Title: The intersection of abortion and criminalization: abortion access for people in prisons

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Introduction

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

Globally, women are the fastest growing population in prisons, and most incarcerated women are of reproductive age (15-49 years old). Yet, women remain a small subset of incarcerated people, for example, only approximately 6% of federal prisoners in Canada.[2] Although state provision of essential health care is required by international law[3], prison health services are often ill-prepared to meet gendered health needs. Over the last few years, numerous news stories from Australia, Britain and Canada have demonstrated the reproductive health dangers of prison, with incarcerated women and their newborns being refused care during miscarriage, birth, and the postpartum period.[4-6] Despite international obligations[7] for states to routinely collect reproductive health information about incarcerated people, this information is largely unavailable, including in Canada. Furthermore, the Office of the Correctional Investigator, the Canadian federal prison watchdog, does not report on prison conditions with respect to

reproductive health. Despite the progressive policy position towards abortion in Canada, the frequency of or approaches to abortion care for incarcerated people are not publicly known.

Abortion Rate in Prisons

The US-based *Pregnancy in Prison* project found that only 1% of pregnancies among federally incarcerated women resulted in abortion.[8] A 2021 study of pregnancy outcomes in state prisons and county jails found an abortion rate of 4.2%[9], while yet another study among county jails found a rate of 15%.[10] In 2019 the CDC found that 16% of pregnancies that did not miscarry ended in abortion among the general US population[11]- a rate vastly higher than what was observed in the federal prisons. The type of and location of custody for incarcerated people creates different barriers to care.

Several international studies have found lifetime rate of abortion among incarcerated women to be higher than what is usually observed in the general population. A Brazilian study of the health records of incarcerated women found 41% had had between 1 to 3 abortions.[12] A United States study found a lifetime abortion rate of 35% among surveyed incarcerated women.[13] A survey of women in a Canadian jail found close to two-thirds (57%) of respondents had experienced abortion at some point in their lives.[14] These compare to the Canadian[8] and global average of one-third of women.[15] Abortion is often a consequence for those experiencing unintended pregnancy as a result of systemic discrimination, racism and colonialism.[16] Incarcerated people may seek abortion to protect themselves from anticipated traumas of experiencing pregnancy in prison and from separation from children at or soon after birth.[17] Among incarcerated people are high rates of intimate partner violence and sexual assault, mental and physical illness, substance

use disorder,[18] sex work[19], and sexually transmitted and blood borne infections including HIV and hepatitis C virus[20]: these experiences may also affect reproductive decision-making.

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

Barriers to Care

Incarceration presents multiple potential barriers to abortion care. Physical distance between prisons and care providers represents a concrete barrier. US researchers have found the distance between prisons and the nearest abortion provider varied from 0.5 to 383 miles.[31] In Canada, most aspiration (surgical) abortion care is limited to major urban centres.[32] Prisons are largely located *outside* of major urban centres, introducing transportation challenges.[33,34] Frequent staffing shortages in prisons[35] prevent prisons from arranging escorts for patients to receive off-site care.[36] A further barrier is information. Incarcerated people experience complex health histories and restrictions to health information and services.[37-39] If incarcerated people and prison staff lack knowledge about access pathways and important considerations such as gestational age

limits to medication abortion or for local surgical services, patients may miss the window for care.[40,41] These issues may impact patient understanding of options and decision-making. Stigma presents another barrier.[42] Fear of judgment, privacy, and confidentiality violations, or even punishment may be particularly acute for people who are incarcerated.

Despite international availability for several decades, mifepristone, the drug used for medication abortion, was only available in Canada since 2017. While medication abortion has significantly shifted the landscape of abortion access,[43] its use may be prohibitively difficult in prison. The privacy and convenience benefits of medication abortion through telemedicine may not translate in the context of correctional procedures and environments. The requirement that the pills be taken 24-48 hours apart is cumbersome in a system highly structured around mandatory activities such as "count", work and program hours, and "med line"- a daily queue, sometimes situated outdoors, to receive medication. Heavy bleeding and pain may be especially challenging for patients in prisons due to lack menstrual supplies,[44] unhygienic and isolating contexts,[45] and restrictions on accessing over-the-counter analgesics.

Access to abortion for people in prison must be addressed from a reproductive justice perspective, expanding the legal framework of reproductive rights to examine the intersectional human rights and equity implications of reproductive decisions.[46-49] Reproductive justice recognizes that autonomy and "choice" are constrained by oppressive and discriminatory structures including racism, colonialism, classism, and transphobia/homophobia- structures that also shape and define the prison system.[50]

International Obligations

The United Nations Minimum Standards for the Treatment of Women Prisoners,[7] known as the Bangkok Rules, includes multiple stipulations relevant to reproductive care. Rule 6 requires clinical screening on admission to prison, including reproductive health history. Rule 8 requires respect for medical confidentiality at all times. Rule 10 specifies gender-specific health-care services be provided at least at a level equivalent to what is available in the community. Correctional facilities must be assessed for compliance with these minimum standards, starting with the 72 prisons and jails designated for women and girls across Canada.[33]

Conclusion

Barriers to abortion care inequitably restrict people who can get pregnant [17] from attaining education and employment opportunities, cause entrenchment in violent relationships, and prevent people from choosing to parent when they are ready and able. Incarceration itself restricts people from living healthy, safe and autonomous lives. There is an urgent need for research in this area to direct best practices in clinical care and support policies capable of ensuring equal access to abortion care for incarcerated people.

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