United States, Germany still has more options available for a very small subset of their prison population—women.

Preungesheim prison in Germany has been “hailed as the most comprehensive program in the world for imprisoned women and their children.”<sup>88</sup> Unlike most of the prison nurseries in developed countries, this nursery houses women in both high- and low-security facilities, and “recognizes motherhood as a bona fide job.”<sup>89</sup> Women classified as low-security are allowed to keep their children with them until they are five years old; women classified as high-security are permitted to keep their children until age three.<sup>90</sup> Mothers that are considered a low-security risk live in an open mother-child house, which faces the surrounding neighborhood of Frankfurt, rather than the prison.<sup>91</sup> Simple details like facing the nursery towards a residential neighborhood provide the children with a more traditional childhood experience and make it much easier to reintegrate into the community. To make reintegration even simpler when the time comes, mothers living in the open house are able to either work in the house, or go into the city for work while specially trained staff watches over their children.<sup>92</sup> Older children attend the local preschool and all of the children go on local field trips while their mothers work or take classes.<sup>93</sup>

A unique German policy allows incarcerated mothers with older, school-age children to travel to their child's home daily to work as a mother.<sup>94</sup> Even after incarcerated mothers and their children become ineligible to participate in the prison nursery programs, Germany has created a way for mothers to bond with their children in a completely safe and natural environment. Because Germany views housework as valuable

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86. *World Prison Populations*, BBC NEWS, <http://news.bbc.co.uk/2/shared/spl/hi/uk/06/prisons/html/nn1page1.stm> (last visited Sept. 19, 2014).

87. RAM SUBRAMANIAN & ALISON SHAMES, VERA INST. OF JUST., SENTENCING AND PRISON PRACTICES IN GERMANY AND THE NETHERLANDS: IMPLICATIONS FOR THE UNITED STATES 5 (Oct. 2013), <http://www.vera.org/pubs/sentencing-prison-germany-netherlands>.

88. EDDY & POEHLMANN, *supra* note 11, at 163.

89. Kelsey Kauffman, *Mothers in Prison*, 63 CORRECTIONS TODAY 62, 64 (Feb. 2001).

90. *Id.*

91. *Id.*; see also EDDY & POEHLMANN, *supra* note 11, at 163.

92. Kauffman, *supra* note 89, at 64.

93. *Id.*

94. *Id.*

labor, incarcerated mothers are able to leave the prison walls via public transportation in time to wake their children for school and take care of daily household demands.<sup>95</sup> After cooking dinner and helping with homework, mothers leave their children with another adult family member or caretaker and return to the prison.<sup>96</sup> Although this visitation and work practice may seem outrageous for many countries, it works in Germany without criticism.

#### B. LATIN AMERICA

In many prisons across Latin America, incarcerated mothers are allowed to bring their children with them for extended periods of time.<sup>97</sup> One interesting example is Bolivia where both mothers and fathers are permitted to bring their children with them to prison. The Bolivian Code of Criminal Procedure allows children six years of age or younger to live with their incarcerated parent.<sup>98</sup> It is estimated that there are 2,000 children living with their parents in Bolivian prisons.<sup>99</sup> Bolivia's San Pedro Prison stands in stark contrast to any other prison nursery because it houses 2,000 male inmates and 200 children without any mothers allowed.<sup>100</sup> This prison differs from others around the world because it is essentially a "jail town" where male inmates must pay to stay in a cell with their children.<sup>101</sup> Fathers and their children are not given any basic supplies and must either buy clothing, soap, and shampoo or ask their children to bring it into the prison.<sup>102</sup> Although Bolivia may have the goal of bonding, similar to other countries, the lack of prison standards and organized government have instead resulted in disastrous consequences such as child rape and death by accidental fires.<sup>103</sup>

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95. Kauffman, *supra* note 89, at 64. Once German women have their first child, only about fourteen percent resume their full-time careers. Katrin Bennhold, *Women Nudged Out of German Workforce*, N.Y. TIMES, June 28, 2011, <http://www.nytimes.com/2011/06/29/world/europe/29iht-FFgermany29.html>. Likewise, only six percent of the time mothers resume their full-time job when they have two children. *Id.* These statistics show that Germany may value women in the household, but perhaps it also shows a resistance for social change to allow women into the predominantly male powered workforce. Further, Germany's acceptance of motherhood and housework as valuable labor may be Germany's way of intentionally nudging women out of the workforce.

96. Kauffman, *supra* note 89, at 64.

97. Anastasia Moloney, *Colombia: Mothers in Prison Share Jail with Their Babies*, WOMEN NEWS NETWORK, Oct. 21, 2011, <http://womennewsnetwork.net/2011/10/21/mothers-prison-share-jail-babies/>.

98. *Laws on Children Residing with Parents in Prison*, *supra* note 8.

99. *Id.*

100. Justin Brooks, *Children Living in Jails in Bolivia*, THE WRONGFUL CONVICTIONS BLOG (Oct. 23, 2013), <http://wrongfulconvictionsblog.org/2013/10/23/children-living-in-jails-in-bolivia/>.

