



## Children of Incarcerated Caregivers

### 2024 Argentina Prison Nursery Country Report

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In Argentina, mothers are permitted to bring their children of up to four years old into prison with them. While most federal and provincial women’s facilities contain dedicated mothers’ units or prison nurseries, the conditions within these facilities vary.

The number of children living in Argentine prisons has significantly decreased in the past few years as home arrest has become an increasingly popular alternative to incarceration for pregnant women and mothers.

Though the use of home arrest has reduced the number of children living in prison nurseries, challenges persist for mothers who care for their children while confined to their homes. This alternative is also not implemented equally—migrant mothers and those of low socioeconomic status face the most significant barriers to accessing and living under home arrest. Nonprofits and the government are developing innovative ways to address the needs of this population.

#### **Overview of Argentina’s Prison System**

Argentina is the second largest country in South America, with a population of over 45 million people.<sup>2</sup> The Argentine Republic is composed of 23 provinces and its autonomous capital city, Buenos Aires.<sup>3</sup> The judicial system is organized along these lines, with an overarching federal judicial branch and provincial justice systems.<sup>4</sup> Across the country, there are 330 prisons.<sup>5</sup> The Penitentiary Service of the province of Buenos Aires (Servicio Penitenciario de la provincia de Buenos Aires or SPB) operates the largest number of prisons (65), while the Federal Penitentiary

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<sup>2</sup> “Argentina Population 2024.” World Population Review, accessed April 2024, <https://worldpopulationreview.com/countries/argentina-population>.

<sup>3</sup> Juan-Andrés Fuentes, “Argentinian Legal Research: Basic Legal Structure,” *Harvard Law School Library*, Accessed April 2024, <https://guides.library.harvard.edu/law/argentina>.

<sup>4</sup> Fuentes, “Argentinian Legal Research.”

<sup>5</sup> Argentina Ministry of Justice and Human Rights - National Directorate of Criminal Policy in Matters of Justice and Penal Legislation, “*Sistema Nacional de Estadística sobre Ejecución de la Pena (SNEEP)*” [National System of Statistics on the Execution of Sentences (NSSSES)], 2022, [https://www.argentina.gob.ar/sites/default/files/2023/09/informe\\_sneep\\_argentina\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/2023/09/informe_sneep_argentina_2022.pdf).

Service (Servicio Penitenciario Federal or SPF) manages 30 federal facilities.<sup>6</sup> The rest of Argentina's prisons are governed by their respective provincial penitentiary services.<sup>7</sup>

In response to the U.S. "war on drugs," Argentina began tightening its drug policies in the 1990s, resulting in harsher and lengthier sentences for low-level drug offenses and causing a dramatic increase in incarceration rates over the last several decades.<sup>8</sup> As of 2024, the incarceration rate is roughly 250 per 100,000 people, with women composing about 4 percent of the prison population.<sup>9</sup> Currently, the majority of incarcerated women serve time in federal or Buenos Aires prisons for low-level drug offenses.<sup>10</sup> Between 2005 and 2019, the population of incarcerated women increased by 103%, with a small decrease in 2020 and 2021.<sup>11</sup>

Argentine women play a fundamental role in their families as caregivers, taking on the majority of childcare responsibilities.<sup>12</sup> Thus, the rapidly increasing incarceration of Argentine women poses a dilemma to the caregiving and well-being of their children.<sup>13</sup> In an effort to mitigate the negative effects of maternal incarceration on young children, Argentina has developed and implemented a few legal provisions that aim to preserve the mother-child bond throughout incarceration.

### **Laws regarding prison nurseries and incarcerated mothers**

According to the most recent figures from 2022, there are approximately 70 recorded cases of children living together with their mothers in prisons across the country.<sup>14</sup> Buenos Aires prisons house nearly half of the population of incarcerated mothers and children, while the provincial

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<sup>6</sup> Argentina Ministry of Justice and Human Rights, "*Sistema Nacional de Estadística*."

<sup>7</sup> Argentina Ministry of Justice and Human Rights, "*Sistema Nacional de Estadística*."

<sup>8</sup> University of Chicago Law School Global Human Rights Clinic et al., *Women in Prison in Argentina: Causes, Conditions, and Consequence*, 2013, 33

<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1003&context=ihrc>; Leyla Savloff, "Deviant Motherhood: House Arrest and Social Belonging in Argentina," *Social Text*, 38 (2020): 70, doi:10.1215/01642472-7971103.

