

# Laws Relating to Sex, Pregnancy, and Infancy

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Issues in Criminal Justice

Carmen M. Cusack

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LAWS RELATING TO SEX, PREGNANCY, AND INFANCY

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This book is dedicated to YC, W, M, RY, P, B

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# Contents

Introduction	ix
1 Sex	1
2 Birth Control	7
3 Fakers	19
4 Baby Snatching	33
5 Animals	39
6 Freedom of Religion	45
7 Food	65
8 Pornography	71
9 Pregnant Criminal Justice Employees	77
10 Civil-Criminal Crossover	85
11 Criminal Justice Environments	95
12 Parental Duty, Child Maltreatment, and State Control	103
13 Pregnant on Drugs	113
14 Parents	125
15 Physical Violence	137
16 Illness	155
17 International and Comparative	163
Bibliography	171
Index	187

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# Introduction

The role of children, mothers, and pregnancy in the criminal justice system is varied and wide ranging. The presence of infants in legal environments may illustrate that the criminal justice system functions successfully. For example, Justice Ruth Bader Ginsburg was one of the only women to attend Harvard and Columbia law schools. She ranked first in both her classes while caring for her first child, who was a toddler at the time. Yet, society has brutalized and ignored babies. Because the system works, many babies have been defended and protected using the criminal justice system. *Laws Relating to Sex, Pregnancy, and Infancy: Issues in Criminal Justice* describes some of the laws, anecdotal evidence, science, history, and policy dealing with pregnancy, babies, and sex in the criminal justice system.

Sex, pregnancy, and babies are not necessarily correlated. Sex does not necessarily lead to pregnancy; pregnancy does not necessarily result in babies; and babies are not necessarily the result of sex or pregnancy between intimate partners. Babies and motherhood may be the products of rape, fertilization treatment, adoption, and other anomalies or unique experiences; and yet, since the beginning of human history, sex, pregnancy, and babies have shared a biological, and often sacred, relationship. *Laws Relating to Sex, Pregnancy, and Infancy: Issues in Criminal Justice* discusses family law, criminal codes, case law, policy, politics, history, behavioral science, social science, current events, and anecdotal evidence to demonstrate how varied and, at times, unpredictable the relationships may be between the criminal justice system; sex; babies; and pregnancy. The criminal justice system is not a singular entity; it is a concept describing numerous organized responses to problems in society; but, practically, philosophically, and legally, it is anchored together by a single root, which is the U.S. Constitution. Despite its history and ability to evolve, the criminal justice system must consistently respond in a manner that

demonstrates fairness, fulfilment of duty, equality, and best practices. Yet, facts between parties and changes in culture constantly require the system to adapt; create new standards; respond to emergencies; and accommodate vulnerable populations (e.g., children and women).

Women and children are not always accommodated by criminal justice responses. For example, women may be electro-stunned by police or placed in isolation in prison; they may be ignored by jailers when they are hungry; and they may be discouraged from exercising their rights. Children may be placed in physically and psychologically uncomfortable situations by criminal justice system branches (e.g., state custody). However, the system, at large, attempts to regard these special populations with the requisite level of sensitivity. The system should act in the best interest of children; and at times, in the best interest of fetuses. Sometimes, this interest countervails pregnant women's interests or lifestyles. Protections for vulnerable populations have increased in recent years; but great work remains to further develop them. *Laws Relating to Sex, Pregnancy, and Infancy: Issues in Criminal Justice* discusses a history of laws' progression; gaps in protection; and future directions for policy changes. This interdisciplinary text includes analyses of foreign policies, laws, and cases, which may be compared to the U.S. criminal justice system.