101. *Id.*

102. *Id.*

103. *Id.*

Colombia presents another interesting situation. Good Shepherd prison, the largest women's jail in the country, houses thirty-five babies and toddlers.<sup>104</sup> Here, mothers drop off their children at the nursery in the morning and pick them up later in the afternoon after a full day of playtime and socialization.<sup>105</sup> Mothers have three options: either to keep their children behind bars with them until they reach three years old; or they can elect to send their child to foster care or send their child to live with a family member.<sup>106</sup> Although the prison provides the basic necessities, mothers complain that "it's a constant struggle to keep small children warm and healthy in the damp cells."<sup>107</sup> Another mother complained about waiting "ages" for a doctor to come tend to her sick child.<sup>108</sup> To make the situation worse, mothers sometimes end up pregnant after sentencing as a consequence of conjugal visits, and harbor a misplaced belief that time might go by faster if they have a baby to keep them company.<sup>109</sup> Despite the questionable conditions of the prisons and nurseries, most Colombian mothers that utilize the prison nurseries are happy that their children are with them.<sup>110</sup> As of July 2013, "there were 237 children living with their mothers in Columbia's prisons."<sup>111</sup>

In Mexico, there is great debate over the imprisonment of mothers with their children.<sup>112</sup> There are approximately two thousand children under the age of six living with their mothers in prison.<sup>113</sup> Santa Martha Acatitla prison in Mexico City houses 1,680 incarcerated mothers convicted of various types of crimes ranging from drug dealing to homicide.<sup>114</sup> Additionally, Santa Martha Acatitla houses fifty-three children under the age of six.<sup>115</sup> Unlike any other country in the world, Mexico has made it mandatory for all children born in prison to stay with their incarcerated mother until they are six years old.<sup>116</sup> Like the many other countries that have implemented prison nurseries, the Mexican government believes that it is better for children to be with their mothers than left behind to stay with foster parents or relatives.<sup>117</sup> Since there are older, school-age children living in the prison as a consequence of its mandatory policy, the Mexican

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104. Moloney, *supra* note 97.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* ("Some think with a baby the time will go faster, they can fill the emptiness by having a baby and they will be happier. But they underestimate how hard it is.")

110. *Id.*

111. *Laws on Children Residing with Parents in Prison, supra* note 8.

112. James C. McKinley Jr., *In Prison, Toddlers Serve Time With Mom*, N.Y. TIMES, Dec. 31, 2007, <http://www.nytimes.com/2007/12/31/world/americas/31mexico.html>.

113. *Laws on Children Residing with Parents in Prison, supra* note 8.

114. McKinley, *supra* note 112.

115. *Id.*

116. *Id.*; WPA REPORT, *supra* note 6, at 36.

117. McKinley, *supra* note 112.

Government has even founded a school and hired three teachers to work with the children.<sup>118</sup> Similar to other South American countries, children at Santa Martha Acatitla are not bound to a special prison nursery wing and instead socialize with the general population.<sup>119</sup> The warden at Santa Martha Acatitla prison believes that the children are safe when walking through the prison yard because the inmates' collective maternal instinct creates a protective "invisible shield."<sup>120</sup> She also believes that the children have a calming effect on the inmates.<sup>121</sup>

Similar to other mothers participating in prison nurseries worldwide, mothers at Santa Martha Acatitla prison fear the day they have to be separated from their child.<sup>122</sup> After six years of bonding under the mandatory policy, the Mexican government can remove children from their incarcerated mother and place them elsewhere until the mother's sentence is completed.<sup>123</sup> One woman, Cecilia Nava Lopez, is serving a twenty-seven and a half year sentence.<sup>124</sup> She has only completed two years of her sentence, and the impending separation from her child looms in the near future.<sup>125</sup> Ms. Lopez was convicted of murdering her stepchild and was pregnant with her fourth child when she was sentenced.<sup>126</sup> The father of her children testified against her, which ultimately led to her conviction.<sup>127</sup> An incarcerated mother such as Ms. Lopez may be particularly adverse to sending her child to live with the father, but in most countries like the United States, a mother convicted of killing a child would never be allowed into a prison nursery or around children at all. Although Mexico's mandatory policy might be convenient for some, others cannot even afford to feed their children inside prison and would rather send them to live with relatives.<sup>128</sup> Another mother, Diana Merlos Espericueta, has been awaiting trial for three years with an ominous seventy-year sentence.<sup>129</sup> She says she contemplates committing suicide if she has to give up her child and spend her entire life behind bars.<sup>130</sup>

### C. KENYA

Kenya currently houses 121 inmates in prison per 100,000 citizens, and 5.3 percent of them are female.<sup>131</sup> The female prison population is quickly

