

A History of Menstrual Injustice: How Essential Care is Flawed at Best -- and Absent at Worst --
for Incarcerated People with Periods in the United States

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As of 2019, there are 1.2 million women under the supervision of the criminal justice system, spread between state prisons, local jails, probation, and parole.¹ Due to the nature of the carceral state, in which bodily autonomy is suppressed, there is ample room for prisoner abuse, and a specific target of carceral injustice is reproductive health. With unregulated policies, unenforced accountability, and general disregard for the basic dignity of incarcerated populations, inmates who menstruate experience extreme suffering from a bodily experience often found only to be inconvenient by those on the outside. This is both a public health and human rights crisis with minimal recent attention outside menstrual equity activists.

In the last 40 years alone, women's incarceration has increased by over 700%.² The sharp increases of arrests and harsher sentencing in state, local, and federal jails has resulted in overcrowded facilities and other human rights abuses. Women's incarceration has exhibited a different trajectory, steeper than men's, which has continued through the present day: "Though many more men are in prison than women, the rate of growth for female imprisonment has been twice as high as that of men since 1980."³ The majority of this growth has taken place in local jails.⁴ The focus of this paper is the population of 222,455 women (as of 2019) currently incarcerated in state, local, and federal prisons and jails throughout the country. While incarcerated bodily autonomy has increased over time as prisoner healthcare slowly emerged in the courts and legislation, there is a long way to go before menstrual equity is achieved in carceral spaces.

¹ The Sentencing Project, "Incarcerated Women and Girls," Last modified November 24, 2020, <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>.

² The Sentencing Project, "Incarcerated Women and Girls."

³ Ibid.

⁴ Wendy Sawyer, "The Gender Divide: Tracking Women's State Prison Growth," *Prison Policy Initiative*, January 7, 2018, https://www.prisonpolicy.org/reports/women_overtime.html.

When incarcerated, the state of healthcare falls into a limbo of specific legislative and administrative control. The bodily integrity and autonomy we, non-incarcerated populations, enjoy is muted, strictly subject to the regulations set by state and federal authorities. While this might seem like an obvious facet of the general prison system, there are much darker implications of this shifting of freedom; gaps in oversight that have allowed human rights and public health abuses alike to run rampant, posing dangerous risks to human beings. For prisoners with periods, the monthly process of menstruation is actively heightened by a construct that withholds bodily autonomy at its core. Or, at its best, forces inmates to rely upon prison administration to supply the products needed for proper hygiene. While there are recently passed state and federal policies which address the tenuous accessibility to menstrual products in carceral spaces, thousands of incarcerated people each year still experience uncertainty, discomfort, and unnecessary hardship during the natural bodily process of menstruation.

Mass Incarceration and the So-Called “War on Drugs”

This increase in women’s incarceration coincided chronologically with the so-called “War on Drugs.” The phenomenon known as mass incarceration in the United States rose to prominence in the 1980s as a result of greater and more restrictive criminal legislation introduced the decade earlier. Former President Richard Nixon declared a “War on Drugs” in 1971 as a response to increased recreational drug usage the decade prior, although in the 1990s Nixon’s domestic policy chief revealed that the infamous political campaign was actually created to target and incarcerate Left-leaning and Black populations.⁵ As part of Nixon’s governmental initiative he created and funded federal anti-drug agencies and programs and, most, notably, implemented mandatory jail sentences for drug crimes.⁶ When Ronald Reagan came into the presidency in

⁵ History, “The War on Drugs,” last modified December 17, 2019, <https://www.history.com/topics/crime/the-war-on-drugs>.

⁶ Ibid.

1981, his administration capitalized on the widespread social stigmas of crime on which the “War on Drugs” rhetoric thrived to further imbue discriminatory and unforgiving criminal justice policies.⁷ Throughout the 1980s, the “political hysteria about drugs led to the passage of draconian penalties in Congress and state legislatures that rapidly increased the prison population.”⁸ Some of the most infamous legislation decreed minimum drug sentences, longer and more sentencing in general, and eliminated parole and limited ‘favorable conduct’ time systems.⁹ These policies defined a specific era of United States criminal justice in which the phenomenon of mass incarceration was conceived, the results of which saw an extraordinary increase in incarcerated people unlike any decade before, and its impacts are increasingly gendered.

Contemporary Profile of Incarcerated Women

Women in the United States today only make up a small percentage of the total incarcerated population: in 2019, women prisoners comprised around eight percent of the whole.¹⁰ Girls also comprise 15% of the incarcerated youth population.¹¹ The status of women as a minority of prisoners in the US has been consistent since the 1980s.¹² However, women-identifying prisoners being a minority of the prison population does not invalidate their acute healthcare needs and struggles. While there has been a general decline in incarceration rates since the turn of the century, women’s incarceration has increased: the female incarcerated population is greater than seven times higher today than it was in 1980.¹³ The Prison Policy

⁷ Drug Policy Alliance, “A Brief History of the Drug War,” <https://drugpolicy.org/issues/brief-history-drug-war>

⁸ Ibid.

⁹ Daryl Kosiak, “Healthcare and Medical Assistance for Prisoners,” in *Corrections*, (Sage Publications, 2011), 4.

¹⁰ E. Ann Carson, “Prisoners in 2019,” *Bureau of Justice Statistics*, last modified October 2020, 3.

