

Failing to Protect

*Oklahoma's Child Abuse and Neglect Statute
Unfairly Punishes Mothers and Endangers Children*

ISSUE BRIEF



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Introduction to *Turning the Page*

At the end of 2016, Oklahoma had the highest incarceration rate in the country, a shameful consequence of more than two decades of explosive jail and prison growth that failed to make Oklahoma safer, more just, or more productive. Since that time, Oklahoma voters and policymakers have begun turning the page on this marred history, making long overdue changes to the criminal justice system that have reduced the prison population by more than 20% and helped thousands of Oklahomans reunite with their families and return to their communities. Yet even after all this progress, Oklahoma still has the third-highest overall imprisonment rate in the country, thanks in part to the state's unyielding reliance on increasing prison sentences rather than investing in common sense policy solutions that foster healing and stronger families and communities.

Thankfully, Oklahoma's criminal justice reform story continues to be written. The improvements that have been made to the criminal justice system in the last five years show that progress is possible. *Turning the Page: Oklahoma's Criminal Justice Reform Story* (*Turning the Page*), a recent report from FWD.us, relied on months of qualitative and quantitative

research to examine the impacts of five years of reforms, the ongoing drivers of Oklahoma's stubbornly high incarceration rates, and the personal stories of people who have been impacted by the criminal justice system.

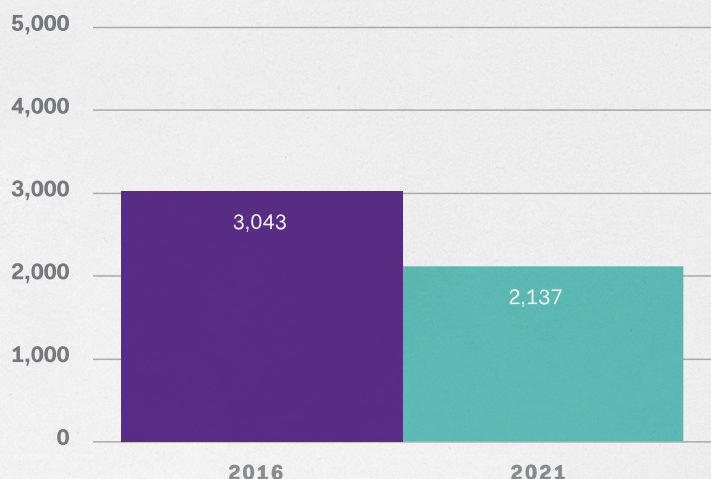
This issue brief continues that work, honing in on data and personal stories to explore the state's child abuse and neglect statute, which is driving Oklahoma's outsized imprisonment rate for women. As broken down in the second section of this brief, Oklahoma's statute is highly punitive and overly broad, including almost any scenario where a child's health, safety, or welfare was or could have been at risk, threatening people with a life sentence no matter the severity of the risk or actual harm. While children's safety must be protected, Oklahoma's statute often does the opposite. The rest of the brief tells the stories of women and families who have been impacted by this failed policy. By criminalizing survivors of domestic violence and mothers living in poverty—sometimes with little to no evidence of actual wrongdoing—the statute deters reporting, separates families, isolates them from much-needed help, and places children at even greater risk of abuse and neglect.

Why Focus on Incarceration for Child Abuse and Neglect?

For nearly three decades, Oklahoma imprisoned more women per capita than anywhere else. Thanks to recent criminal justice reforms, the overall prison population has declined by 21% in five years. The women's prison population has seen an even more significant drop (30%) and now Oklahoma has the second-highest rate of women's imprisonment in the country.

Figure 1: The women's prison population in Oklahoma declined 30% since 2016.

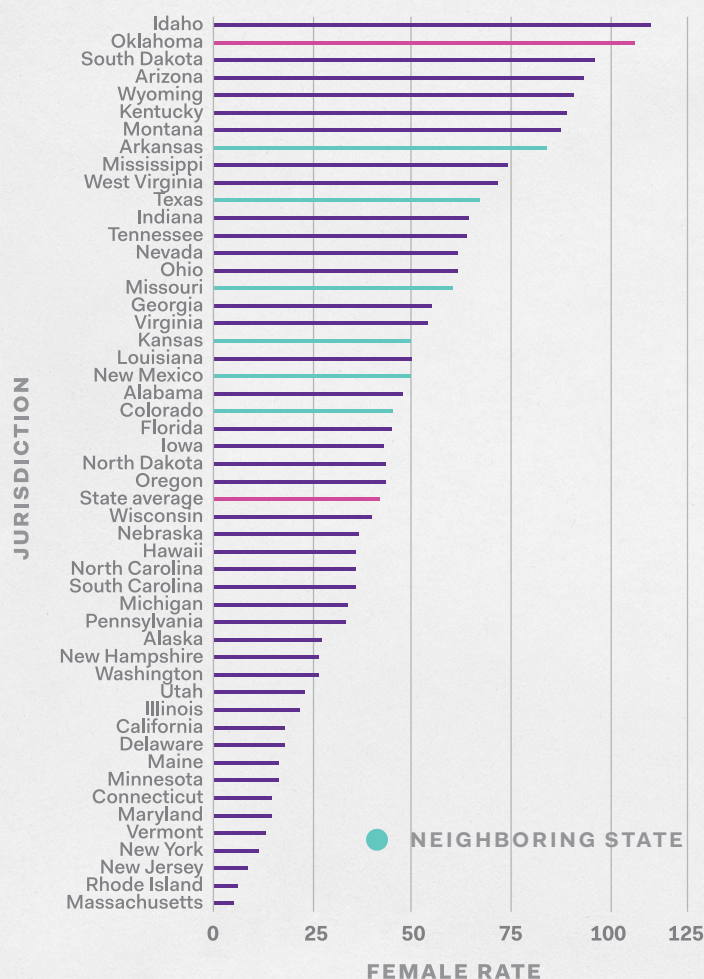
Women's prison population, FY16 vs. FY21



