

Alternatives to Incarceration for Pregnant & Postpartum People in the U.S.



**A STATE POLICY BRIEF FROM THE NATIONAL UNIVERSITY-BASED
COLLABORATIVE ON JUSTICE-INVOLVED WOMEN & CHILDREN (JIWC)**

Created by the Center for Leadership Education in Maternal & Child Public Health,
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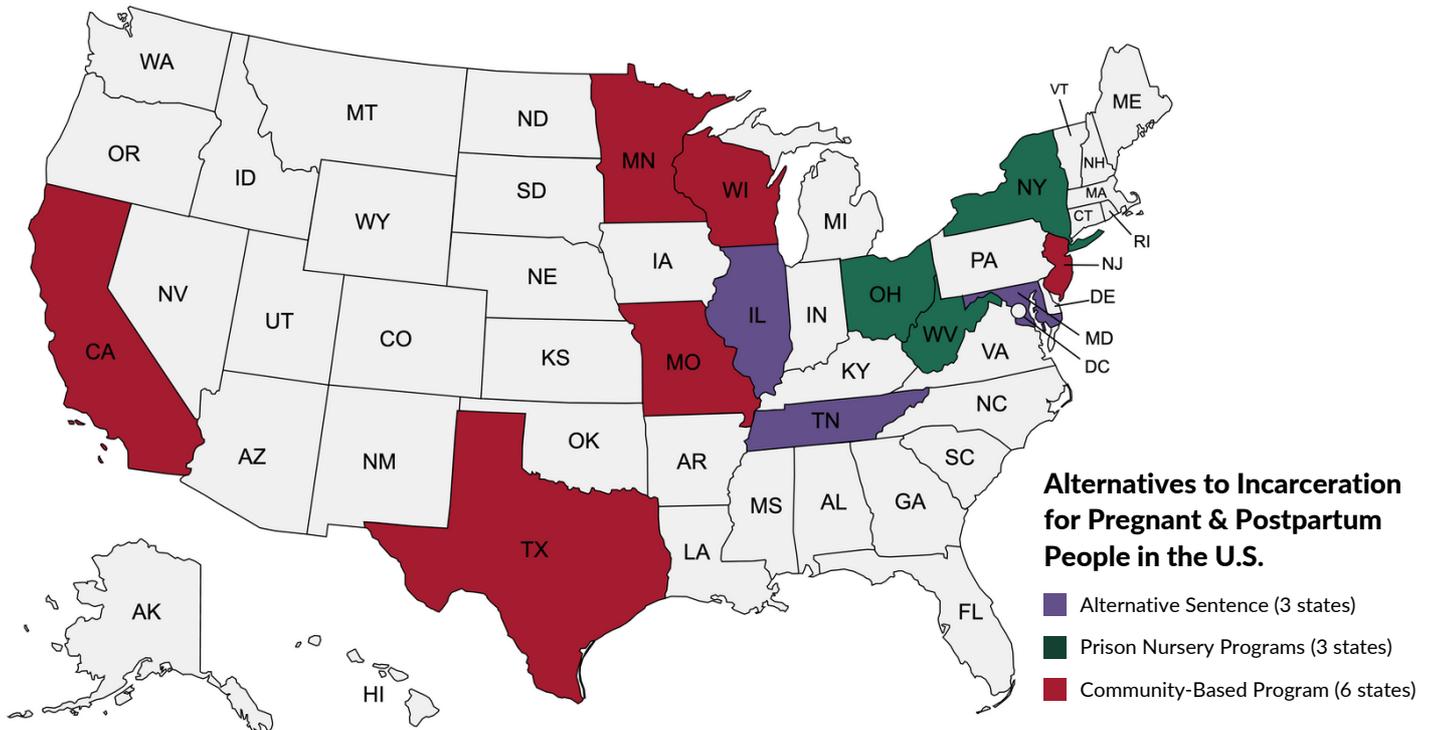
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CENTER FOR LEADERSHIP EDUCATION
IN MATERNAL & CHILD PUBLIC HEALTH

Executive Summary

Only **12** states have laws providing alternatives to incarceration for pregnant and postpartum people. Among the state laws, there is variability in terms of who is eligible to participate, what services are offered, when the intervention takes place (from pre-trial to post-sentencing), and whether or not the state law prevents the separation of the biological mother from their newborn.



