Access denied: Pregnant inmates struggle to gain entry to prison nursery programs

By Jie Jenny Zou

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In the year since her release from an upstate prison, Yolanda Smith has gotten a full-time job, has reunited with family, and is working to secure housing.

But a constant reminder of her time behind bars is her strained relationship with 2-year-old Chance, the son she delivered while serving a sentence for a 2012 attempted robbery conviction.

“He shies away from me,” said Smith, 41, who named her son after the odds of finding herself pregnant while in prison. “It’s like he don’t want to be with me—I try not to think about it, it really hurts.”

She remembers sleepless nights in her cell after getting rejected from a program that could have kept them together for a year while she continued to serve her two-year sentence.

“Who wants to be ripped away from their baby in three days?” Smith said of their separation after Chance’s birth.

New York is one of only 11 states that allows pregnant inmates to stay with newborns by serving out part of their sentence in a nursery for up to 18 months. There are two nurseries in the state—one operated by the state Department of Corrections and Community Supervision at the Bedford Hills Correctional Facility for Women in Westchester and one run by the city Department of Correction at Rikers Island.

A New York World investigation has found that between 2010 and 2012 as many as a third of all applicants have been denied access to the nursery program even though the two nurseries operate at less than half capacity. And while some inmates have successfully challenged the denials in court, mothers who gain access to the program can still be expelled for any reason.

Experts and advocates question the high denial rate, pointing to studies showing that participation in such programs cuts recidivism by as much as half and has long-term benefits for both mother and child.

Between January 2013 and the middle of 2014, city officials approved only 15 of 33 applications for the 15-bed nursery at the Rose M. Singer women’s facility on Rikers Island. Inmates were rejected for a variety of reasons, from rule infractions while incarcerated to past substance abuse.

When one inmate who was denied access to the program in 2011 and went to court to fight for access to the nursery, the judge granted her request, calling the initial decision denying her access, “arbitrary, capricious and an abuse of discretion.” EDITOR’S NOTE: For more on this case, see here.

Arisleida Duarte, a former gang member, was incarcerated on two separate occasions while pregnant and was initially denied access to the nursery program each time. Photo: Jie Jenny Zou

In an interview with the New York World, Erik Berliner, deputy commissioner of the Department of Correction, said the city is working to improve access.

“We need to do a better job of giving them the benefit of the doubt,” Berliner said.

City reforms announced in July and September include increasing awareness of the program among female inmates and allowing pregnant inmates into the nursery prior to giving birth.

State officials refused to provide comment on the application process for the Bedford nursery and declined to answer any questions about the program.

Despite repeated requests and several formal records requests the city failed to provide even basic information on the nursery program at Riker’s Island and the state ultimately provided just a handful of statistics for 2013.

However, the World obtained data on both facilities from other sources including the New York City Board of Correction, an independent oversight body, and the Correctional Association of New York’s Women in Prison Project, which has a legislative mandate dating back to 1846 that allows it to monitor state prisons.

A review of data revealed that:

- Of 152 applications between 2010 and 2012, more than one of every three was rejected by the city and state.
- Nearly 179 women participated in a state nursery program in 1997 and 1998. By 2013, the total dropped to 19.

Some of the decline in participation can be attributed to a decreasing female inmate population. The number of female inmates held by the state dropped by 19 percent from 2003 to 2013. And Berliner said that the city has cut the number of female inmates nearly in half since over the last 15 years or so. However, studies have found that 5 to 10 percent of female inmates are pregnant, meaning that hundreds of women in New York correctional facilities last year were pregnant.

Yolanda Smith was upset when Bedford officials denied her application, especially since Rikers officials had previously allowed her to work in the city nursery while she was an inmate there. Like other inmates who pass a comprehensive background check, Smith worked at the nursery where she cared for infants delivered by other incarcerated women.

“That crushed me, I was really like, ‘Oh my god, what am I going to do?” Smith said of her rejection. “It’s not that I didn’t have family, it’s that I didn’t want to be separated from my baby. I would at least give someone a chance.”

Smith said officials wouldn’t let her into the program due to an attempted robbery charge.

In January 2012, Smith took a jacket containing two cellphones and a music player after punching the owner in the eye in the Washington Heights section of Manhattan. At the time of the arrest, Smith was facing drug charges from a 2011 arrest.