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118. McKinley, *supra* note 112.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Kenya, INTERNATIONAL CENTRE FOR PRISON STUDIES, <http://www.prisonstudies.org>



increasing, “with recent figures showing the upsurge at 42%, nearly twice as fast as their male counterparts.”<sup>132</sup> In addition, Kenya’s prisons are 214 percent over their official occupancy level, which leaves many prisons dirty and uncomfortable.<sup>133</sup> Lang’ata, Kenya’s largest women’s prison, used to be a facility where “prisoners dressed in rags, ate food infested with worms, shared lice-ridden mats and were crowded into dark, dirty wards.”<sup>134</sup> Today, Lang’ata is different from the other prisons that spread across Kenya.<sup>135</sup> Lang’ata boasts rehabilitation and parenting programs, plus use clean sheets and a prison nursery.<sup>136</sup> Despite the horrid prison conditions that continue to persist in Kenya, incarcerated mothers at Lang’ata are allowed to keep their children with them in prison until they reach four years old.<sup>137</sup>

About 700 to 1,000 women in Kenya are housed at maximum-security Lang’ata Women’s Prison, which is about six miles from Kenya’s capital.<sup>138</sup> In Lang’ata, “there are more than 50 children under the age of four living inside the prison with their mothers, who are serving sentences for crimes ranging from homicide, theft, kidnapping, to drug trafficking.”<sup>139</sup> Mothers with children under four years old are allowed one of two options: to bring their small children to prison with them, or to deliver while incarcerated and keep the child with them until the child turns four years old.<sup>140</sup> Although the model of the Lang’ata prison nursery may seem similar to others, the stories that the female inmates have lived to tell are not so similar. One mother, Sarah, who was convicted of murdering her sister describes the fear she had that her child might die from pneumonia, “I am afraid my child might die. Often times she is at the brink of death and it’s only by God’s grace that she is still alive.”<sup>141</sup> Sarah admits to the tough conditions of the prison, but despite her long sixteen-year sentence, she would rather see her baby die inside the prison than outside in the hands of hostile relatives.<sup>142</sup> Another woman, Mary, recalls

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/country/Kenya (last visited Sept. 19, 2014).

132. Joyce J. Wangui, *Kenya: Life of Children in Prison*, VOICE OF AFRICA RADIO, <http://www.voiceofafricaradio.com/news/986-kenya-life-of-children-in-prison.html> (last visited Sept. 19, 2014); see also Zoe Alsop, *Behind Closed Doors*, ARISE, <http://www.ariselive.com/articles/behind-closed-doors/87566/> (last visited Sept. 19, 2014).

133. *Kenya*, *supra* note 131; see generally Gitonga Njeru, *Africa: Kenyan Mothers Suffer in Prison with Limited Access to Children*, WOMEN NEWS NETWORK, Jan. 1, 2012, <http://womennewsnetwork.net/?p=13239>.

134. Alsop, *supra* note 132.

135. *Id.*

136. *Id.*

137. Robertson, *supra* note 71, at 75.

138. Wangui, *supra* note 132.

139. *Id.*

140. Jill Craig, *Day Care Center Opens for Kenya’s Female Prisoners*, VOICE OF AMERICA (Jan. 24, 2013), <http://www.voanews.com/content/day-care-center-opens-for-kenyas-female-prisoners/1589985.html>.

141. Wangui, *supra* note 132.

142. *Id.*

during the birth of her second child, that she was almost killed by the midwives because of their rude and negligent behavior.<sup>143</sup> Despite the overcrowded and dirty prison conditions, female inmates in Kenya would rather keep their children with them than subject them to an outside world that is completely out of their control.

Since the opening of a new daycare at Lang'ata in January 2013, conditions have allegedly improved for the incarcerated mothers who live there with their children.<sup>144</sup> Before the opening of this daycare, children were spending "every moment of the day with their incarcerated mothers."<sup>145</sup> Previously, this meant that children were usually left unattended with their mothers in the general population, mixed in with women in maximum-security who are not mothers. Now, the children are able to spend time apart, eat nutritious food, and play amongst themselves, rather than being carried around by their mothers completing prison tasks.<sup>146</sup> During the evening, children are returned to their mothers after a full five to eight hours of playing in the daycare.<sup>147</sup> The founders of this new daycare believe that it is good for both the mother and the child because it gives the mother some breathing room and gives the child a chance at an ordinary daily routine in the real world.<sup>148</sup> On the other hand, founders of the Lang'ata prison nursery worry that this daycare may be too nice, leaving children confused once their mothers complete their sentence and this level of care is no longer available.<sup>149</sup>

#### D. CANADA

Canada's nursery program has both full-time and part-time options for children of low-risk incarcerated mothers.<sup>150</sup> Children may live with their mothers in prison full-time until they turn four years old; or part-time, on weekends and holidays, until they turn twelve years old.<sup>151</sup> Compared to other countries, Canadian children hold a lot of power when it comes to the nursery programs because they "have a right to request an end to their living in prison."<sup>152</sup> Unlike other countries, the wishes of the child are taken into account by the program board prior to being placed in a prison nursery.<sup>153</sup> Canada predominantly prioritizes the best interests of the

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143. Craig, *supra* note 140.