But still, Oklahoma locks up more than twice as many women in prison per capita as the average state—imprisoning women at a far higher rate than any of its neighbors and exacerbating racial disparities. As of FY 2021, the women's prison population in Oklahoma was 18% Black and 17.5% Indigenous, despite Black and Indigenous people only making up 7% and 8% of the overall state population, respectively. While the women's prison population has declined due to recent reforms since 2016, this decline is larger for white women (35.8%) than for Indigenous (27.2%) and Black women (12.6%).

Figure 2: Oklahoma's imprisonment rate for women is more than twice as high as the average state.

Female imprisonment rate by state, 2020



Source: Bureau of Justice Statistics, National Prisoner Series

The high rate of incarceration for women takes a toll on Oklahoma's families. While most incarcerated parents are fathers, a larger proportion of women in prison are mothers with minor children¹ and mothers are more likely to have lived with their child prior to their incarceration.² A 2014 study

of women in Oklahoma prisons found that around 85% had children and 68% had minor children.³ **Of those with minor children, about 66% were living with their children at the time of their arrest and nearly 75% of their children were no longer living with a parent after their mother's incarceration.**⁴ Because mothers often had custody before their incarceration, their children were more likely to end up with another family member (such as the child's grandmother) (53.5%), placed in the foster system (9.6%), or left to fend for themselves. Shockingly, nearly 12% of mothers who lived with their children prior to their incarceration reported that they did not know where their children were currently living.⁵

This type of disruption can have lasting effects on a child's wellbeing long into adulthood. Indeed, the average age of a minor child with a parent in state prison is nine years old, and one in every five children (19%) are only four years old or younger.⁶ This means that a substantial number of children are

separated from their parents during their most pivotal stages of development.

Unfortunately, motherhood can serve as a pathway to incarceration for women in Oklahoma. As of July 2021, the most common offense for people in women's prisons was child abuse and neglect, with one in every six women serving a sentence for this offense. This number could be an undercount, as some women may have been convicted of first degree murder, the second most common offense, for child fatalities directly tied to abuse and neglect, even if they themselves did not harm the child.⁷

Child abuse and neglect is rarely a top, let alone the top, most common offense for women in prison in other states. For example, in Arizona and Mississippi, two other high-incarcerating states, child abuse and neglect accounted for just 2.1% and 4.3% of the women's prison population, respectively, compared to 16% in Oklahoma.

Figure 3: One in every six women in Oklahoma prisons is serving a child abuse or neglect sentence.
Top ten offenses for women in Oklahoma's prisons, FY 2021

Controlling Offense	Number of Women	Percent of Women in Prison Population
Child Abuse/Neglect/Failure to Protect	342	16.04%
Murder First Degree	190	8.91%
Trafficking in Illegal Drugs	180	8.44%
Distribution of Controlled Dangerous Substance/PWID	144	6.75%
Manslaughter First Degree	105	4.92%
Murder Second Degree	101	4.74%
Robbery or Attempted Robbery with a Dangerous Weapon	92	4.32%
Assault and/or Battery with a Dangerous Weapon	67	3.14%
Burglary Second Degree	61	2.86%
False Personation	60	2.81%

Breaking Down Oklahoma's Child Abuse and Neglect Statute

Oklahoma's child abuse and neglect statute is written in a way that criminalizes a broad range of circumstances, many of which are closely linked to poverty and being a victim of domestic violence. This broad, vague language gives district attorneys unfettered discretion in the prosecution of these cases, which are used to punish mothers in ways that are uncommon in other states where the law is more tightly written to focus on the person committing abuse and the severity of the harm alleged. In addition, Oklahoma's law does not allow an affirmative defense based on a mother's own victimization, unlike other states including Texas. Finally, in Oklahoma this vaguely defined crime comes with an overly broad sentence—zero years to life in prison. In this section, each of these issues is explored with comparisons to a neighboring state to give an example of how far Oklahoma's statute is from how these crimes are dealt with in other states.