¹¹ The Sentencing Project, “Incarcerated Women and Girls.”

¹² Marc Mauer, “The Changing Racial Dynamics of Women’s Incarceration,” *The Sentencing Project*, last modified February 27, 2013,

<https://www.sentencingproject.org/publications/the-changing-racial-dynamics-of-womens-incarceration/>.

¹³ Ibid.

Initiative writes that “women’s incarceration has grown at twice the pace of men’s incarceration in recent decades, and has disproportionately been located in local jails,” which is a contrast from the general incarcerated population that is mostly held in state prisons.¹⁴ As will be addressed later, the fact that the majority proportion of incarcerated women are held in local jails presents unique challenges for menstrual equity.

Alongside the dramatic increase of women’s incarceration, racial dynamics in women’s prison populations have also shifted noticeably over the last few decades. National demographic trends have even changed substantially in as recently as the last 10 years.¹⁵ It has been well documented that Black people are overrepresented in prisons in comparison to their makeup of the U.S. population: “While they comprise only 13% of women in the US, nearly 50% of women in prison are African American.”¹⁶ According to the Sentencing Project, “in 2000, Black women were incarcerated in state and federal prisons at six times the rate of white women.”¹⁷ Hispanic women were also incarcerated at higher rates than white women.¹⁸ However, these numbers have shifted considerably in the last two decades. Over the 2000s Black women experienced a “decline of 30.7% in their rate of incarceration,” while incarceration for white women rose by 47.1%.¹⁹ The year 2002 marked the first year that white women’s incarceration in the US outpaced that of Black women.²⁰ Incarceration for Latinx women also rose at a 23.3% rate from 2000 to 2009.²¹ These trends continued throughout the 2010s. The six times incarceration ratio of

¹⁴ Aleks Kajstura, “Women’s Mass Incarceration: The Whole Pie 2019,” *Prison Policy Initiative*, October 29, 2019, <https://www.prisonpolicy.org/reports/pie2019women.html>.

¹⁵ Federal Bureau of Prisons, “Inmate Gender,” last modified January 30, 2021, https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp, Prison Policy Initiative, “United States Rates of Incarceration by Sex, 2010,” accessed February 12, 2021, <https://www.prisonpolicy.org/graphs/genderinc.html>, and Marc Mauer, “Changing Racial Dynamics.”

¹⁶ Barbara Bloom, Barbara Owen, and Stephanie Covington, “Women Offenders and the Gendered Effects of Public Policy,” in *The Incarceration of Women: A Text/Reader* (2011), 479.

¹⁷ Mauer, “Changing Racial Dynamics.”

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

black to white women decreased by 53% in 2009, bringing it to about 3:1, and as of 2019, “the imprisonment rate for African American women ... was over 1.7 times the rate of imprisonment for white women.”²² This is a significant marked decrease from the incarceration race ratio of 2000 as well as decades before that. The incarceration rate for Latinx compared to white women in 2019 was 1.3:1, so comparably lower than that of black women, but still an increase from the 2000s.²³ Overall, since the turn of the century, “the rate of imprisonment in state and federal prisons declined by 60% for black women, while the rate of imprisonment for white women rose by 41%.”²⁴ The majority of incarcerated women in the United States are in their early to mid-thirties, meaning that most women behind bars are of the age of regular menstruation.²⁵

As compared to the shifting racial dynamics of adult female incarceration, more divided, racial disparities still exist within youth incarceration. Although the United States incarcerated youth population has decreased by half in the last ten years, “in every state, Black youth are more likely to be incarcerated than their white peers, about five times as likely nationwide.”²⁶ And as a whole, girls have comprised a growing proportion of teen arrests since the 1980s.²⁷ As adolescents with vaginas can get their period as early as age 12, it is equally important to consider incarcerated youth when analyzing menstrual injustice in the carceral setting.²⁸

Research also shows that the majority of incarcerated women in the United States are or come from low-income backgrounds.²⁹ *Women and Crime: A Text/Reader* notes that 48% of

²² Mauer, “Changing Racial Dynamics,” and The Sentencing Project, “Incarcerated Women and Girls.”

²³ The Sentencing Project, “Incarcerated Women and Girls.”

²⁴ Ibid.

²⁵ Stacy L. Mallicoat, “The Incarceration of Women” in *Women and Crime: A Text/Reader* (2011), 464.

²⁶ Josh Rovner, “Racial Disparities in Youth Incarceration Persist,” *The Sentencing Project*, February 2021, 4.

²⁷ The Sentencing Project, “Incarcerated Women and Girls.”

²⁸ KidsHealth, “All About Periods,” last modified October 2018, <https://kidshealth.org/en/kids/menstruation.html>.