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. OLIVER ROBERTSON, UNITED NATIONS OFFICE, CHILDREN IMPRISONED BY CIRCUMSTANCE 29 (2008), [http://www.operationspaix.net/DATA/DOCUMENT/761~v~Children\\_Imprisoned\\_by\\_Circumstance.pdf](http://www.operationspaix.net/DATA/DOCUMENT/761~v~Children_Imprisoned_by_Circumstance.pdf).

151. *Id.*

152. *Id.* at 22.

153. *Id.* at 8.

children, but also cares deeply about the “emotional well-being of inmates,” which is why Canada is now reestablishing six prison nursery programs across the country.<sup>154</sup> In 2012, there were zero participants in the Canadian prison nursery program for 603 offenders, but it appears that viewpoints are beginning to change as a consequence of the successful United States prison nursery programs.<sup>155</sup> The Canadian prison nursery programs used to provide mothers and children with apartment-like units equipped with kitchens, a park on prison grounds, and even an on-site pediatrician.<sup>156</sup> In order to qualify to participate in a Canadian prison nursery, a prospective mother had to undergo a psychological assessment, though there is no mention of possible disqualifying characteristics as in the United States and United Kingdom.<sup>157</sup>

In December 2013, the British Columbia Supreme Court ruled that “[i]mprisoned mothers have the constitutional right to care for their newborn babies” because of the critical bonding period between a mother and her child.<sup>158</sup> Since the court found no evidence of harm to children at any prison nursery in British Columbia or worldwide, it concluded that discriminating against incarcerated mothers “violates the right to security of the person.”<sup>159</sup> Prior to this landmark decision, there were no such programs available to incarcerated mothers in British Columbia and all were forced to find alternative homes for their infants.<sup>160</sup> The British Columbia Corrections has six months from the Supreme Court’s decision to reenact the prison nursery program that had been cancelled in 2008, in order to give incarcerated mothers the option to care for their infants while imprisoned.<sup>161</sup> It is still unknown whether the British Columbia Corrections reenacted the program.

## V. COMMON THEMES

This section discusses the common themes that run throughout each of the countries and their respective prison nursery models. Some countries have created their prison nursery model based on the importance of the

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154. *Canada: Bringing up Baby While Behind Bars*, CHILD RIGHTS INTERNATIONAL NETWORK (Feb. 15, 2008), <http://crin.org/en/library/news-archive/canada-bringing-baby-while-behind-bars>; *Babies born in jail belong with moms, B.C. court says*, CBC NEWS (Dec. 16, 2013), <http://www.cbc.ca/news/canada/british-columbia/babies-born-in-jail-belong-with-moms-b-c-court-says-1.2466516>.

155. *Canada: Bringing up Baby While Behind Bars*, *supra* note 154; *Laws on Children Residing with Parents in Prison*, *supra* note 8 (“There were three MCP participants among 261 federal female offenders in April 2003, four participants for 460 offenders in April 2007, and zero participants for 603 offenders in April 2012.”).

156. *Canada: Bringing up Baby While Behind Bars*, *supra* note 154.

157. *Id.*

158. *Babies born in jail belong with moms*, *supra* note 154.

159. *Id.*

160. *Id.*

161. *Id.*

mother-child bond, and others have concentrated on the cost of the programs. Many countries have used a combination of themes to create a prison nursery program that works for their government, mothers in prison, and overall citizens' beliefs.

A. THE MOTHER-CHILD BOND, CHILD WELFARE, AND THE RESULTING EFFECTIVENESS

Different countries hold different viewpoints on the initial mother-child bond and its overall importance in society. The majority of the United States and countries like Suriname, Liberia, and the Bahamas are not comfortable with the initial mother-child bonding period occurring behind bars.<sup>162</sup> The age limit that each country imposes on children in prison nursery programs “reflects fears that at some point children will be harmed by their unnatural surroundings.”<sup>163</sup> While infants probably do not recognize that they are living in a prison, school-age children may wonder why their friends live in homes with white-picket fences while they live in small cells. In addition, the age limit variations from country to country are likely correlated “with the degree to which the prison world deviates from the world outside.”<sup>164</sup> For example, a country that provides a prison nursery with an environment almost exactly like the surrounding community will likely impose limits only on older, school-age children. Countries such as the United States and the United Kingdom likely restrict having children over the age of eighteen months because their nursery programs are completely different from daily life outside of the prisons. Although there may be clean, colorful rooms for the children to play in, an environment outside of prison is much more than organized play dates and naps.