OKLAHOMA'S CHILD ABUSE AND NEGLECT STATUTE IS VAGUELY DEFINED

Child abuse and child neglect is prosecuted in every state across the country but Oklahoma is unique in how vaguely its statute is written and the maximum punishment allowed.

In Oklahoma, child abuse and child neglect are located in the same section and carry the same sentence range regardless of the severity of harm or injury to a child and the culpability of the accused. Child abuse typically involves physical or psychological harm but can include neglect as well. The Oklahoma statute defines child abuse as "the willful or malicious harm or threatened harm or failure to protect from harm or threatened harm to the health, safety or welfare of a child" or injuries to a child.⁸ **This means Oklahoma's statute does not require an actual injury to occur, and although abuse is defined as nonaccidental, the statute gives widespread discretion to prosecutors, judges, and juries. As one attorney noted, "you could really say anything is child abuse."**

On the other hand, child neglect frequently involves situations associated with poverty. In Oklahoma, it is defined as "the willful or malicious neglect" of a minor, including "the failure or omission to provide ... adequate nurturance and affection, food, clothing, shelter, sanitation, hygiene, or appropriate education, medical, dental, or behavioral health care, supervision or appropriate caretakers, or special care made necessary by the physical or mental condition of the child" in addition to abandonment and the "failure or omission to protect a child from exposure to" illegal drugs, inappropriate content, and other illegal activities.⁹ **The statute does not further describe what constitutes "adequate" or "appropriate" and can criminalize parents with limited resources.**

Several advocates and currently incarcerated women shared stories of women sent to prison for driving without a car seat, which is typically charged as a misdemeanor, or co-sleeping with their child when they couldn't afford a crib. One incarcerated woman was experiencing homelessness. Her mother was incarcerated, she was expecting another baby, and had no choice but to move in with her abusive husband and his parents.

Soon after giving birth, she had to immediately return to work. She said,

“I was the only one in that house with a job so I had to go back to work just days after delivering my baby.”

Still, she couldn't afford a bassinet and slept in the same bed as her husband and baby. One morning, she woke up to find that her 61-day-old daughter was not breathing. Her abusive husband at the time had smothered the baby while sleeping. The baby's cause of death was ruled sudden infant death syndrome (SIDS)/co-sleeping. She said, “That day I lost everything. My children to [the Department of Human Services (DHS)] or death, my home since my in-laws kicked me out, and my sanity.” Months later, after she left her husband and attempted to regain custody of her other children, she was arrested for child abuse and neglect and sentenced to 20 years in prison. Her husband received a 10-year prison sentence.

Like the story above, the child abuse and neglect statute allows a person to be prosecuted for “enabling” or “permitting” abuse if they “authorize or allow for the care of a child” and “knows or reasonably should know that the child will be placed at risk.” This portion of the statute is commonly referred to as “failure to protect,” and unfairly punishes women who have survived domestic violence. Back in 2014, an investigative report found that nearly 30 states had explicit “failure to protect” laws and essentially all states had more general statutes that could apply to “failure to protect” situations, but the sentences across states varied greatly—in 16 states the maximum allowable sentence was 5 years or less, and in 28 states the maximum was 10 years or less.¹⁰

Despite decades of research showing that long sentences do not make communities safer, both child abuse and child neglect in Oklahoma carry up to a life sentence for first time offenses. Thus, even if no actual harm happens or an adult was not directly involved in perpetuating that harm, they can be sentenced to spend the rest of their life behind bars.

While Oklahoma's statute doesn't mandate a life sentence (the sentence ranges from zero years to life in prison and sets a fine between \$500 and \$5,000), the statute offers no guidance on what type of acts or omissions warrant a fine, probation, or a life sentence. In other states, the type of harm that rises to the level of abuse is much more clear and maximum sentences are adjusted accordingly so that the punishment is more proportionate to the crime itself. Looking at one of Oklahoma's neighboring states, Missouri's statute not only offers a generic definition of abuse and neglect but also defines different injury types, such as abusive head trauma, mental injury, physical injury, serious emotional injury, and serious physical injury.¹¹ Unlike Oklahoma's statute, Missouri's statute also factors in the severity of the injury in determining the maximum allowable prison sentence.

Oklahoma does not distinguish between the severity of harm or injury, allowing for harsh punishment for minor acts or omissions connected to poverty and trauma.

Review of Missouri Statutes



Oklahoma

Does not define and distinguish between harm and subjects all acts or omissions to the same maximum punishment.



Missouri

Defines and assigns different sentences for acts that result in mental or physical injury versus those that result in serious emotional or physical injury or death.

OKLAHOMA'S CHILD ABUSE AND NEGLECT STATUTE DOES NOT ALLOW SPECIFIC AFFIRMATIVE DEFENSES

Oklahoma's statute also does not explicitly allow a person charged with child abuse and neglect to argue an affirmative defense based on a person's own victimization, which would allow them to present evidence to negate or mitigate their criminal liability, including instances where a mother was under duress and being abused by the same person who harmed her children.

