

PRISION MOTHER: THE WORK OF SOCIAL ASSISTENCE AND RIGHTS GUARANTEE

MÃES DO CÁRCERE: A ATUAÇÃO DO ASSISTENTE SOCIAL E A GARANTIA DE DIREITOS

MADRES EN PRISIÓN: EL PAPEL DEL TRABAJADOR SOCIAL Y LA GARANTÍA DE DERECHOS



<https://doi.org/10.56238/sevened2026.019-013>

Camila Auricchio Villani¹

ABSTRACT

This article deals with presenting a synthesis of the problematizations of maternal in women's penitentiaries. The research identified the characteristics of women in maternity in the female prison system, as well as analysed the difficulties these women face to get the respect of their human rights. Also coming to investigate how the women's prison system works and the importance of the social worker in the performance and care of the woman in the maternity situation in the female prison system.

Keywords: Women's Prison. Social Services. Mothering. Social Worker. Rights.

RESUMO

Este artigo trata de apresentar uma síntese das problematizações da maternidade nas Penitenciárias Femininas. A pesquisa identificou as características das mulheres em situação de maternidade no sistema carcerário feminino, assim como, analisou as dificuldades que essas mulheres enfrentam para obter o respeito de seus direitos humanos. Vindo também a investigar como funciona o sistema de cárcere feminino e importância do assistente social na atuação e no atendimento da mulher em situação de maternidade no sistema prisional feminino.

Palavras-chave: Cárcere Feminino. Serviço Social. Maternidade. Assistente Social. Direitos.

RESUMEN

Este artículo presenta una síntesis de las problemáticas relacionadas con la maternidad en las cárceles femeninas. La investigación identificó las características de las mujeres que experimentan la maternidad dentro del sistema penitenciario femenino, así como las dificultades que enfrentan para obtener el respeto de sus derechos humanos. También investigó el funcionamiento del sistema penitenciario femenino y la importancia del trabajo social en la atención y el apoyo a las mujeres que experimentan la maternidad dentro de este sistema.

¹ Master student in Political Science. Universidad Europea del Atlántico.



Palabras clave: Prisión Femenina. Trabajo Social. Maternidad. Trabajador Social. Derechos.

1 INTRODUCTION

The number of women in prison in Brazil is gradually increasing. According to the Ministry of Justice, this increase reached 42% between 2007 and 2012. In five years there was an increase of more than 10,000 (ten thousand) women in the Brazilian prison system

Violations of the rights of incarcerated women and their children have gained space in the growth of the number of inmates in the female prison system. Although the number of incarcerated men is higher, the number of women has grown considerably. However, even with this feminization of prisons, the spaces and policies adopted disregard the feminine particularities. Making it impossible to protect and guarantee their rights and those of their children.

This situation reveals the Brazilian fragility regarding criminal and social policies that concern the reduction of inequalities and the guarantee of citizenship of these women, which has not favored their social reintegration or even their resocialization. This situation of incarceration does not favor the preservation of the health of women and children, causing a true process of exclusion and discrimination with negative repercussions, in the medium and long term, for these women and even for their children.

In this context, this study aims to problematize the constitution of maternity in Women's Penitentiaries and the access of these women to this right. The vast majority of prison institutions are not prepared to meet women's needs. As for maternity in prison, some studies point to the right to breastfeeding in a limited way, without considering the other rights of mother and citizen that the prison has.

In view of the challenges of the work that affect the social assistance professional, the present work also aims to reflect on the performance of the social worker in the female prison system, and also to analyze the possibilities and challenges faced by it, taking into account the prison in its contemporary social function.

For the realization of this article, a literary research was carried out on articles written in Brazil, as well as an analysis of research and data collected in the daily reality of prison women in maternity situations, and also a detailed bibliographic analysis of the main names of Brazilian Social Work.

In the end, it is expected to achieve the objective of analyzing the importance of the social worker in the female penitentiary system in relation to women in maternity situations.

2 FEDERAL LEGISLATION TO GUARANTEE WOMEN PRISONERS

The content collected initially allowed 12 federal norms to be found that guarantee the rights of women in prison in maternity situations and their children.