Background

The U.S. has the **highest** incarceration rate in the world with rates of reproductive-aged women in prisons and jails skyrocketing in recent decades.^{1,2} For incarcerated pregnant people, birth is typically followed by near immediate separation from their newborn.^{3,4} This practice, while deeply traumatic, has long been standard practice in carceral settings.

Some states have since developed **alternatives to incarceration** to better address the complex needs of pregnant and postpartum people and their families. Alternatives to incarceration can occur at various points in the criminal legal system, including pre-trial diversion (where an individual may be offered programs and services in lieu of a prison sentence) or post-conviction programs (where one may serve a sentence in an alternative setting).⁵ Sometimes these programs permit biological mothers to live with their babies, avoiding separation from their newborn at a critical period in the lifecycle.



While limited, evidence suggests that these types of policies and programs reduce intergenerational trauma, improve maternal self-image, promote secure attachment, encourage sustained breastfeeding, and may reduce rates of recidivism.^{6,7,8,9}

Critics of prison nursery programs have argued that carceral settings are inappropriate for newborns and that families' needs would be better served¹⁰ outside of the prison setting. Given these considerations, some states have implemented community-based alternatives which permit postpartum people to reside with their babies in community settings. Policies and programs specific to pregnancy vary by state, and are outlined in greater detail below.

Summary of State Laws

Twelve states have laws related to sentencing alternatives or programs specifically for pregnant and/or postpartum people.

ALTERNATIVE SENTENCE (3 STATES)

Illinois, Maryland, and Tennessee have laws that allow permanent or temporary **alternative sentences** to be granted for pregnant people or for women with young children.

PRISON NURSERY PROGRAMS (3 STATES)

New York, Ohio, and West Virginia have laws that create or authorize **prison nursery programs** that allow infants to reside with their biological mother at the facility, thereby preventing the separation of mother and baby that would otherwise occur.

COMMUNITY-BASED PROGRAMS (6 STATES)

California, Minnesota, Missouri, New Jersey, Texas, and Wisconsin have laws that create or authorize **community-based alternatives** that allow infants to reside with their biological mother outside of prisons and jails, thereby preventing the separation of mother and baby that would otherwise occur.

A comprehensive, sortable table of these summaries can be accessed [here](#).

A Closer Look

PRE-TRIAL ALTERNATIVE SENTENCING:

Most states intervene after the pregnant or postpartum person has been sentenced to prison; however, **Illinois** allows for electronic home monitoring as a condition of pretrial release to reduce the number of pregnant people held in jail. **Tennessee's** law grants a short, temporary furlough of up to six months to a pregnant person to permit childbirth and bonding between the mother and child in the community. In **Maryland**, the Governor can exercise executive clemency and grant a pregnant person parole, a reduced length of sentence, or an alternative residential setting for pregnancy; however, after birth, they are to be returned to a facility as soon as their health allows.

PRISON NURSERY PROGRAMS:

In **New York**, **West Virginia**, and **Ohio** state laws permit a postpartum person to return to a correctional facility with their newborn. Some prison nursery programs require that participants comply with certain requirements, including education and counseling, in order to remain eligible.

COMMUNITY-BASED PROGRAMS:

Minnesota's law permits the Commissioner of Corrections to identify alternative community-based options for pregnant and postpartum people. In **Wisconsin**, the Department of Corrections partners with local nonprofits to provide similar non-restrictive programming and support to pregnant and/or postpartum people. **Texas** allows postpartum people to live with their newborns in a community-based setting where they have access to additional resources. **California**, **Missouri**, **New Jersey**, and the **federal Bureau of Prisons** focus specifically on providing substance use treatment to pregnant and parenting people.