This type of defense is important for women like Kerry. One night, Kerry woke up and found her abusive boyfriend choking her daughter.¹² She immediately tried to stop the abuse, but she was pushed and beaten. After trying unsuccessfully to reduce the aggressiveness of the attack, Kerry placed her body between his belt and her daughter. He responded by taking Kerry's phone, locked her out of her daughter's bedroom, and physically prevented her from escaping to call for help. When Kerry's roommate came home, Kerry's boyfriend detained her as well, taking her phone and keys. When city contractors came to service the home later in the day, the roommate escaped and alerted them to call the police. Despite the abuse Kerry endured and her attempts to shield her child from abuse, she was prosecuted for "failure to protect" and sentenced to 30 years in prison. Her boyfriend received an 18-year sentence.

Some states have taken steps to add an affirmative defense in their child abuse statute, acknowledging that a person's experiences of trauma should be considered when assigning blame. For example, the child abuse statute in Texas provides for an affirmative defense in certain situations where a person is a survivor of domestic violence.¹³

Oklahoma does not provide an affirmative defense for survivors of domestic violence.

Review of Texas Statutes



Oklahoma

No affirmative defense for a person's own victimization in statute.



Texas

Allows an affirmative defense for a victim of family violence who was not aware of any prior abuse, did not cause the injury, and did not reasonably believe an effort to stop the abuse would have had an effect.

OKLAHOMA'S CHILD ABUSE AND NEGLECT STATUTE CARRIES A LIFE SENTENCE

While child abuse in Oklahoma carries up to a life sentence in prison, even if it is the person's first conviction, the maximum prison sentence allowed in Kansas for a person who has no prior record is about 2.8, 3.5, or 5 years, depending on the child's age and the type of harm.¹⁴

Notably, child endangerment in Oklahoma is similarly defined as a parent or guardian who commits acts or omissions such as "knowingly permit[ting]" abuse but carries a sentence of up to four years in prison.¹⁵ Strikingly, the child endangerment statute includes an affirmative defense if a person has a "reasonable apprehension" that any effort to stop abuse "would result in substantial bodily harm to the person or the child." Instead of charging "failure to protect" cases under this statute, prosecutors routinely seek child abuse and neglect charges to leverage a life sentence. **One attorney said that district attorneys have admitted to charging a person with**

child abuse and neglect rather than child endangerment because it's easier to prove child abuse and neglect and a life sentence “makes plea bargaining far easier” for the prosecutor. Oklahoma also has a misdemeanor child neglect statute for “omission to provide,” that could be used by district attorneys in lieu of a felony charge.¹⁶

But even less punitive options in Oklahoma carry maximum sentences far longer than some other states. In Kansas, child endangerment is a misdemeanor or if aggravated endangerment, the offense carries up to about 1.4 years in prison.¹⁷ (For a comparison of child abuse, child neglect, and child endangerment sentence ranges in neighboring states, see the *Turning the Page Data Appendix*.)

Oklahoma allows longer sentences, regardless of conviction history.

Review of Kansas Statutes



Oklahoma

Child abuse and neglect:
up to life in prison for a
first offense.

Child endangerment: up to
4 years in prison.



Kansas

Child abuse: up to 5 years
for a first offense.

Aggravated/child
endangerment: misdemeanor
or up to 1.4 years in prison.

Additionally, in Oklahoma, child abuse and neglect is classified as a violent offense regardless of the facts of the case and is an 85% crime, meaning that people sentenced to prison for this offense are not eligible to earn credits off their sentence and return home to their families sooner until they have served the vast majority of their term in custody.

Given the broad sentence range in Oklahoma, advocates shared stories about a “trial tax,” where women fear taking their cases to trial and getting a life sentence. Oklahoma is one of a few

states where juries decide guilt and provide a prison sentence. But juries in Oklahoma do not issue deferred or suspended sentences or sentence a person to probation or another alternative to incarceration. In other words, juries have the option to acquit or send a person to prison, even if the jury may believe that society would benefit the most if that person remained in the community to receive treatment, counseling, and other supportive services.

Because of this, women who may want to fight their cases feel an overwhelming pressure to accept a plea deal offered by the prosecutor or accept a “blind plea” where a judge sets the sentence and the person has no prior knowledge of what the punishment will be. Sometimes, they wait in jail for months or even years, hoping to receive a more favorable plea offer that is less harsh than the life sentence they are up against. One attorney said, “A lot of people plea when they’re not necessarily guilty, just because they don’t want to take the risk of going to trial. ... You end up seeing people sit up in jail for two years, waiting on the trial, just to be offered probation at the last minute.”

Far from protecting children from abusive homes, Oklahoma’s child abuse and neglect statute is routinely used to scapegoat survivors of domestic violence, criminalize mothers living in poverty, and punish mothers struggling with substance use or in the wake of devastating accidents.