²⁹ Beryl Ann Cowan, “Incarcerated Women: Poverty, Trauma and Unmet Need,” American Psychological Association, last modified April 2019, <https://www.apa.org/pi/ses/resources/indicator/2019/04/incarcerated-women>, and Nadya Okamoto, *Period Power: A Manifesto for the Menstrual Movement* (Simon & Schuster, 2018), Kindle edition.

women were unemployed at the time of their arrest.³⁰ This injustice has presented a clear barrier to menstrual equity behind bars, as additional pads and tampons beyond what each facility deems necessary for inmates are available for purchase at facility commissaries. In most facilities, however, these products are priced exorbitantly.³¹ A Huffington Post article found that in American federal prisons, two tampons cost \$5.55.³² For comparison, CVS markets a 34-count box of tampons at \$10.³³ While many argue pricing period products at all is a human rights abuse, affording these essential products is more problematic for incarcerated populations because inmates make much lower salaries than those not incarcerated. While it varies by state, the average minimum wage for non-industry (regular) jobs in prisons is 33 cents per hour and the hourly maximum is 63 cents.³⁴ For the jobs for correctional facilities, of which only 6% of incarcerated people have, the wages are higher, with a minimum of 33 cents per hour and maximum of \$1.41.³⁵ Because the wages that inmates earn are incredibly low across the country, it's an unfair -- and, for many, impossible -- expectation that those who menstruate can simply purchase extra products if those provided by the institution are insufficient in supply or quality (which is often the case). According to Chandra Bozelko, a former convict who has publicly shared the experiences of her incarceration over the last decade, in her facility “approximately 80% of inmates are indigent and cannot afford to pay the \$2.63 the maxi pads cost per package

³⁰ Mallicoat, “The Incarceration of Women,” 463-464.

³¹ Eleanor Goldberg, “Women Often Can’t Afford Tampons, Pads In Federal Prisons. That’s About To Change,” *The Huffington Post*, December 20, 2018, https://www.huffpost.com/entry/the-new-criminal-justice-bill-provides-free-tampons-pads-in-federal-prisons_n_5c1ac0a0e4b08aaf7a84ac38?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAFbY2RffONAQgpDzaXajV22rrdtMTFCmXmEnCy5PKTv5WxyQeIvMbJaIzW0DjcgntBpAJWELdzAOOD_3zu7xIPkLn7m15LoFTV_IV35mfh5iIDc4Ti8rYreTdmaLqfsZ3oV106A6XvHNLqFO8ueyT6uK8XYmM-sAHfN50xS74Oz#:~:text=But%20heavy%2Dduty%20pads%20weren.prison%2C%20two%20tampons%20cost%20%245.55.

³² Ibid.

³³ CVS Pharmacy, “Tampons,” accessed February 12, 2021, <https://www.cvs.com/shop/personal-care/feminine-care/tampons>.

³⁴ Wendy Sawyer, “How Much Do Incarcerated People Earn in Each State?” *Prison Policy*, April 10, 2017, <https://www.prisonpolicy.org/blog/2017/04/10/wages/>.

³⁵ Ibid.

of 25, as most earn 75 cents a day and need to buy other necessities like toothpaste (\$1.50, or two days' pay) and deodorant (\$1.93)."³⁶

Lastly, an important element to consider when profiling the contemporary incarcerated woman is the increased likelihood of experiencing sexual, physical, or emotional trauma in their lifetime, in comparison to the general public.³⁷

Judicial Rule on Prisoner Healthcare and Gender Implications

Although there has been a growing amount of agency in prisoner rights and rights to litigation, particularly since the 1960s after the United States Supreme Court reversed its “hands off” approach to Constitutional regulation of correctional institutions, cases involving the unfair treatment of women prisoners -- let alone healthcare injustices in specific -- have been few and far between.³⁸ Eileen Leonard notes that as the 60s progressed, a “political and legal movement emerged within the U.S. prison system, spurred in part by a 1964 U.S. Supreme Court ruling that state prisoners could sue state officials in federal court for denial of their constitutional rights (*Cooper v. Pate, 1964*). Federal judges began to elucidate and protect the legal rights of prisoners, prison law became a new specialty, and judgments increasingly favored prisoners.”³⁹ Supreme Court cases *Robinson v. California (1962)* and *Johnson v. Avery (1969)* established that incarcerated people are protected under the Constitution; Stuart Klein writes that “these decisions clearly established that prisoners do not lose all of their rights merely by reason of their status as

³⁶ Chandra Bozelko, “Prisons that Withhold Menstrual Pads Humiliate Women and Violate Basic Rights,” *The Guardian*, last modified June 12, 2015,

<https://www.theguardian.com/commentisfree/2015/jun/12/prisons-menstrual-pads-humiliate-women-violate-rights>.

³⁷ Cowan, “Incarcerated Women: Poverty, Trauma and Unmet Need.”

³⁸ Eileen B. Leonard, “Judicial Decisions and Prison Reform: The Impact of Litigation on Women Prisoners,” *Social Problems* 31, no. 1 (1983): 45-58, accessed February 9, 2021, via JSTOR,

<https://www-jstor-org.ezproxy.cul.columbia.edu/stable/pdf/800408.pdf?refreqid=excelsior%3Ab8c720e46e0a143abf029148696e0d8f>.