The areas within the United States that provide prison nurseries also implement programs that focus on the mother-child bond that occurs in the early years of childhood development.<sup>165</sup> Specifically, the Ohio Reformatory for Women recognizes the fact that “[c]hild development experts have long identified that certain developmental tasks must be achieved through bonding or serious and intractable ramifications for the child will result.”<sup>166</sup> The American Psychological Association found that “children separated from their incarcerated parents are more likely to have emotional or behavioral disturbances, drop out of school, and eventually be arrested themselves.”<sup>167</sup> The major debate that surfaces is whether it is better for a child to bond with their mother while in a prison, or if it is healthier for the child to be raised in a more natural environment outside of

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162. IMMARIGEON, *supra* note 32, at 20-1.

163. *Id.* at 20-5.

164. *Id.*

165. *Id.* at 20-2.

166. *Id.*

167. Ford, *supra* note 24.

prison walls, albeit without their mothers. Researchers on this topic do not deny that the initial bonding experience between a mother and child is an important formative step in a child's life, but some researchers specifically stress the quality of the relationship rather than the type of relationship.<sup>168</sup>

Nevertheless, other states worry about the safety and welfare of infants and young children who are jailed with their mothers for the mother's convenience. Specifically in the United States, opponents of the prison nurseries argue that imprisoning a child with their mother violates the child's Fourteenth Amendment right.<sup>169</sup> Opponents also suggest that prison nursery programs incentivize pregnancy, or that women will intentionally become pregnant to benefit from a nicer environment.<sup>170</sup>

Once children are actually incarcerated with their mothers, a plethora of safety concerns can arise depending on the type of program. For example, United States prison nursery programs typically separate children and their mothers from the overall prison population.<sup>171</sup> Children are not completely separated from others, because the other prison nursery participants are present within the nursery with their own children. Conversely, Mexican prison nursery programs allow children to socialize with the general population, but even the warden concedes that the children are very seldom placed in dangerous situations.<sup>172</sup> Regardless, the thought of allowing a child to be in such close proximity to people who are labeled as "criminals" can be terrifying for those who are not incarcerated themselves.

For the states that believe an initial bond is important, most also have a secondary goal to reduce recidivism by encouraging lifestyle changes for the good of the children.<sup>173</sup> The hope is that mothers who participate in prison nursery programs are incentivized to turn their lives around and become better mothers as a result of the required parenting classes.<sup>174</sup> There has been little research conducted on the effectiveness of prison nurseries worldwide in connection with the mother-child bond. Mary W. Byrne's research is the first of its kind that measures the outcomes of prison nursery participants.<sup>175</sup> By taking a sample from Bedford Hills and Taconic Correctional Facilities in the United States from 2000 to 2008, Byrne found that when resources are available, prison nursery programs "can provide a positive environment that supports parenting and child

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168. Joann B. Morton & Deborah M. Williams, *Mother/Child Bonding*, 60 CORRECTIONS TODAY 98, 100 (1998).

169. Chhaya Nene, *The Controversial, Emerging Notion of Prison Nurseries*, THE CHRONICLE OF SOCIAL CHANGE, Mar. 28, 2013, <https://chronicleofsocialchange.org/analysis/the-controversial-emerging-notion-of-prison-nurseries/2362>.

170. *Id.*

171. EDDY & POEHLMANN, *supra* note 11, at 162.

172. McKinley, *supra* note 112.

173. WPA REPORT, *supra* note 6, at 15.

174. Ford, *supra* note 24.

175. WPA REPORT, *supra* note 6, at 21.

development.”<sup>176</sup> She notes that this finding sharply contrasts with a United Kingdom study that found the infants in prison nurseries were developmentally delayed compared to other infants in the community.<sup>177</sup> This finding should be researched more extensively because, as mentioned previously, the programs in the United States and the United Kingdom are nearly identical. Byrne further confirmed that participants in prison nursery programs achieve healthy attachment between mothers and children and lower recidivism rates, which are the central goals of every prison nursery program across the United States.<sup>178</sup>

#### B. VISITATION

Prison nurseries can be extremely convenient and helpful for the incarcerated mothers that qualify and live in jurisdictions that offer them. Still, many incarcerated women, both those within the prison nurseries and outside of the prison nurseries, are burdened by their prison’s strict and varying visitation policies. While one United States survey stated that fifty-four percent of mothers reported to have no visits with their child,<sup>179</sup> Germany allows incarcerated mothers to travel outside of the prison walls for daily home visits with their children when they become ineligible for participation in the prison nursery.<sup>180</sup> The mothers that do not qualify to participate in U.S. prison nursery programs rely on visitation policies to see their children and other relatives as often as possible. Likewise, even mothers that do participate in a prison nursery program must also rely on visitation policies in order to ensure their children are continuing to receive outside contact with their families such as their father and grandparents. Studies have demonstrated that it is just as important for a child to have contact with its mother as it is to have contact with other relatives, to ensure an optimal reintegration process.<sup>181</sup>

Even if a prison has a flexible visitation policy, additional barriers such as distance and inconvenience can inhibit family members from visiting their child or grandchild. According to the Sentencing Project, “over 60% of state and 80% of federal inmates are more than 100 miles from home.”<sup>182</sup> While this statistic concerns overall jails and prisons for both males and females, the distance of female prisons, specifically those with nurseries, may be an even further distance than the reported average. This makes it extremely difficult for family, traveling with or without children,

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176. WPA REPORT, *supra* note 6, at 22.