<sup>9</sup> "Incarceration Rates by Country: Argentina," World Population Review, accessed May 2024, <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>.

<sup>10</sup> Macarena Fernández Hofmann (Coordinator of the Criminal Policy and Prison Violence Program, CELS Argentina) interview with CIC researcher Anya Lindberg, December 2023.

<sup>11</sup> Alejandra Zarza, Siliva Garcia de Ghiglino, Delfina de Cesare, and Rafael Farace, "Personas privadas de la libertad en Argentina: Un acercamiento con perspectiva de géneros" [Persons Deprived of Their Liberty in Argentina: A Gender Perspective Approach], Argentina Ministry of Justice, (2020), [https://www.argentina.gob.ar/sites/default/files/2020/11/informe\\_sneep\\_articulo\\_genero.pdf](https://www.argentina.gob.ar/sites/default/files/2020/11/informe_sneep_articulo_genero.pdf).

<sup>12</sup> Màrius Domínguez-Amorós, Karina Batthyány, and Sol Scavino, "Gender Gaps in Care Work: Evidences from Argentina, Chile, Spain, and Uruguay," *Social Indicators Research*, 154 (2021): 982-983, doi:10.1007/s11205-020-02556-9.

<sup>13</sup> Savloff, "Deviant Motherhood," 38.

<sup>14</sup> Argentina Ministry of Justice and Human Rights, "*Sistema Nacional de Estadística*."

prisons of Santa Fe contain roughly 20 percent of this population, those of Cordoba contain about 10 percent, and other provincial and federal facilities house the rest.<sup>15</sup>

The National Law of Criminal Enforcement (La Ley de Ejecución de la Pena Privativa de la Libertad) is the primary federal law concerning the rights of those who are deprived of their liberty, including those who are mothers and pregnant.<sup>16</sup> Taking into account international standards set out by the Convention on the Rights of the Child, Argentina's criminal code permits mothers to bring their children of four years old or younger with them into prison.<sup>17</sup>

Argentina is a party to the Convention on the Rights of the Child (CRC), which states that courts of law must give primary consideration to "the best interests" of children in all actions concerning them.<sup>18</sup> While the CRC advises that the "best interests" of the child should be considered in determining children's placement in prison with their parents, Argentine law does not outline a process or criteria by which these interests should be evaluated before allowing cohabitation in prison.<sup>19</sup> If a judge determines that a custodial sentence is necessary for a mother, she has the right to live with her child in prison until they reach the age of four.<sup>20</sup> While the majority of incarcerated women are mothers, only a small number of them live together with their children in prison.<sup>21</sup> Most mothers opt to have the child stay with another caregiver or family member when possible; cohabitation in prison occurs when no better alternative is available.<sup>22</sup>

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<sup>15</sup> Delfina De Cesare et al., "Niños y niñas que conviven con sus madres privadas de libertad (2018-2022)" [Boys and Girls That Cohabitate with Their Mothers in Prison (2018-2022)], *National Directorate of Criminal Policy in Matters of Justice and Penal Legislation*, (2022), [https://www.argentina.gob.ar/sites/default/files/2020/11/informe\\_ninos\\_y\\_ninas\\_en\\_contexto\\_de\\_encierro\\_2018-2022.pdf](https://www.argentina.gob.ar/sites/default/files/2020/11/informe_ninos_y_ninas_en_contexto_de_encierro_2018-2022.pdf).

<sup>16</sup> Law No. 24660, Jun. 19, 1996, B.O. 28436 (Arg.).

<sup>17</sup> Law No. 24660, Jun. 19, 1996, B.O. 28436 (Arg.).

<sup>18</sup> University of Chicago Law School, *Women in Prison in Argentina*; UN General Assembly, Resolution 44/25, "Convention on the Rights of the Child," Nov. 20, 1989, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>19</sup> University of Chicago Law School et al., *Women in Prison in Argentina*; Committee on the Rights of the Child, *Report and Recommendations of the Day of General Discussion on the "Children of Incarcerated Parents"*, (United Nations Human Rights Office of the High Commissioner, 2011), <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2011/DGD2011ReportAndRecommendations.pdf>.