³⁹ *Ibid*, 45.

prisoners”⁴⁰ However, it was not until 1974, in *Estelle v. Gamble*, that the prisoner’s right to minimal healthcare was legitimately established by these Constitutional principles. In the case, “because Gamble was incarcerated by the government involuntarily, duty was imposed on the state to treat the prisoner’s medical needs. The failure to adequately treat a prisoner’s medical need can result in unnecessary pain, suffering, and even death.”⁴¹ Further, “the infliction of ‘unnecessary pain and suffering’ is inconsistent with evolving standards of decency, and thus violates the Eighth Amendment.”⁴² Since then, the Cruel and Unusual Punishment clause of the Eighth Amendment “has become the primary means to achieve improved mental health treatment in jails and prisons. The due process clauses of the fourteenth and fifteenth amendments have also been employed, principally in the jails, but also in the prison setting.”⁴³

The Constitutional protection of prisoners’ rights to healthcare, however, has not been extended to all populations equally. One of the obstacles to menstrual equity is the application of the Constitutional framework of human dignity, particularly regarding healthcare. Leonard writes that “theoretically, the rights that some prisoners have won should apply to all prisoners. In fact, this is not the case. Women in prison have not benefited from many of the rulings because court decisions have generally been limited to conditions in specific prisons and made in response to suits from male prisoners.”⁴⁴ “The Incarceration of Women” chapter notes a few specific court cases in which female prisoners challenged the Constitutionality of their health treatment. A majority of these cases, however, address access to wider and more comprehensive facility resources as operational in male correctional institutions. While some mention healthcare

⁴⁰ Stuart B. Klein, “Prisoner’s Rights to Physical and Mental Health Care: A Modern Expansion of the Eighth Amendment’s Cruel and Unusual Punishment Clause,” *Fordham Urban Law Journal* (7) no. 1 (1979), 10-11.

⁴¹ Kosiak, “Healthcare and Medical Assistance,” 2-3.

⁴² *Ibid*, 3.

⁴³ Klein, “Prisoner’s Rights,” 10.

⁴⁴ Leonard, “Judicial Decisions and Prison Reform,” 45 and Lauren Shaw, “Bloody Hell: How Insufficient Access to Menstrual Hygiene Products Creates Inhumane Conditions For Incarcerated Women,” *Texas A&M Law Review* 6, no. 2 (2019): 489-490 .

provisions, as with *Todaro v. Ward* (1977) which “declared that the failure to provide access to healthcare for incarcerated women was a violation of the Eighth Amendment,” it was not until the 21st century that the specific issue of menstrual (in)equity in correctional institutions was addressed by the courts of the United States.⁴⁵

In 2014, a group of eight female prisoners held at the Muskegon County Jail in Muskegon, Michigan sued the facility with the help of the ACLU of Michigan, alleging a number of human rights abuses regarding unsanitary living conditions, racist and sexist degradation by guards, and an acute lack of sanitary products.⁴⁶ One of the many Constitutional violations listed in their class action suit read that the “defendants fail to provide adequate feminine hygiene products to women detained at MCJ, causing them to bleed through their clothes.”⁴⁷ Londora Kitchens, one of the inmates in the suit, testified specifically to this claim. Londora said she was deprived of sanitary products when menstruating and that a guard told her “that I was ‘shit out of luck,’ and I better not ‘bleed on the floor.’”⁴⁸ She further said that “nobody deserves to be forced to live like an animal and to be treated like one. We are women deserving of basic respect, sanitary conditions, bodily privacy, and simply to be treated like the women we are.”⁴⁹ After three years of clause dismissals, appeals to higher courts, and the addition of more plaintiffs (which, by the end, included the entire jail population), the ACLU of Michigan reached a settlement with financial compensation and policy reforms.⁵⁰

⁴⁵ Ibid.

⁴⁶ ACLU Michigan, “ACLU of Michigan Sues Muskegon County Over Unconstitutional Policies, Hazardous Conditions at Jail,” last modified December 4, 2014, <https://www.aclumich.org/en/press-releases/aclu-michigan-sues-muskegon-county-over-unconstitutional-policies-hazardous>.

⁴⁷ ACLU Michigan, “Muskegon Complaint,” accessed February 12, 2021, 1, https://www.aclumich.org/sites/default/files/wysiwyg/2014_muskegon_complaint.pdf.

⁴⁸ ACLU Michigan, “Abuse and Neglect at Muskegon County Jail,” accessed February 12, 2021, <https://www.aclumich.org/en/abuse-and-neglect-muskegon-county-jail>.

⁴⁹ Ibid.

⁵⁰ Civil Rights Litigation Clearinghouse, “Semelbauer v. Muskegon County,” accessed February 12, 2021, <https://www.clearinghouse.net/detail.php?id=14252> and ACLU Michigan, “Mistreatment of Women at Muskegon

While the successes of *Semelbauer vs. Muskegon County (2014)* are notable, it is also important to note how difficult it was for the women to achieve them. One of the reasons this was so is that the Eighth Amendment is held by the courts as a highly subjective legal entity, “based on the reasoning that cruel and unusual *punishments* are prohibited, not merely cruel and unusual *conditions*” which means that “no matter how objectively terrible a prison condition is, a court may find the condition constitutional because a prison official did not meet the scienter requirement.”⁵¹ The judge in the Michigan case actually originally dismissed the claims about insufficient period products because “the women only alleged single, temporary delays in their access to feminine hygiene products”; in her opinion, this was not a violation of the inmates’ civil rights.⁵² While controversial, the judge’s opinion was not unusual; Lauren Shaw asserts that “the high burden of proof makes it difficult for women prisoners to make a successful Eighth Amendment claim based on insufficient feminine hygiene products” and that “courts give extensive deference to prison administrators when determining the validity of a prison regulation ... Thus, a successful claim in court does not ensure a prison regulation will be changed to bring relief to all prisoners. A successful individual claim only ensures relief for the individual claimant.”⁵³ These qualifiers suggest that the opportunity for carceral menstrual equity in the judicial sphere is quite destitute. Despite the progress made, “cases brought specifically on behalf of women and women's institutions have been disproportionately low... The courts simply have not been specific enough, nor forceful enough, in ensuring that their decisions are obeyed.”⁵⁴

County Jail,” accessed February 12, 2021,

<https://www.aclumich.org/en/cases/mistreatment-women-muskegon-county-jail>

⁵¹ Shaw, “Bloody Hell,” 491.