Punishing Survivors

Research shows that incarcerated people and crime survivors are not mutually exclusive groups. Most people in prison, especially women, are survivors of physical and sexual violence and other forms of abuse and neglect. **Efforts to cope with trauma or defend themselves from abuse can serve as a pathway to incarceration for women in Oklahoma.**

A study of women in Oklahoma prisons found that as children, 57% experienced sexual abuse, 47% experienced physical assault, 70% experienced either, and 35% experienced both.¹⁸ As adults, about 46% experienced at least one rape, and 66% experienced physical abuse by a partner within a year before prison.

Domestic violence is a rampant issue across the country and Oklahoma's child abuse and neglect statute only exacerbates the harm. The prosecution of "failure to protect" in Oklahoma has been under scrutiny for several years because a person's status

as a survivor is used as evidence, sentences are long, and women are almost exclusively punished for the actions of their abusive partner. The assumption is that survivors "should've known" that an abusive partner could and would be violent toward their children, thus, the survivor's failure to immediately report abuse, or leave an abusive situation, makes them guilty of a crime.

This line of reasoning is flawed. **Research about the psychology of abuse recognizes that domestic violence is about power and control and survivors are stigmatized and told constantly that they are to blame for the abuse they endure.**¹⁹ As one advocate explained, "That blame is internalized ... so it is not a rational conclusion for someone experiencing abuse from a partner to think, "Oh I'm facing this violence therefore my children may be also facing this violence" because in their minds the abuse is their fault. ... Their children are blameless so, of course, their children are safe."

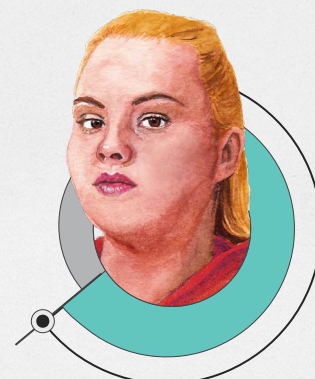
Most women in prison are survivors of physical and sexual violence and other forms of abuse and neglect.
Experiences of women in Oklahoma prisons



Sexually abused as a child



Physically assaulted as a child



Experienced intimate partner violence
within a year of incarceration

Source: Sharp, Jones, and McLeod, 2014

Furthermore, as one incarcerated survivor noted,

“It’s not easy to just up and leave a[n] abusive relationship like people think it is.”

Survivors are often tied to their abusers financially, emotionally, and legally. They might have children together, be married, live together, share bank accounts, and rely on their partner for basic needs. They are often isolated from friends and family and feel as if they have nowhere to turn. They might be told that the abuse won’t happen again or fear that the abuse will only escalate if they attempt to leave.

Indeed, the most dangerous time in an abusive relationship is when an abused person attempts to cut ties. For three years in a row, research from the Violence Policy Center has ranked Oklahoma in the top 10 for the number of women killed by men in the United States. The latest report ranked Oklahoma second in the country, with a homicide rate of 3.28 per 100,000, which is more than double the national average.²⁰

In 2021, women in Oklahoma made up nearly 70% of victims of intimate partner homicide.²¹ Women of color were overrepresented. Almost one in four women killed by an intimate partner were Black and more than one in 10 were Indigenous.

Women are more vulnerable to intimate partner homicide and more likely to be primary caregivers²² and Oklahoma’s statute disproportionately impacts them without making children safer. Looking at available court data in 13 Oklahoma counties, a report found that 93% of people convicted of “failure to protect” were women.²³ Not one case was found where a woman directly abused a child and a man was convicted of “failure to protect.” Additionally, one in four women convicted of “failure to protect”

received a longer sentence than the person who committed the abuse. Half of the women convicted had also been abused by the same person who harmed their child(ren). A recent investigative report found that more than 300 people have been charged with “failure to protect” in Oklahoma since 2009, at least 90% of people sent to prison were women, and the vast majority had no other felony convictions.²⁴ The article also identified several cases where the mother was convicted and the man’s charges were dismissed.

In the last few years, the problem has gotten worse. The proportion of women in prison for child abuse or neglect has risen sharply from around 9% in 2016 to 16% in 2021. **Women are vastly overrepresented in admissions to prison for child abuse and child neglect, making up 38.2% of all people admitted to prison for this offense in FY 2021, compared to 15.9% of admissions overall.** Research has also shown racial disparities, with Black women accounting for 19% of people sent to prison under the “failure to protect” statute since 2009, nearly triple the Black population of the state.²⁵

Tondalao (Toni), a young Black mother, was looking for an apartment so she could leave the abusive father of her children.²⁶ When she returned home, she found that two of her three kids had been injured. She took them to the hospital for treatment. Toni was charged with “failure to protect” and was sentenced to 30 years in prison. The father of her children spent two years in jail and received an 8-year probation sentence. Advocates rallied around Toni’s case as a prime example of how Oklahoma’s statute unfairly punishes survivors. After serving 15 years behind bars, Governor Stitt commuted Toni’s sentence in 2019.