Table 1

Federal legislation that safeguards the rights of the prison mother and her children

Title	Menu	Articles
<i>Constitution of the Federative Republic of Brazil of 1988</i>		Fundamental rights of female prisoners to an establishment appropriate to their female condition, to breastfeeding their children (Art. 5. XLVIII, L), and to family life (Art. 227).
<i>Decree-Law No. 2,848, of December 7, 1940</i>	Code of Criminal Procedure	Serving the sentence in an establishment appropriate for women (Art. 37).
<i>Decree-Law No. 3,689, of October 3, 1941</i>	Code of Criminal Procedure	Substitution of preventive detention for house arrest (Art. 318).
<i>Law No. 7,210, of July 11, 1984</i>	<i>Penal Execution Law</i>	Medical follow-up of the woman and the newborn (Art. 14. § 3). Mandatory nursery, place for breastfeeding, at least up to 6 (six) months of age (Art. 83. § 2). Mandatory place for pregnant and parturient women, and daycare for children over 6 (six) months and under 7 (seven) years old (Art. 89). Benefit of the open regime in a private residence for convicted women with a minor or physically or mentally disabled child; convicted pregnant woman (Art. 117).
<i>Law No. 10,406, of January 10, 2002</i>	Civil Code	Possibilities of suspension of family power to a father or mother convicted by an unappealable sentence, due to a crime whose penalty exceeds two years in prison (Art. 1.583, § 5; art. 1.637 and 1.638).
<i>Law No. 8,069, of July 13, 1990</i>	<i>Statute of the Child and Adolescent</i>	Adequate conditions for breastfeeding and living with the imprisoned mother (Art. 9). Dignified conditions and full protection of the child (Art. 3, 4, 5 and 7). Freedom and coexistence of the child with the mother (Art. 16 and 19). Family power and criminal conviction (Art. 23). Hearing of parents in adoption and child custody proceedings (Art. 158).
<i>CNPCP Resolution No. 14, of November 11, 1994</i>	Minimum Rules for the Treatment of Prisoners.	Conditions for the permanence of children with prisoners during the breastfeeding period (Art.7, §§ 1 and 2). Provision of obstetric material in the prison establishment in case of emergency (Art.17).
<i>CNPCP Resolution No. 04, of July 15, 2009</i>	Regulates the permanence of the children of prisoners in prison environments.	Guidelines for the permanence and referral of the children of prisoners (Art.2). Permanence of at least one year and six months with incarcerated mothers (Art.1). Gradual process of separation (Art.3). Possibilities for sheltering children: extended family, surrogate family or institutions (Art.4). Nursery for children up to two years old (Art.6) Possibility of children from two to seven years old staying with their mothers in the prison unit (Art.7). Food (Art.5). Visits by imprisoned family members and parents (Art.9). Leave of absence from work activity (Art.10). Responsibility of the Union and the States to build and maintain women's penitentiaries with a nursery (Art.8). Possibility of changing the terms and conditions of permanence of children in the prison unit (Art.12).
<i>CNPCP Resolution No. 09, of</i>	Basic Guidelines for Penal Architecture.	Section for pregnant and parturients; daycare centers - nursery module (Annex V).

November 18, 2011		
<i>CNPCP Resolution No. 3, of June 1, 2012</i>	Recommendation on the use of handcuffs.	The use of handcuffs or other means of restraint during childbirth and during the subsequent rest period is prohibited (Art. 3). Recommendation to health professionals to formally report misuse (Art. 5).
<i>Ordinance MS/MJ No. 1,777, of September 9, 2003</i>	National Health Plan in the Penitentiary System.	Women's health. Prenatal, childbirth and postpartum care in 100% of penitentiary units. There is no reference to a pediatrician, or monitoring of the children
National Plan for Criminal and Penitentiary Policy	National Plan for Criminal and Penitentiary Policy - CNPCP/MJ 26/04/2011.	Prenatal care and the existence of specific spaces and services for pregnant women during pregnancy and during the period of their children's stay in the prison environment.

Source: Authors.

There is a disparity between the legislations, and this heterogeneity and the lack of norms to regulate the situation of the child with the mother aggravates the discretionary character sent to the management of penal establishments

The absence of legislative content on the subject indicates aspects that are harmful to the protection of rights that affect their health. The lack of interest in legislating such a controversial issue shows the social, legal and administrative invisibility of children living with their mothers in prisons.

3 CRESS/CFESS GUIDELINES

Social workers, as active professionals and defenders of human rights, must be guided by the careful observance of the competence guidelines established by the CRESS/CFESS, as well as by the Code of Ethics of the profession.

Professional intervention in Social Assistance policy cannot have as its horizon only the execution of the activities listed in institutional documents, at the risk of limiting its activities to the "management of poverty" from the perspective of the individualization of social situations and of approaching the social issue from a moralizing bias. (CFESS, 2009, p.5).