⁵² Ibid, 492

⁵³ Ibid, 491-492.

⁵⁴ Leonard, “Judicial Decisions and Prison Reform,” 53.

The issue of accountability is one seen in every aspect of menstrual equity and criminal justice policy. When it comes to menstrual injustice behind bars, the lack of accountability is perhaps as unjust as the actual acts of mistreatment. Prison administrators and wardens have the final say on the healthcare resources they provide to inmates, and with so many correctional facilities located across the country at state, local, and federal levels, it is virtually impossible to have a consistent standard of rules and regulations that promote menstrual equity.

Human Rights Abuses

The practices that these women or people with periods are forced to use to manage their periods endangers both themselves and those around them. In a recent study, the Correctional Association of New York found that “over half of the interviewed women responded that their monthly supply of pads (the only product that is provided without charge) was inadequate to meet their needs.”⁵⁵ Former convict Chandra Bozelko speaks first-hand about her traumatic experiences menstruating behind bars: “The only reason I dodged having a maxi pad slither off my leg is that I layered and quilted together about six [pads] at a time so I could wear a homemade diaper that was too big to slide down my pants. I had enough supplies to do so because I bought my pads from the commissary.”⁵⁶ The adverse physical and mental health effects of limited period supplies are well documented, both in and out of the carceral setting. The most well known medical condition directly associated with menstruation is Toxic Shock Syndrome (TSS); a bacterial infection resulting from a tampon left in place for an extended period of time (especially with super absorbent sized products) or low-quality tampons that are made with dangerous chemicals.⁵⁷ The impacts of this disease can be life threatening; the Mayo

⁵⁵ Nayla Lee, “Menstruation and Incarceration: Prisons Often Lack or Withhold Necessary Hygiene Products, Study Shows,” *The Trail: University of Puget Sound*, accessed November 2, 2020 via LexisNexis.

⁵⁶ Bozelko, “Prisons that Withhold Menstrual Pads Humiliate.”

⁵⁷ Mayo Clinic, “Toxic Shock Syndrome,” last modified March 18, 2020, <https://www.mayoclinic.org/diseases-conditions/toxic-shock-syndrome/symptoms-causes/svc-20355384> and Shaw, “Bloody Hell,” 482.

Clinic lists TSS complications as shock, renal failure, and death.⁵⁸ The availability and quality of menstrual products available to incarcerated populations is highly variable, the effects of which often result in shortages of necessary products. To combat the uncertainty of pad and tampon provision, prisoners with periods have been forced to reuse soiled products or else risk free bleeding onto themselves and their environment.⁵⁹ A 2019 Texas A&M Law Review tracking menstrual hygiene in carceral settings stated that in American prisons “women report wearing multiple hygiene products at once for extended periods of time,” a specific precursor to TSS.⁶⁰ According to the review, “it is now recommended that women change their tampons at a minimum every four to eight hours.”⁶¹ The same goes with pads: “Wearing sanitary pads for extended periods of time can cause fungal and bacterial infections, specifically vaginal yeast infections. To lower the risk of infection, it is recommended that women change their pad every four hours. This is obviously not possible for women prisoners when facilities only provide ten or fewer pads per month, and the average period lasts two to seven days.”⁶²

Alternative methods of managing menstrual blood flow in prisons and jails have yielded similarly horrifying stories: “Women in both American prisons and developing countries often use unwashed rags to control their menstruation, which can cause an abundance of infections. Similarly, a Connecticut woman prisoner was not provided feminine hygiene products and had to resort to using her sock. In addition to toilet paper or mattress stuffing, women prisoners have reported rolling up pads and using them as makeshift tampons.”⁶³ The review mentioned concern

⁵⁸ Ibid (both)

⁵⁹ ACLU, “Muskegon Complaint,” 1, Zoe Greenberg, “In Jail, Pads and Tampons as Bargaining Chips,” New York Times, last modified April 20, 2017, <https://www.nytimes.com/2017/04/20/nyregion/pads-tampons-new-york-womens-prisons.html#:~:text=Simple%20supplies%20like%20pads%20and,no%20policy>, and Lauren Shaw, “Bloody Hell,” 480-481.

⁶⁰ Shaw, “Bloody Hell,” 480-481.

⁶¹ Ibid, 482-484.

⁶² Ibid, 484.