Eligibility Requirements

Some states base eligibility for participation in alternatives to incarceration on the length of a person's sentence: in **Ohio** and **California**, for example, participants must have a sentence of less than 3 years. **Illinois** and **New Jersey** limit eligibility to pregnant individuals.

In some states, eligibility requirements are based on the age of an incarcerated person's child: in **Tennessee**, a person's child must be under six months of age, in **Minnesota** and **Wisconsin** under one year; in **California** under six years; in **Missouri** under twelve years.

Some states condition eligibility on the type of offense or length of sentence. For example, **Missouri** specifies that only pregnant or parenting people with drug-related offenses may participate. Many states stipulate that participants are serving for non-violent crimes and have no history of child abuse.

Funding Mechanisms

Only half of the state laws identified in our search—**California, Missouri, Ohio, and West Virginia**—identify funding sources for these programs; even fewer states require legislative oversight or reporting. In one exception, **Minnesota** requires annual reports to the legislature about participation through the Healthy Start Act. The **federal Grants for Family-Based Substance Abuse Treatment** authorizes appropriations of \$10 million for each fiscal year 2019 through 2023 for grants to states, local governments, territories, nonprofit organizations, and Indian Tribes for **residential and prison-based family substance use treatment programs** for pregnant women or parents of minor children who are incarcerated for nonviolent drug offenses.

Recommendations

States have the opportunity to address the unique needs of incarcerated pregnant and postpartum people—and their infants—by enacting or expanding laws for alternative sentencing and programming.

Consider **multiple alternative sentencing and program options that intervene at different points in the criminal justice process**—ranging from arrest to post-conviction and/or reentry to the community.

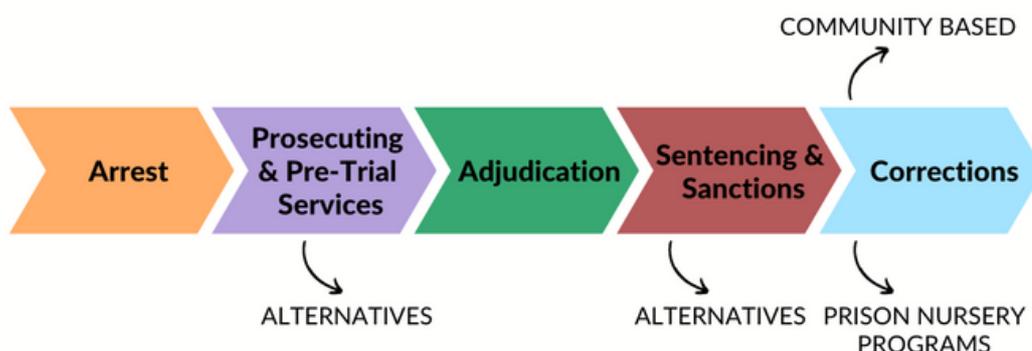
Provide **family-based substance use treatment and mental health support** to incarcerated pregnant and parenting people.

Include **mechanisms for funding, evaluation, and enforcement** to help ensure that policies are effective and translate to improved practice.

Conclusion

Historically the experiences of pregnant and postpartum people in carceral settings has been largely under-researched. Consequently, policies and programs to support this population have been inadequate. While additional research is needed to identify which alternative policies and programs are most effective, there is ample evidence demonstrating that immediate separation following birth is harmful to mothers and their infants and should not be standard practice.

Alternatives to Sentencing



Pregnant and postpartum people and their babies are at a critical stage in the lifecourse; prisons and jails are ill-equipped to meet their complex needs. Alternatives to incarceration—like alternative sentencing, prison nursery programs, and community-based alternatives—can be meaningful and impactful interventions, especially when paired with expanded health access, family-based substance use treatment, mental health support, and resources like education and vocational training.

Currently, only 12 states have written policies outlining alternatives to incarceration for pregnant and postpartum people and their infants. These states should serve as models for other states to better serve justice-involved families.

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