Table 2

General and specific competencies of the social work professional according to CFESS guidelines

GENERAL COMPETENCIES OF THE SOCIAL WORKER	SPECIFIC COMPETENCIES OF THE SOCIAL WORKER
Critical apprehension of the social processes of production and	A dimension that encompasses individual, family or group approaches from the perspective of meeting basic needs and access to rights,

reproduction of social relations in a perspective of totality;	goods and public equipment. This dimension should not be guided by psychotherapeutic care for individuals and families (proper to Psychology), but rather to the enhancement of social orientation with a view to expanding the access of individuals and the community to social rights;
Analysis of the historical movement of Brazilian society, apprehending the particularities of the development of Capitalism in the country and the regional particularities;	A dimension of collective intervention with social movements, from the perspective of the socialization of information, mobilization and popular organization, which is based on the recognition and strengthening of the working class as a collective subject in the struggle for the expansion of rights and state accountability;
Understanding of the social meaning of the profession and its socio-historical development, in the international and national scenarios, unveiling the possibilities of action contained in reality;	A dimension of professional intervention aimed at insertion in democratic spaces of social control and construction of strategies to foster the participation, claim and defense of rights by users and Councils, Conferences and Forums of Social Assistance and other public policies;
Identification of the demands present in society, aiming to formulate professional responses to face the social issue, considering the new articulations between the public and the private.	A dimension of management, planning and direct execution of goods and services to individuals, families, groups and collectivity, in the perspective of strengthening democratic and participatory management capable of producing, intersectorally and interdisciplinarily, proposals that enable and enhance management in favor of citizens;
	A dimension that materializes in the systematic realization of studies and research that reveal the real living conditions and demands of the working class, and can feed the process of formulation, implementation and monitoring of the Social Assistance policy;
	A pedagogical-interpretative and socializing dimension of information and knowledge in the field of rights, social legislation and public policies, aimed at the various actors and subjects of politics: public managers, directors of service providers, workers, counselors and users.

Source: Authors.

The documentary content analyzed, allowed the analysis of the professional profile of the social worker in the performance of the guarantee of the fulfillment of the rights of prison women in maternity situations and their children, this being observed by the social assistance professional the Parameters of their competence according to the CFESS/CRESS.

Professional action is restricted because of the system that is included and also all the bureaucracy that this system presents. Social work as a profession acts in the expressions of social issues and social relations and aims at the struggle for human rights in Brazil, the realization of these rights and also the denunciation of the non-fulfillment of the rights of convicts in prison units.

4 SOCIAL VISION OF FEMALE CRIMINALITY

With the observation of the female prison reality and the profile of the prison woman, the multiple faces of social marginalization that marks the trajectory of most imprisoned women are revealed. They are marked both by socioeconomic exclusion, gender and race discrimination, as well as by a history of violence and drug abuse.

Different economic and sociocultural studies are unanimous in stating that the majority of women prisoners are young, aged between 20 and 35 years, belong to ethnic minority groups, poor, single mothers, with low education, without professional qualifications, unemployed or employed in a low-skilled position and with low income.

In addition to these profiles, the survey also revealed that women prisoners have a history of violence in childhood and adolescence, including physical assault, rape, alcohol and drug abuse.

However, these problems pointed out originated from historical and social facts that began centuries ago. As Cláudia Gabriele da Silva argues:

It is from the second half of the eighteenth century, with the advent of the Industrial Revolution, that the prison system began to be modeled according to the interests of the capitalist class, where the inmates served as labor to circumvent idleness, through coercive methods. Over time, the penalties were adapted to the crimes, becoming more "humanized" and this work developed in the capitalist spheres of production began to serve for the custody of the convict. However, the character of punishment, coercion and modeling of "being" according to the norms of the functional capitalist society did not cease to exist. (Silva, Cláudia Gabriele da, 2007, p. 3)

The capitalist economic and political model, through a meritocratic ideology, annuls the differences, subjectivities and distinct opportunities of the beings who live in its context, introducing personal will as the only condition for success, limited to the economic, in which "we are what we have".

For Yamamoto:

It is in the context of world globalization under the hegemony of big financial capital, of the alliance between banking capital and industrial capital, that we witness the technical-scientific revolution based on microelectronics, establishing new patterns of producing and managing work. At the same time, the demand for labor is reduced, the surplus population is expanded to the average needs of capital itself, increasing the social, economic, political, and cultural exclusion of men, young people, children, and women from the subaltern classes, who are now the target of institutionalized violence. This social exclusion becomes, contradictorily, the product of the development of collective work. In other words, pauperization and exclusion are the other face of the development of the productive forces of social labor, the development of science and technology, the

means of communication, production, and the globalized market. (IAMAMOTO, Marilda, 2000, p. 14)

In recent years, the portrait of social exclusion that women were subjected to before prison has deepened even more with incarceration. The hypothesis that there is a relationship of continuity, between participation in criminal activities and the experiences of abusive relationships, or immersion in violent environments, lived in childhood, adolescence and/or adulthood, the current discrimination and deep inequality caused for years by a perverse capitalist system that corrupts society and the political system, It seems that they only contribute to the increase and narrowing of relations between crime and marginality with women.