⁶³ Ibid, 481.

for the potential health consequences of using non-sanctioned period products; these dangers present are well documented in other sources. A scientific blog details the exact threats to bodily health that “alternative” period products bring about: “The vaginal microbiome is the bacterial population that lives in harmony in the vagina ... [it] has been suggested to work with the immune system to protect us from numerous health complications such as STI’s, HIV, cervical cancer, and pregnancy complications such as miscarriage, ectopic pregnancy and premature delivery ... by using [period product] substitutes you run the risk of introducing unhealthy bacteria ... which is not only irritating and causes an unpleasant discharge, it’s associated with the aforementioned health complications.”⁶⁴ To reiterate the preventable deadliness of makeshift pads and tampons, a menstrual hygiene study in India found that a lack of proper period care leads to an increased risk of developing cervical cancer.⁶⁵ These are the conditions under which prisoners with periods are forced to menstruate. It is inhumane, undignified, and a horrific extended case study on the abuses of the American mass industrial prison complex. It is laughable that lawmakers offer up the commissary supply excuse as a legitimate option for menstruation, when in fact it only widens the accessibility gap further for a resource that is absolutely essential.

While physical health concerns are an obvious observation of limited period products, the unseen impacts on prisoners’ mental health from the same inequity are equally as important. In the aforementioned New York study, “it was reported that requesting more pads was arduous, humiliating, and often unsuccessfully; guards also kept track of how many times a woman

⁶⁴ Gynae Geek, “Menstrual Hygiene: The Health Implications,” last modified November 26, 2017, <https://www.gynaegeek.com/the-blog/2017/11/26/menstrual-hygiene-the-health-implications#:~:text=Toxic%20shock%20syndrome%20is%20a,use%20of%20excessively%20absorbent%20tampons.>

⁶⁵ Shaw, “Bloody Hell,” 481.

requested more products and used that against them. Some women report trading sex with guards in order to access necessary products.”⁶⁶ Chandra Bozelko asserts in her 2015 op-ed:

Even though keeping inmates clean would seem to be in the prison’s self interest, prisons control their wards by keeping sanitation just out of reach. Stains on clothes seep into self-esteem and serve as an indelible reminder of one’s powerlessness in prison. Asking for something you need crystallizes the power differential between inmates and guards; the officer can either meet your need or refuse you, and there’s little you can do to influence his choice ... to ask a macho guard for a tampon is humiliating. But it’s more than that: it’s an acknowledgement of the fact that, ultimately, the prison controls your cleanliness, your health and your feelings of self-esteem.⁶⁷

Further, when considering that the majority of incarcerated women are survivors of sexual trauma, the additional suffering embedded into carceral period care Bozelko describes -- of humiliation and degradation by prison guards -- is even more inhumane. Jennifer Weiss-Wolf, a menstrual equity activist and author, writes that “for those caught in America’s prison industrial complex, menstrual hygiene is an oxymoron. There’s nothing healthy or even resembling hygienic for those who are behind bars. Not once a month. Not ever.”⁶⁸

While the courts “will not allow prison inmates to suffer from a lack of medical care which is so egregious as to independently shock the conscience” and “if the medical system in a correctional facility presents a ‘grave and immediate health danger to the physical well-being’ of the prisoners, the court may enjoin those conditions prior to any harm resulting,”⁶⁹ it is more than

⁶⁶ Lee, “Menstruation and Incarceration.”

⁶⁷ Bozelko, “Prisons that Withhold Menstrual Pads Humiliate.”

⁶⁸ Jennifer Weiss-Wolf, *Periods Gone Public: Taking a Stand for Menstrual Equity* (New York: Arcade Publishing, 2017), 76.

⁶⁹ Klein, “Prisoners’ Rights,” 11-12.

fair to say that these endless stories of the horrific period reality behind bars ‘shock the conscience’ of all who read them. So if it’s clearly unconstitutional, why is this still happening?

State and Federal Legislation and their Many Issues

It is only fairly recently, in the past 20 years or so, that US criminal justice legislation has begun to acknowledge the varying sex and gender characteristics between genders and how the nuances of those differences interact in carceral spaces. There are a handful of Supreme Court cases and instances of state legislation that codify the specific healthcare rights of incarcerated women and yet, large disparities and human rights violations still exist in the treatment of inmates. There is an inverse relationship between the health needs of women prisoners and available treatment or resources in many facilities.⁷⁰ They write that “although their numbers have grown, we maintain that public policy has ignored the context of women’s lives and that women offenders have disproportionately suffered from the impact of ill-informed public policy.”⁷¹ The First Step Act of 2018 is the most recent piece of federal legislation that addresses the menstruation needs of prisoners. A short, one sentence section (if it could be called that) entitled “Healthcare Products” states that The First Step Act “requires [the Bureau of Prisons (BOP)] to provide tampons and sanitary napkins that meet industry standards to prisoners for free and in a quantity that meets the healthcare needs of each prisoner.”⁷² A more thorough 2020 operations memorandum by the Bureau of Prisons mandates that wardens of federal prisons must make available regular and super size tampons, pads, and panty liners at no cost to prisoners, as well as additional products for purchase at the commissary.⁷³ This one-year memorandum has

⁷⁰ Mallicoat, “The Incarceration of Women,” 465.

⁷¹ Bloom et. al., “Women Offenders,” 477.

⁷² Nathan James, “The First Step Act of 2018: An Overview,” *Congressional Research Service*, accessed February 12, 2021, <https://crsreports.congress.gov/product/pdf/R/R45558>, 20 and Federal Bureau of Prisons, “An Overview of the First Step Act,” accessed February 12, 2021, <https://www.bop.gov/inmates/fsa/overview.jsp>.