She pleaded guilty to attempted robbery and received a combined sentence of three years (one year at Rikers and two at Bedford) for the two offenses. Smith was released last September on parole.

Tamar Kraft-Stolar, director of the Women in Prison Project, described Bedford’s admission figures to the nursery program as “nowhere near where it should be.”

The state once had two nurseries, but the second facility at Westchester’s Taconic Correctional Facility was closed in 2011. The state declined to explain the reason for that program’s closure.

Usage at the city’s Rikers nursery, which is equipped for 15 mothers, is also low. In the early 2000s, the nursery had a daily average of eight to 10 women. By 2010, the figure had dropped to an average of zero to three women.

The same year, city officials flagged the nursery for potential permanent closure due to reduced use, despite “robust” funding.

“It tends to be empty too much of the time,” said Jane Stanicki, advocate and board member of Hour Children, a nonprofit that works with families of incarcerated women. Stanicki has made weekly visits to Rikers for the last eight years, only to find the nursery closed for months at a time, or with only one woman present.

While Stanicki spends much of her time visiting Rikers, her organization, Hour Children, runs the day-to-day operations at the Bedford nursery.

State officials did not allow an Hour Children employee at the Bedford facility to talk with the World.

The city’s nursery is operated privately by Corizon Health Inc., a prisoner medical contractor with the city Health Department.

Low admission numbers persist despite studies that show nurseries drastically cut recidivism while fostering maternal attachment and encouraging breastfeeding.

A 2013 study found that state nursery participants were half as likely to reoffend within three years of release. A 2002 study by state correction officials similarly found a reduction for participants in the late 1990s.

Dr. Mary Byrne, a researcher at the Columbia University School of Nursing who spent years tracking nursery outcomes at Bedford and Taconic [disclosure: The New York World is a project of the Columbia University Graduate

School of Journalism], found that infants in prison nurseries develop maternal attachment at nearly the same rates as children born in the free world.

Other studies have shown that maternal attachment is crucial in an infant's social development and suggest that abnormal development during this period is tied to more violent or addictive behaviors later in life.

Attorney Jeremy Benjamin, who has represented rejected applicants in court, said nurseries allow inmates to regain a meaningful role. "There aren't many opportunities in prison where you get to be responsible for something or someone that loves you," he said. "When people are given a responsibility role, I think they love it and they thrive in it."

The law that established guidelines for the nursery program was signed by Gov. Franklin D. Roosevelt in 1930. It requires the state to provide accommodations for inmates' infants but stops short of specifying criteria guaranteeing or barring entry to the mother. Judges have interpreted the law as mandating that inmates must only be "physically fit," and participation should be in "best interests of the child."

"The idea is it's not about the rights of the mothers," explained Valentina Morales, an attorney who previously represented a nursery client denied to both the Bedford and Rikers nurseries. She said the law puts "a premium on the mother-child relationship."

However, the law's lack of specificity regarding eligibility for the program has left correction officials with a difficult dilemma in balancing the "best interests" of the child against an inmate's criminal record, misbehavior while incarcerated, and past run-ins with child protective services.

Martin Horn, a professor at John Jay College of Criminal Justice and New York City correction commissioner from 2003 to 2009, said the law at the center of correctional nurseries is subject to interpretation.

"I think the intent of the law is to be as inclusive as possible," Horn said. But, he added, "I don't think it imposes an absolute duty on the prison or the jail."

While he doesn't advocate changing the law, he acknowledges that vague phrasing currently leaves prison officials with wide latitude when deciding whether to approve an application.

Administrators argue that security remains a top concern in nurseries where cells are kept unlocked for access to infants.

"Everyone becomes a lawyer," Berliner said of staff overseeing the Rikers nursery. "Everybody is worried about the liability involved."

Joseph Ponte, Mayor Bill de Blasio's correction commissioner, pledged in July to take a closer look at rejections, acknowledging a "fairly high" denial rate in 2013.

In 2013, 52 percent of city nursery applicants were denied, mostly for behavioral infractions and prior brushes with the Administration for Child Services, the city agency that investigates child abuse complaints.