Similar to Toni’s case, many mothers are not home when their children are abused. **Working mothers who leave their children with a partner for childcare are prosecuted without any evidence that they witnessed or were aware of the abuse of their children.** Affordable and reliable childcare is hard to come by and the COVID-19 pandemic worsened the childcare crisis in Oklahoma—leaving low-income, working

mothers with too few options.²⁷ One incarcerated mother shared that she received a 15-year prison sentence for “failure to protect” because her son’s father physically abused him while she was at work.

If not for diversion programs available in Tulsa and Oklahoma Counties, geared specifically at reuniting women and their children, many more would end up in prison for decades. This

was the case for one survivor of domestic violence who faced up to life in prison for “failing to protect” her child from the same abuse she endured. The district attorney in her case agreed to let her enter into ReMerge, a diversion program in Oklahoma City. She has since graduated from the program and is thriving—but alternatives to incarceration are not available in every county and some exclude women with charges classified as violent, including child abuse and neglect.

Punishing Poverty

As described earlier in this brief, Oklahoma's child abuse and neglect statute can apply to many situations, including those connected to poverty, such as not providing “adequate” food, shelter, and access to medical care.²⁸ **Court data shows that more than half (56.4%) of felony child abuse and neglect charges are specifically for child neglect.**²⁹ With more than one in seven Oklahomans living below the federal poverty line,³⁰ Oklahoma’s child abuse and neglect statute does not effectively distinguish between a parent who cannot afford to provide running water, three nutritious meals each day, and a home free of vermin—all of which could impact the “health, safety or welfare” of a child and can lead to a prison sentence—and those who can afford but willfully or intentionally refuse to. As a result, parents can face criminal prosecution and prison time without any real intention to harm their children.

The mere fact of a child’s injuries or death triggers an immediate impulse to assign blame criminally—and the implementation of Oklahoma’s child abuse and neglect statute gives law enforcement and district attorneys the power to pursue cases that should not, in reality, be a crime, such as tragic accidents and deaths resulting from natural causes.

One woman was raising her eight children in a cramped three bedroom apartment. Her 17-year-old son had cerebral palsy and was severely underweight (around 48 pounds). He was immobile and needed around-the-clock care. After he died at home, a medical examination was conducted, showing that he was hydrated, had food in his bowel, and did not have any bed sores. As her attorney noted, “Had he been in a hospice situation, he wouldn’t have been that well cared for.” Still, his mother was arrested and charged with murder by way of child abuse and neglect because “she must have been doing something wrong.”

After sitting in jail for two years, finally on the eve of her trial, prosecutors offered her probation—for a crime she never committed. She pled guilty to manslaughter and accepted the probation offer to avoid going to trial with a possible life sentence hanging over her head. But the harm had already been done. Her children were placed in the foster system and years later, she is still fighting to regain custody of her youngest two children. Her partner was also charged with child neglect and was subsequently deported because he was undocumented.

Sadly, this mother's case is not an anomaly. Maria, a young mother, was staying at her mother's house with her young daughter. One night, the house caught on fire and Maria was surrounded by thick smoke. Two days later, Maria woke up in the hospital burn unit with tubes down her throat to the news that her daughter was dead. Soon after, the fire department, DHS, and police flooded into her room accusing her of setting the fire that killed her only child at the time. Several months later, she saw her picture on TV saying that she was wanted for child neglect. She said,

"I was screaming, how could they do this?"

With no evidence that Maria had caused the fire, she still faced a 20-year prison sentence the prosecutor offered her. She had every intention of fighting the case, but after spending 10 months in county jail, in and out of suicide watch, she eventually pled to a 10-year probation term.

In another case, a mother was sleeping when she woke up looking for her two- and three-year-old children. After searching for some time, she thought they must've been with relatives she lived with. Unbeknownst to her, the children had wandered out of the building and drowned in a nearby creek. She received a 15-year sentence for child neglect.

Prosecution is too common for situations that are later found to not be crimes in the first place. Research has shown that around 28% of exonerated women were wrongfully convicted of harming a child and over 70% "were wrongfully convicted of crimes that never took place at all," including accidents, deaths by suicide, or fabricated crimes.³¹

Additionally, racial disparities also exist in the prosecution of child neglect. Indigenous women are sentenced 2.6 times more often, and Black women are sentenced 1.9 times more often, than their white peers.³² Poverty also plays a significant role, where counties with higher poverty rates and lower median income send more people to prison for child abuse and neglect.

Overall, the child abuse and neglect statute sets an expectation that mothers be all-knowing and that somehow harshly punishing them will keep kids safe in the future. In actuality, these harsh laws put children in harm's way. The statute lends itself to being used to criminally punish what some might consider morally wrong—a mother not doing "enough" to shield, protect, and provide for her children. One incarcerated mother said,

"There are so many women locked up who have had a child die or who have had a child abused by another person. They have been told that they 'should have known' their child was hurt. ... Sometimes you don't 'know' things just because you have kids."