177. *Id.*

178. *Id.*

179. IMMARIGEON, *supra* note 32, at 19-3.

180. Kauffman, *supra* note 89, at 64.

181. IMMARIGEON, *supra* note 32, at 20-2.

182. EMILY SANDERS & RACHEL DUNIFON, CORNELL UNIVERSITY, CHILDREN OF INCARCERATED PARENTS 4 (2011), <http://www.human.cornell.edu/pam/outreach/parenting/research/upload/Children-of-Incarcerated-Parents.pdf>.

to visit because of extra time, gas expenses, and prison visitation policies.<sup>183</sup> This situation presents incarcerated mothers with a difficult decision to either keep their child in prison with them with barely any visits from other relatives, or let their child stay with family and receive barely any visits themselves. Even when incarcerated mothers elect to send their children to live with relatives, those relatives may choose to visit less because it is too emotionally traumatizing for children to visit a prison or because the relative has a bad relationship with the mother.<sup>184</sup>

One particularly important prison policy that varies depending on location is whether incarcerated mothers are allowed to have full physical contact visitation with loved ones.<sup>185</sup> Visits with children and other relatives range from full contact visits to barrier visits that use a glass window for separation.<sup>186</sup> Some prisons have been more progressive with their policies by allowing full family visits in colorful, child-friendly rooms with toys and even overnight stays for inmates' spouses and children.<sup>187</sup> More open-minded prison policies can greatly "influence the quality and outcomes of visits."<sup>188</sup> For example, one study found that when there were higher levels of contact between mother and child, incarcerated mothers were less depressed.<sup>189</sup> Likewise, children experienced insecure attachment when barrier visits took place in noisy rooms with a pre-visit frisk.<sup>190</sup> In addition, family-friendly policies like full contact visits can incentivize good behavior and strengthen overall family ties, which may lead to easier reintegration into the community for women post-release.<sup>191</sup>

### C. DIGNITY AND HUMAN RIGHTS

The central motive for some countries to create prison nursery programs and other policies for pregnant women in prison is to promote dignity and preserve human rights. Although most jurisdictions know that there are special issues relating to women in custody, "very little is being done to remedy the recognized problems."<sup>192</sup> For example, the quality of obstetrical care varies greatly in each jurisdiction.<sup>193</sup> Depending on the

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183. SANDERS & DUNIFON, *supra* note 182, at 4.

184. *Id.*

185. University of Pittsburgh Office of Child Development, *Children Of Parents In Jail Or Prison: Issues Related To Maintaining Contact*, 25 DEVELOPMENTS 1, 2 (Jan. 2011), <http://ocd.pitt.edu/Default.aspx?webPageID=244> (hereafter *Children Of Parents In Jail Or Prison*).

186. *Id.*

187. Chesa Boudin, Trevor Stutz, & Aaron Littman Prison, *Visitation Policies: A Fifty State Survey*, 32 YALE L. & POL'Y REV. 149, 168–70 (2013).

188. *Children Of Parents In Jail Or Prison*, *supra* note 185.

189. *Id.*

190. *Id.*

191. Boudin, *supra* note 187, at 178.

192. Carolyn Engel Temin, *Let Us Consider the Children*, 63 CORRECTIONS TODAY 66, 66 (2001).

193. *Id.*

jurisdiction, a pregnant mother may be transported out of the hospital to give birth in full shackles, or sometimes an inmate may be treated humanely during transportation, but separated from her child upon birth without being allowed to nurse.<sup>194</sup> Currently, there are thirty-three states in the United States that allow pregnant inmates to be shackled to their hospital beds during labor.<sup>195</sup> California is the most recent state that has outlawed the use of “leg irons, waist chains and handcuffs behind the body” on pregnant inmates during labor, delivery or recovery.<sup>196</sup>

Moreover, California’s law gives pregnant women the right to summon a doctor to discuss a nutritious diet plan, prenatal vitamins, and information regarding “childbirth education and infant care.”<sup>197</sup> Even more recently, California legislators have introduced legislation that would limit sterilization surgeries while in prison unless a woman’s life is in danger.<sup>198</sup> Currently, the law restricts tubal ligations, but places no limits on the removal of women’s uteruses and ovaries.<sup>199</sup> Prisoners have reported that the medical staff targets women who are likely to later return to prison and coerces them to undergo surgery for birth control purposes.<sup>200</sup> The above outlined policies are just a few examples of how much further the laws need to come in order to address the special needs of incarcerated women.