A review of Rikers nursery data for the past five years show that some inmates were denied admission in the program for previous foster care cases where parental rights were terminated, but some were rejected for less definitive, pending Administration for Children's Services cases.

Reasons for Denials at Rikers Island

Each woman represents an applicant denied to the nursery program at Rikers Island. Applicants can be denied for multiple reasons such as violent charges, pending child neglect cases, or misbehavior while jailed.

*Includes violent and non-violent charges.
**Indicates whether applicant was subject of substantiated or pending complaint for child neglect or maltreatment.
***Includes infractions during incarceration and other non-criminal reasons like substance abuse issues.
Source: New York City Board of Correction

Berliner acknowledged there is “confusion with what to do with ACS info” and said that the department is working with the agency to produce “easy to read” reports that clearly indicate whether applicants present dangers to children.

Morales noted that ACS summaries can be faulty or misleading and are rarely seen by applicants themselves. “They have no idea what’s even on them, no way of refuting what’s on there,” she said, adding that factual changes require agency hearings.

After her rejection, Smith focused on temporary custody arrangements with a relative to avoid foster care. “Maybe God didn’t want my baby to be in this prison,” said Smith, who is hopeful a closer relationship will develop over time. “I tried as much as I could.”

Chance is Smith’s fourth child. Her first is now an adult and two other minor children still live with her. The two minors stayed with a grandmother while Smith served her sentence.

Those rejected by the program must make temporary custody arrangements with a relative or friend before delivery. Infants without suitable guardians are put into foster care.

The state refused to release information on the placement of babies born to inmates still serving sentences, citing privacy concerns, and the city denied having records on the issue.

Even mothers who are accepted into a nursery program face the possibility of being kicked out at any point, since removal comes purely at the discretion of correction officials.

In 2011, the Queens County Supreme Court interpreted the law as also providing the warden with “discretion to remove the infant from the mother at any time, should there be any compelling reason to do so.”

Byrne, the Columbia researcher, found that expulsions happened “more than anticipated and arguably not always in alignment with the best interests principle.” Of the 100 nursery mothers she tracked from 2003 to 2006, 14 were removed by prison staff as punishment.

“It’s more punitive than anything,” said Byrne, noting that removals stemmed from such infractions as failing to comply

with correction officers, not threats to infants.

No formal mechanism exists for inmates to challenge removals, she added.

City officials were unable to provide specific data regarding expulsions, but Berliner noted that removals have occurred at the city nursery for punitive reasons.

“It doesn’t happen extraordinarily often,” said Berliner, adding that “staff bend over backwards to not remove” inmates. Removals typically stemmed from verbal arguments among inmates, he added.

“It’s a privilege, not a right,” Berliner said of the nursery. “We expect rule adherence.”

The fear of removal and becoming estranged from her child stayed with Britteny Woodside during her time at the Bedford nursery. The 28-year-old single mother was among the 19 women who participated in the program last year, but only after she sued the state in March 2013.

A temporary restraining order allowed her and baby Adaline into the facility while a judge deliberated on her case. Two months later, Bedford officials overturned their own denial.

“I had to walk on eggshells,” Woodside said of getting temporarily admitted. “I didn’t want anything to go wrong.”

Her application was rejected for a 2010 intoxicated driving charge and a fight with another inmate in which she was the only one injured, according to court documents.

“I figured I would at least get the appeal, and then they said no again,” Woodside said of a second denial she received in writing while eight-months along in the pregnancy. “It’s bad enough going to prison and being pregnant—and then being told you can’t have her? It’s a horrible feeling.”

She and Adaline stayed in the nursery for over a year until Woodside’s release in May. They now live with Woodside’s parents in rural Peru in upstate New York while she works 10-hour waitressing shifts at a local steakhouse.

Aside from time at Bedford she received for violating the terms of a drug court order, Woodside hasn’t served any other prison time. She has no history of child abuse and maintained custody of her two other children. “I knew I could do it,” she said. “I just needed them to give me a chance.”

CORRECTION: The original version of the story stated that the law that established the prison nursery program contained language that inmates must only be “physically fit,” that participation should be in “best interests of the child,” and that prison administrators can remove an inmate from the program for a “compelling reason.” That’s wrong. All of that language comes from judicial decisions interpreting the law, not the law itself.