Endangering Children

While the intended goal of Oklahoma's punitive child abuse and neglect statute may be to deter abuse, protect children, and incentivize survivors and parents in poverty to access resources, it ultimately has the opposite effect by deterring mothers from seeking help, increasing childhood trauma, and failing to protect children.

FEAR OF PROSECUTION DETERS MOMS FROM SEEKING NEEDED HELP

The lack of resources, coupled with the looming threat of prosecution, can discourage a person from seeking and getting support. A mother faces the threat of prosecution the moment abuse has happened in front of or adjacent to a child. Women in Oklahoma have been prosecuted and found to be criminally liable for child abuse even when they were in the midst of safety planning—saving money, finding housing, and reaching out to support networks to try to leave their abusive partner. Thus, women's financial vulnerability coupled with their responsibilities to their children play a significant role in their incarceration.

Moreover, taking steps to secure a safer environment for a child may also make a woman more vulnerable to prosecution.

Disclosing abuse, seeking resources for substance use or homelessness, and even taking your child to the hospital after an accident can trigger the involvement of law enforcement.

One mother shared that she regrets seeking out services when she was leaving an abusive relationship after the father of her children pulled a gun on her. She said,

“Instead of fighting him or anything like that, I did what everyone around me told me to do, I got up and I left and I filed a protective order and I talked to DHS. And that was mistake number one.”

Two years later, while facing false allegations of child abuse, her experience as a domestic violence survivor was brought up to justify her arrest.

Survivors who do seek help are also often forced to cooperate with law enforcement to receive resources, including crime victim compensation, and forced to testify against the person who abused them to lessen the punishment they may face under the statute, despite the very real fear of retribution.

Oklahoma's child abuse and neglect law has also been used to punish pregnant women for legal and illegal substance use. Since 2019, more than two dozen women have been charged with felony child neglect for using marijuana while pregnant, including women with a valid state medical marijuana license and under the care of a physician.³³ Before their child is even born, district attorneys are painting mothers as “bad” and in need of punishment instead of treatment and support. This reliance on the criminal justice system to deal with a public health issue disrupts the doctor-patient relationship. In a recent article, an expert on substance use in pregnancy stated, “The threat of criminal prosecution in Oklahoma has made it harder to gain pregnant patients' trust and to provide treatment. ... Instead of acting as a deterrent for drug use, [] fear of arrest can keep women from seeking prenatal care.”



Fearing prosecution or having their children removed for seeking social services and medical care only furthers isolation. The possible temporary or permanent loss of parental rights is very real for survivors and mothers living in poverty. A federal law, the Adoption and Safe Families Act, established a reunification timeline where states must move for the termination of parental rights if a child is in a foster placement for 15 out of the last 22 months.³⁴ These timelines can also be expedited, especially when infants and toddlers are in the state's care.³⁵ Incarceration of any length can trigger DHS placement and puts moms at risk of becoming a legal stranger to their children.³⁶

About 23% of child maltreatment reports in Oklahoma are substantiated and for those that are, the vast majority (86%) involve some form of neglect, which can include not providing “adequate” food, shelter, and access to medical care. Interestingly, nearly half (48.1%) of substantiated incidents of neglect were for “threat of harm,” 23.4% for exposure to domestic violence, and 13% for “failure to protect.”³⁷

Additionally, more than half (53%) of children who enter the foster system are there because of a parent's drug use, 61% are there for neglect, and 11% because of inadequate housing.³⁸ Sonya, a mother of three, struggled with substance use for decades after being molested and placed in the foster system as a child. At one point, she was homeless and living in her car with her oldest son. She did not seek out supportive services because she was afraid that her son would be taken. She said,

“I didn’t want nobody to take him, ... at this point [being a mother] was the only thing I was holding on to.”

All in all, the fear of prosecution and family separation serve as barriers to support which does not make women and children safer.

PUNISHING MOTHERS DOES NOT PROTECT CHILDREN

If punishing mothers was working to protect children, Oklahoma would have the best childhood outcomes in the country. Instead, Oklahoma ranks in the bottom as one of the least healthiest states for women and children (47th)³⁹ and 37th in the country because of its high rate of adverse childhood experiences, which are traumatic events that can affect a child's wellbeing through adulthood.⁴⁰

About 7% of Oklahoma children witnessed domestic violence, one in eight struggle with anxiety and/or depression,⁴¹ and one in 10 have experienced parental incarceration, which is significantly higher than the national average of 6.5%.⁴² The racial disparities in incarceration noted previously makes parental incarceration more common for some children than others. One in nine Black children has experienced parental incarceration, compared to one in 17 white children. Similarly, children in poverty experienced parental incarceration at a rate more than three times that of children in families earning two times or more above the poverty level.⁴³ These are not numbers to celebrate.