5 SCENARIO OF WOMEN'S PROFESSIONAL INSTITUTIONS

The situation of national prisons is of great concern. The overcrowding and precariousness of these institutions are largely caused by omissions by the Public Power, thus generating an alarming picture of violations of the human rights of the incarcerated.

In this scenario of bankruptcy of the prison system, women suffer more rights violations, considering that they are in a system designed by men and structured by men, resulting in a model that does not pay attention to the needs and peculiarities of women, among them the maternity of incarcerated women, the main theme of this work.

Motherhood brings with it both physiological and social responsibility. And these were imposed on women, and they were accompanied by this imposition also in the prison environment.

The Federal Constitution of 1988 guarantees the right to health and social assistance, and these rights must also be observed in relation to incarcerated women, especially if they are in a situation of maternity.

It is the responsibility of the State to guarantee social support, and also the essential for nutrition, hygiene and health of mother and child, especially if they are in a situation of incarceration.

This opens a reflection on the existence and application of human rights and the difficulties that the social worker faces in the performance of the profession where there is a lack of resources, both material and physical and human

As a result, the woman in a situation of maternity faces several difficulties, and there is no human dignity for both, where the first six months of life are the most important for the human being.

The social worker has been fighting to guarantee the rights of all and the realization of them.

6 CONCLUSIONS

We live in a social moment with growing crime, and based on the premise that the national prison system is precarious and presents itself as a violator of human rights, disrespecting the guarantees provided to prisoners and mainly hurting one of the main foundations of the Democratic Rule of Law: human dignity.

It was identified that, despite initiatives that show concern for women prisoners, the laws that guarantee humane treatment to prison mothers and that aim to enable the continuity of motherhood in prison, in practice, are not effective.

Therefore, one of the current challenges of the social worker profession is to make the professional practice effective within women's prison institutions, effectively materializing the fulfillment of human rights standards and fundamental guarantees of the prison mother and her child, in an attempt to overcome a system of social and punitive control. The work of the social worker in the Brazilian prison system is surrounded by many limitations, conflicts and difficulties.

REFERENCES

- Brasil. (1988). Constituição da República Federativa do Brasil.
- Brasil. (1984). Lei nº 7.210, de 11 de julho de 1984. Institui a Lei de Execução Penal. Diário Oficial da União.
- Brasil. Conselho Nacional de Justiça. (2016). Regras das Nações Unidas para o tratamento de mulheres presas e medidas não privativas de liberdade para mulheres infratoras. <https://www.cnj.jus.br/files/conteudo/arquivo/2016/03/27fa43cd9998bf5b43aa2cb3e0f53c44.pdf>
- Boiteux, L. (2015). Encarceramento feminino, seletividade penal e tráfico de drogas em uma perspectiva feminista crítica. <https://www.academia.edu/9832437>
- Castel, R. (2002). As metamorfoses da questão social: uma crônica ao salário (3ª ed.). Vozes.
- Centro pela Justiça e pelo Direito Internacional (CEJIL), & Grupo de Estudos e Trabalho Mulheres Encarceradas. (2007). Relatório sobre mulheres encarceradas no Brasil. <http://carceraria.org.br/wp-content/uploads/2013/02/Relatorio-para-OEA-sobre-Mulheres-Encarceradas-no-Brasil-2007.pdf>
- CFESS. (2009). Parâmetros para atuação de assistentes sociais na política de assistência social. http://cfess.org.br/arquivos/Carilha_CFESS_Finalgrafica.pdf

Conselho Nacional de Justiça. (2016). Conheça os direitos da gestante e lactante. <http://www.cnj.jus.br/noticias/cnj/81835-cnj-servico-conheca-os-direitos-da-gestante-e-lactante>

Conselho Regional de Serviço Social – 16ª Região. (1993). Lei nº 8.662, de 07 de junho de 1993. Lei de regulamentação da profissão.

Conselho Regional de Serviço Social – 16ª Região. (2005–2008). Ética do assistente social da profissão: Coletânea de leis (2ª ed.).

Dayer, D. (2005). Uma politização contemporânea da maternidade: Construindo um argumento. *Revista Gênero*, 6(1), 81–104.

Iamamoto, M. V. (2000). O serviço social na contemporaneidade: trabalho e formação profissional (3ª ed.). Cortez.

Lima, R. de L. de. (s.d.). O conceito de gênero e os mitos sobre as mulheres e homens.