Many countries have created prison nurseries because they recognize that, although pregnant women constitute a small percentage of the overall prison population, the size of the population should “not be determinant of lack of need for service.”<sup>201</sup> Prison nurseries around the world have demonstrated a realization that in order to treat pregnant women as human beings, it is absolutely necessary that their special physical and medical needs be provided for while they are incarcerated. Men who are incarcerated do not have specific necessities like women do, such as gynecological care, prenatal care, abortion services, and privacy from observation and searches by male guards, and many countries are ill-equipped to handle their small percentage of female inmates.<sup>202</sup> If a court sentences a pregnant woman to prison, then it must ensure that her Eighth and Fourteenth Amendment rights to medical care and privacy are

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194. Temin, *supra* note 192.

195. Cristina Costantini, *Should a Woman be Shackled While Giving Birth? Most States Think So*, FUSION, <http://fusion.net/justice/story/woman-shackled-giving-birth-states-11307> (last updated Oct. 13, 2014).

196. ASSEMB. B. NO. 2530, CH. 726 (Cal. 2012), *available at* [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB2530&search\\_keywords=#law](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2530&search_keywords=#law).

197. *Id.*

198. Corey G. Johnson, *Bill Would Limit Inmate Sterilization for Birth Control*, SAN FRANCISCO CHRONICLE, Feb. 20, 2014, *available at* <http://www.sfchronicle.com/news/article/Bill-would-limit-inmate-sterilization-for-birth-5253583.php?t=495e2ba77f>.

199. *Id.*

200. *Id.*

201. Temin, *supra* note 192, at 67.

202. *Issues of Importance to Women Prisoners*, JAILHOUSE LAWYER’S HANDBOOK, <http://jailhouselaw.org/issues-of-importance-to-women-prisoners/> (last visited Sept. 19, 2014).



protected even though she is behind bars.<sup>203</sup> When a pregnant woman's rights are violated, both she and the resulting child are affected. Poor and dirty conditions of prison nurseries, such as in Kenya, can have a lasting effect on infants that have been imprisoned as a consequence of being born to an incarcerated woman.<sup>204</sup>

#### D. FINANCIAL EFFICIENCY

Perhaps the most imperative theme that has surfaced in many countries is the question of the overall cost of prison nurseries compared to the available alternatives. Typically, the annual cost of housing one infant in a United States prison nursery is about \$24,000.<sup>205</sup> Especially in the United States, cost is a main concern for many states that have not established prison nurseries because of their already minimal budgets and overcrowded prisons. An Ohio prison nursery estimated its cost for the state for one infant is about \$4.65 daily, or only about \$1,697 annually.<sup>206</sup> New York's program claims a very different, expensive situation with about \$13,980 in annual costs per infant.<sup>207</sup> Surprisingly, the states that have established prison nurseries receive funds from outside groups such as Catholic Charities in New York and Early Head Start in West Virginia, so state taxpayer money is not always utilized.<sup>208</sup> Moreover, West Virginia's statute-authorized prison nursery prohibits the use of any state funds to run the program.<sup>209</sup> This is not uncommon for the majority of states that utilize prison nurseries across the United States, as most depend on federal grants and other types of donations from non-profit or religious organizations.<sup>210</sup> Furthermore, one outcome of the establishment of prison nurseries is a lower recidivism rate, which "could also greatly defray the prison's cost of nursery programs."<sup>211</sup> Although there is limited published information regarding the costs associated with prison nurseries in the United States, and even less internationally, it appears that the amount varies tremendously depending on the facilities offered and the funding available.<sup>212</sup>

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203. *Issues of Importance to Women Prisoners*, *supra* note 202.

204. *See* Alsop, *supra* note 132.

205. Maria Schiavocampo, *Reporter's Notebook: A Look at Babies Behind Bars*, THE GRIO, April 13, 2010, <http://thegrio.com/2010/04/13/reporters-notebook-a-look-at-babies-behind-bars/>.

206. Loris S. Goshin & Mary W. Byne, *Converging Streams of Opportunity for Prison Nursery Programs in the United States*, 48 J. OFFENDER REHABIL. 271 (2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2768406/pdf/nihms117268.pdf>.

207. H.R. DOC. NO. 37 (Virg. 1995), available at <http://leg2.state.va.us/dls/h&sdocs.nsf/682def7a6a969fbf85256ec100529ebd/d44d36301469fe628525616a0051901e?OpenDocument>.

208. Lawrence D. Marshall, *Analysis of Prison Nursery Benefits and Program Strategies* 40 (April 15, 2011) (unpublished Capstone Project, University of Alaska Anchorage), available at <http://www.mpaalaska.org/wp-content/uploads/2013/03/Marshall-Capstone-.pdf>.

209. *Id.*

210. *Id.*

211. Goshin & Byne, *supra* note 206, at 6.

212. *Id.*

Alternatives to the prison nursery programs in the United States, such as foster care and placing a child with other relatives, also have their costs, though they may not seem immediately apparent. Although sending children to live with relatives may seem like a simple and relatively free alternative to prison nurseries, many relatives are indigent and receive some type of public assistance to care for the children whose mother is incarcerated.<sup>213</sup> The average cost of supporting an individual on welfare is \$2,499 annually,<sup>214</sup> the cost of supporting a child in the foster care system is about \$21,902 annually.<sup>215</sup> The least expensive alternative for the government and the best option for preserving an incarcerated mother's parental rights is to send a child to live with a relative if a prison nursery is unavailable. Depending on the state, it may be cheaper to house an infant in a prison nursery with their mother instead of resorting to the alternatives that tend to be more expensive and unpredictable.