⁷³ Federal Bureau of Prisons, “Provision of Feminine Hygiene Products,” July 29, 2020, https://www.bop.gov/policy/om/003_2020.pdf, 1-2.

been renewed every year since 2017, when it was first introduced. The details included in this provision are great, but its one-year expiration date is an unsustainable format for sturdy, institutional change, and “it is not clear what will happen after the new memorandum expires.”⁷⁴

Further, the First Step Act and Provision of Feminine Hygiene Products are definitely important measures towards menstrual equity, approved -- albeit surprisingly -- by President Trump, but it’s important to note that the Bureau of Prisons specifically oversees federal prisons, and not state and local ones. The population of women incarcerated in federal facilities is, as of 2019, the smallest proportion when compared to local jails and state prisons: the number of women in federal facilities is around 12,500 compared to local jails, 101,000, and state prisons, 99,000, respectively.⁷⁵ This means that the remaining 200,000 incarcerated people with periods (not to mention the 7,700 women in immigration detention and 6,600 youths that are included in the graphic) are subject to each state’s individual legislation regarding what menstrual products are available to them and when.⁷⁶ A few comprehensive bills have been proposed by members of Congress over the last five years that have legislated menstrual products for wider levels of incarcerated women, such as Senators Cory Booker and Elizabeth Warren’s 2017 Dignity for Incarcerated Women Act and Congresswoman Grace Meng’s Menstrual Equity for All Act of 2017.⁷⁷ According to Congress’ website, however, these bills sadly remain stagnant in either the ‘introduced’ stage (some have even been reintroduced two years later) or slowly under review by some random committee, which also equates to a standstill effort.⁷⁸ Although these bills didn’t

⁷⁴ Shaw, “Bloody Hell,” 496-497.

⁷⁵ Kajstura, “Women’s Mass Incarceration: The Whole Pie 2019.”

⁷⁶ Ibid.

⁷⁷ H.R.972 (2017), S.1524 (2017), H.R.1882 (2019), and Congresswoman Grace Meng, “Meng Unveils Bold Proposal to Provide Menstrual Equity to All,” last modified March 26, 2019, <https://meng.house.gov/media-center/press-releases/meng-unveils-bold-proposal-to-provide-menstrual-equity-to-all>.

⁷⁸ Elizabeth Warren, “Warren, Booker Re-Introduce the Bicameral Dignity for Incarcerated Women Act,” *Elizabeth Warren*, last modified April 2, 2019, <https://www.warren.senate.gov/newsroom/press-releases/warren-booker-re-introduce-the-bicameral-dignity-for-inca>

pass, the language that comprises them is still extremely helpful in providing a model for similar proposed legislation on a state level. The semantics encoded in state legislation dictate how and when period products are distributed as well as quality, and as the majority of incarcerated women are held in local facilities, it is this specific area of legislation that can really make a difference in achieving menstrual injustice in carceral spaces.

Comprehensive menstrual equity legislation for the incarcerated has been able to pass in a number of states, 13 to be exact.⁷⁹ However, there is a tremendous degree of variation in the way state prisoner's rights to reproductive healthcare are legislated. For example, in Louisiana, a more comprehensive 2018 law "requires menstrual products to be provided to all incarcerated women at no cost, in an appropriate quantity, and the products must be available in the housing units and the medical areas of the facility," while in Kentucky, a 2018 law only requires that the "Department of Corrections must promulgate 'minimum standards' that include an adequate number of menstrual products for prisoners who need them."⁸⁰ New York City is an example of a state where local activists lobbied and partnered with local politicians to successfully pass important legislation. In 2016, New York Governor Andrew Cuomo passed the first piece of legislation specifically regarding menstrual equity country, requiring NYC's "public schools, correctional facilities, and homeless shelters to provide menstrual products."⁸¹ A more comprehensive state-wide law was passed three years later.⁸² These state successes are extremely important in achieving menstrual equity for incarcerated people due to the prominent concentration of women being in state and local facilities. Even so, in states that have passed

[rcerated-women-act#:~:text=%22The%20Dignity%20for%20Incarcerated%20Women,to%20their%20families%20and%20communities.](#)

⁷⁹ ACLU and Period Equity, "The Unequal Price of Periods: Menstrual Equity in the United States," 2019, 5.

⁸⁰ Ibid, 11.

⁸¹ Ibid.

⁸² Ibid.

laws regarding menstrual equity in prison, accountability is still an issue regardless of legislation quality. In Maryland and Virginia, news articles have surfaced in the last few years with similar headlines: despite the state mandate that a variety of free period products be distributed to inmates, incarcerated women were still not receiving adequate treatment.⁸³

The healthcare struggles that women face in prison can be both attributed to and exacerbated by the evolving framework (gendered policy) upon which the modern carceral system in the United States stands, one that emphasizes punishment and captivity over rehabilitation. While social attitudes towards prisoners have always been majoritively negative, the “Tough on Crime” rhetoric in the 1980s solidified a less forgiving, more divisive outlook on the purpose of correctional institutions and the people held there.⁸⁴ Another deep-rooted obstacle to menstrual equity is that criminal justice legislation has historically been crafted with men in mind, both 40 years ago and today: “One of the gender dynamics found where sexism is prevalent is that programs or policies declared ‘genderless’ or ‘gender neutral’ are in fact male-based.”⁸⁵ Criminal justice constructs that cater to men, such as the United States’, “fail the unique needs of women.”⁸⁶