Children in Oklahoma have significant experiences of trauma.

Experiences of children in Oklahoma

20%          
experience poverty

14%          
struggle with anxiety and/or depression

10%          
experience parental incarceration

7%          
experience domestic violence

Source: America's Health Rankings, 2020-2021

Removing children from a loving, even if imperfect, parent and placing that parent in prison can have a lasting impact, which can result in negative educational, emotional, psychological, and physical outcomes, including depression, anxiety, behavioral problems, school expulsions, and poor grades.⁴⁴

Lacreshia, a mother of 10, was arrested for child abuse and neglect after her son told a teacher that he had been spanked at home when she wasn't around. Despite Oklahoma's statute explicitly stating that a parent is not prohibited from "using ordinary force as a means of discipline, including but not limited to spanking, switching or paddling,"⁴⁵ Lacreshia was sent to prison for seven years. She said, "I was informed you were never supposed to spank a child, even if you didn't do the spanking. ... They had a father and stepfather, and he took over being the disciplinarian not I. Once it was reported my children were being spanked, I got charged with allowing that to happen, even if I wasn't in the home." Lacreshia went from being employed in the medical field and living with her minor children, to being put in prison and having her parental rights terminated, which traumatized her children.

Incarcerating a loving parent often means a sudden and traumatic change of circumstances for a child. Lacreshia said,

"They had to move around from house to house, and they realized the feeling of abandonment. ... I was a mother but I couldn't parent physically. ... What does that do to them?"

She continued, "My children love me and they are still wounded by me being gone."

Similarly, an attorney noted, "Kids are being ripped from their homes in the early morning when they're about to go to school or in the middle of the night when they're about to go to sleep. And it's like, gather your belongings in a trash bag and go to a brand new home. And most of the time, if there are several siblings, you're not going to the same place. ... It's not like the foster system is safe."

Oklahoma spends more than half a billion for child welfare services each year,⁴⁶ has the 17th highest rate of foster care entries,⁴⁷ and also has some of the highest numbers of people who harm children while in the state's care, despite Oklahoma having a substantially smaller population than other states at the top of the list.⁴⁸ For example, the rate of foster parents who maltreated children in Oklahoma is nearly six times higher than in the neighboring state of Texas.

Moreover, racial disparities are common in the foster system, which has a long history of removing Indigenous and Black children from their parents at substantially higher rates.⁴⁹ As the numbers above show, children in Oklahoma are not faring well and the child abuse and neglect statute is leveraged to send survivors and mothers living in poverty to prison at disproportionate rates, driving the women's imprisonment rate and exacerbating the trauma their children have endured and potentially exposing them to more abuse.

Conclusion

Oklahoma imprisoned more women per capita than any other state for decades and still has a women's imprisonment rate that is more than double the national average. Since 2016, Oklahoma has begun turning the page on its incarceration crisis through the enactment of criminal justice reform and the women's prison population has seen a huge decline, yet there has been little effort to address a key driver of women's incarceration—the grossly vague and highly punitive child abuse and neglect statute.

Child abuse and neglect is the most common offense for women behind bars in the state because Oklahoma's statute gives

almost unconstrained discretion to system actors to impose up to a life sentence—regardless of a person's culpability, circumstances, and the harm or risk of harm involved.

While the statute's intent is to protect children, isolating and punishing mothers and ripping families apart does the opposite and entrenches cycles of childhood trauma. The threat of prosecution and losing parental rights is a barrier to seeking help and endangers children. More work remains to implement needed reforms that will support survivors, address poverty, protect children, and keep families together.



Methodology

The qualitative research for this issue brief is based on conversations with 95 people through a series of focus groups and individual and group interviews conducted between February and July of 2022, and a review of written submissions from dozens of people currently incarcerated in women's prisons in Oklahoma. Each person provided verbal or written consent to publish the stories shared in this report. To ensure privacy, stories are anonymized or pseudonyms are used for some directly impacted people. Additional interviews with advocates were conducted and corrections data from Mississippi (2021) and Arizona (2017) were analyzed solely for this issue brief.

The quantitative research for this report is based on analysis of data from the Department of Corrections, as well as analysis of court data collected and compiled by Open Justice Oklahoma. Additional analysis uses data from publicly available sources, including the U.S. Department of Justice's Bureau of Justice Statistics.

All quantitative data not otherwise cited comes from analysis of individual-level data files provided by the Oklahoma Department of Corrections tracking all people admitted to or released from state prisons for the years between FY 2016 and FY 2021, and on annual snapshots of the prison population taken on July 1 of each year.

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ABOUT FWD.US

FWD.us is a bipartisan political organization that believes America's families, communities, and economy thrive when everyone has the opportunity to achieve their full potential. For too long, our broken immigration and criminal justice systems have locked too many people out from the American dream. Founded by leaders in the technology and business communities, we seek to grow and galvanize political support to break through partisan gridlock and achieve meaningful reforms. Together, we can move America forward.

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