## VI. CONCLUSION

It is difficult for states and countries to agree on how to best take care of children born to incarcerated women. This Note has outlined the differences between countries worldwide and has revealed that the United States is vastly different from the rest. Within the United States, prisons that offer nurseries may be better than those offered in many other countries. Nevertheless, the vast majority of states do not offer a prison nursery program and the ones that do only allow incarcerated mothers to keep their children for a short amount of time. One major issue affecting prison nursery programs in the United States, or the lack thereof, is an already dwindling and insufficient prison budget.<sup>216</sup> It is unclear and unsettled whether prison nursery costs might be similar to placing a child into foster care. If the costs are the same, then the decision to utilize prison nurseries should be decided based on the best interests of the children.

Prisons are commonly understood to be dangerous places and the desire to exclude children from that environment is understandable. However, insulating children from the general population can negate this concern. For example, nurseries in United States prisons have special wings and sometimes even special buildings for incarcerated mothers and their children. Further, there is no evidence suggesting that a child in a

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213. Goshin & Byne, *supra* note 206, at 6.

214. Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, 8 PROTECTING CHILDREN FROM ABUSE AND NEGLECT 88 (1998), available at [https://www.princeton.edu/futureofchildren/publications/docs/08\\_01\\_05.pdf](https://www.princeton.edu/futureofchildren/publications/docs/08_01_05.pdf).

215. *Id.*

216. U.S. DEP'T OF JUSTICE, FED. PRISON SYS. FY 2013 CONG. BUDGET 1 (2013), available at <http://www.justice.gov/sites/default/files/jmd/legacy/2014/03/22/fy13-bop-bf-justification.pdf> ("The BOP continues to face unprecedented challenges in managing the growing federal inmate population, and providing for inmates' care and safety in crowded conditions, as well as the safety of BOP staff and surrounding communities, within budgeted levels.").

United States prison nursery has been put into any type of danger.

The debate in the United States over whether to offer prison nurseries across the country comes down to the importance of the mother-child bond against the overall healthiness of a child living in a prison nursery during the crucial years of his or her life. Our society wants all children to grow up in the “perfect household,” but when that ideal is unattainable, what can we do? We can make their childhood as normal as possible, while still making sure that they have the love and care of their parents and especially their mothers. While mothers may not be the only person able to provide bonding, incarcerated mothers should be able to choose what to do with their children when they are born in prison. If a woman is concerned about the prison environment and has relatives to care for her child as an alternative, then she should be permitted to place the child with those relatives. If, on the other hand, a woman has no family to turn to for assistance in raising her child, she should be able to care for the child in a prison nursery, as opposed to sending them into foster care at possibly the same cost to the state.

The idea in the United States that a prison sentence should be only a punishment continues to ring throughout society and is an impediment to the development of prison nurseries.<sup>217</sup> Empowering mothers to make a choice about their newborn and possibly raise their newborn during a prison sentence is in opposition to what the United States criminal justice system is trying to achieve. What the criminal justice system and society forget is that these women are not merely “prisoners”—they are mothers, and the future of their children is at stake. More research needs to be conducted regarding the long-term effects on the children of prison nursery participants, in order to compare them to the children that grew up with relatives while their mother remained incarcerated. Once we know the lasting effects on babies raised in prison nurseries, the age limit can be extended accordingly. With an extended age limit, it would be necessary to also change the setup of prison nurseries to make sure that older children are receiving adequate education and community interaction, to prepare them to be reintegrated into the community when it is time. In addition, there should be more specialized visitation programs for older children who are ineligible or who have outgrown the prison nursery programs. Physical contact visits for extended periods of time in an area separate from the prison would ensure that older children also benefit from a mother-child bond in a non-prison setting. This could also have a similar effect in encouraging mothers to stay out of the system once they are released.

The international prison nurseries discussed in this Note all serve as important examples from which to learn. In no respect are any of these countries' programs perfect, but they provide incarcerated women with an

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217. WPA REPORT, *supra* note 6, at 4.

alternative to being completely separated from their children and provide children with a healthy bonding period. Even states that currently offer nurseries might consider improving their models in light of the international models presented in this Note. The relatively low number of pregnant women in prison is no excuse to ignore their plight. This special population has a major effect on both society and their children, which is why I urge policymakers to make changes that will assist incarcerated mothers and their children to develop a strong bond and to make what is an unfortunate circumstance easier for their children. Hopefully, United States policymakers appreciate the benefits yielded by other countries' programs. I urge the readers of this Note to put themselves in the shoes of a pregnant, incarcerated woman and ask: which prison nursery model would I want for my child?

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