Conclusion

For a country like the United States, which has the highest number of incarcerated women in the world, hundreds of thousands of women are denied their basic human dignity

⁸³ Alexa Doiron, “Despite 2019 Law, Some Jails Still Don’t Provide Free Menstrual Products to Female Inmates,” *WYDAILY*, last modified March 9, 2020, <https://wydaily.com/local-news/2020/03/09/despite-2019-law-some-jails-still-dont-provide-free-menstrual-products-to-female-inmates/> and Ann E. Marimow, “A New Law Promised Female Inmates Free Tampons. They’re Still Paying,” *Washington Post*, last modified June 5, 2019, https://www.washingtonpost.com/local/legal-issues/a-new-law-promised-marylands-female-inmates-free-tampons-theyre-still-paying/2019/06/04/cc5442da-86d7-11e9-a491-25df61c78dc4_story.html.

⁸⁴ Mallicoat, “The Incarceration of Women,” 467.

⁸⁵ Bloom et. al, “Women Offenders,” 478.

⁸⁶ Ibid.

every month.⁸⁷ Disjointed policies regarding access to period products in prisons and jails violates the basic human rights of prisoners with periods with dangerous and inhumane consequences as a result of years of male-centered penial framework. When the language that codifies prisoners' rights to healthcare is highly variable, it is impossible for equitable or even equal treatment to occur in facilities throughout the country. Even with the federal legislation in place guaranteeing access to satisfactory menstrual products for federally-incarcerated menstruating people -- of which is far from comprehensive -- it has been seen that the enforcement of what little menstrual equity there is is also a challenge.

Activists from the 1970s (and before!) to today have recognized the major injustices in the way people with vaginas are treated, and organized in response. In the past decade, a number of the articles mentioned in this paper appeared in national news sources, and menstrual equity advocacy began to circulate around social media. Stories about the deprivation of reproductive healthcare in immigration detention centers under the Trump Administration brought this issue to the national spotlight just recently.⁸⁸ For the 7,700 women housed in US immigrant detention centers, the access to menstrual products is an even greater struggle; while non-US citizens are protected under the Constitution, the added anti-immigrant sentiment alongside period equity debates has fostered an even more unorganized and terrifying period experience for immigrants.⁸⁹

⁸⁷ Aleks Kajstura, "States of Women's Incarceration: The Global Context 2018," *The Sentencing Project*, June 2018, <https://www.prisonpolicy.org/global/women/2018.html>

⁸⁸ Andrew Buncombe, "Trump Administration Leaves Menstruating Migrant Girls 'Bleeding Through' Underwear at Detention Centres, Lawsuit Claims," *The Independent*, last modified August 20, 2019, <https://www.independent.co.uk/news/world/americas/trump-immigration-migrant-children-border-lawsuit-period-tampon-latest-a9081341.html>.

⁸⁹ Kajstura, "Women's Mass Incarceration: The Whole Pie 2019," <https://www.pbs.org/newshour/politics/what-constitutional-rights-do-undocumented-immigrants-have>, and <https://www.aclu.org/other/rights-immigrants-aclu-position-paper>.

As people with periods have become more open about their experiences, the American societal capacity to normalize and improve menstruation has expanded. Jennifer Weiss-Wolf declared 2015 as “the year of the period.”⁹⁰ She actually coined the phrase “menstrual equity,” writing “in order to have a fully equitable and participatory society, we must have laws and policies that ensure menstrual products are safe and affordable and available for those who need them.”⁹¹ Weiss-Wolf and Laura Strausfeld co-founded the non-profit Period Equity, a legal organization focused on “axing the Tampon Tax,” accessibility to resources for all who menstruate, and the distribution of safe period products.⁹² Period Equity has made incredible progress with the Tampon Tax, eliminating state policies taxing tampons as a luxury in 20 states.⁹³ They have partnered with the ACLU to craft important informational resources to work towards menstrual justice in the United States, behind and beyond bars.

Another important contemporary issue regarding menstrual inequity behind bars is the treatment of incarcerated trans men and gender non-conforming people. These prisoners are frequently placed in facilities that don’t respect their gender identity and struggle similarly with the exclusive language used in period legislation that designates products to specifically women prisoners rather than people with periods.⁹⁴ Attention to the specific abuses LGBTQ+ prisoners suffer is an aggregated concern of the mainstream narrative of American prison injustice.

⁹⁰ Weiss-Wolf, *Periods Gone Public*, 3.

⁹¹ *Ibid* *IVI*.

⁹² Period Equity, “Mission & History,” accessed February 12, 2021, <https://www.periodequity.org/mission-and-history>.

⁹³ *Ibid*.

⁹⁴ Chloe Atkins, “For Transgender Men, Pain of Menstruation is More than Just Physical,” *NBC News*, last modified January 11, 2020, <https://www.nbcnews.com/feature/nbc-out/transgender-men-pain-menstruation-more-just-physical-n1113961> and National Center for Transgender Equality, “Police, Jails, and Prisons,” <https://transequality.org/issues/police-jails-prisons>.

As the fight for menstrual equity spans into the future, it is imperative that vulnerable populations -- such those incarcerated -- are maintained, front and center, in this pertinent and necessary conversation.

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