<sup>20</sup> Law No. 24660, Jun. 19, 1996, B.O. 28436 (Arg.); Monclús Marta Masó, "Mujeres con hijos en prisión. Comentario a los artículos 195 y 196." [Women with Children in Prison. Commentary to articles 195 and 196], *Penal Thought Association Review*, 2018, <https://www.pensamientopenal.com.ar/comentadas/46511-articulos-195-y-196-mujeres-hijos-prision>.

<sup>21</sup> Masó, "Women with Children in Prison. Commentary to articles 195 and 196."

<sup>22</sup> Masó, "Women with Children in Prison. Commentary to articles 195 and 196."

Argentina's constitution and National Law of Criminal Enforcement both state that prisons must be safe and clean and provide access to healthcare, employment, and education. Incarcerated mothers and their children are included in these rights and obligations.<sup>23</sup> The Law for the Protection of Children's Rights maintains that incarcerated mothers should receive specialized care during pregnancy and birth, and adequate resources are to be provided for the proper and healthy development of the child.<sup>24</sup> Further, prisons should facilitate the mother's communication with her family and take measures to ensure that she and the child are integrated into it.<sup>25</sup> These articles also prohibit correctional facilities and staff from discriminating against mothers or pregnant women, as well as prevent the execution of disciplinary or corrective sanctions on children.

Further, in alignment with international principles dictating the rights of children, the Law of National Education establishes that local educational systems should offer programs for young children between 45 days and four years of age who live in prisons, in addition to providing educational and recreational opportunities both within and outside of the facility.<sup>26</sup> In the province of Buenos Aires, the Provincial Education Law states that children living in prison nurseries should access recreational activities outside of the prison and that authorities should ensure their contact with individuals outside of the prison to prepare them for life when they exit the facility.<sup>27</sup> The Provincial Education Law also holds that prisons should coordinate with other responsible institutions to assist the mother and child throughout their cohabitation in prison.<sup>28</sup>

In 2016, reforms expanded eligibility for electronic home monitoring (EHM) as an alternative to incarceration for pregnant women and mothers who have children who are disabled or are under the age of five.<sup>29</sup> Because of prison overcrowding and the pandemic, several mothers were sentenced to EHM. As a result, the number of children and mothers cohabitating in prison decreased significantly.<sup>30</sup>

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<sup>23</sup> University of Chicago Law School et al., *Women in Prison in Argentina*.

<sup>24</sup> Law No. 26061, Oct. 21, 2005, B.O. 30767 (Arg.).

<sup>25</sup> Law No. 26061, Oct. 21, 2005, B.O. 30767 (Arg.).

<sup>26</sup> Law No. 26206, Dec. 27, 2006, B.O. 31062 (Arg.); Guido Lorenzino, *Informe de Situación Mujeres Madres con Niños y Niñas en Contextos de Encierro* [Report on the Situation of Women who are Mothers in Contexts of Incarceration], (Argentina: Ombudsman of the Province of Buenos Aires, 2017), [https://www.defensorba.org.ar/imgs/comunicados/file/PROGRAMA\\_MUJERES\\_2.pdf](https://www.defensorba.org.ar/imgs/comunicados/file/PROGRAMA_MUJERES_2.pdf).

<sup>27</sup> Law No. 13688, May 07, 2007, B.O. 25692 (Arg.).

<sup>28</sup> Law No. 13688, May 07, 2007, B.O. 25692 (Arg.).

<sup>29</sup> Resolution No. 808-E, Sept. 13 2016, B.O. 33463 (Arg.).

<sup>30</sup> Argentina Ministry of Justice and Human Rights, "*Sistema Nacional de Estadística*"; Public Prosecutor's Office of the Nation of Argentina and the Prosecutor of Institutional Violence "Mujeres embarazadas, madres y niños/as en cárceles. Evolución 2014-2022 - Servicio Penitenciario Federal" [Pregnant Women, Mothers, and Children in Prisons. Evolution 2014-2022 - Federal Penitentiary Service], (PowerPoint presentation, September 2022), <https://www.mpf.gob.ar/procuvin/files/2022/12/ni%C3%B1os-y-madres-en-prision-2014-2022-VF-1.pdf>.

## Conditions

In most Argentine prisons, there is a dedicated unit, pavilion, or area for women who are pregnant as well as mothers and children.<sup>31</sup> However, these units are not always formally established or constructed as specialized nurseries or mothers' units.

Larger prisons, such as federal facilities or those of Buenos Aires, house more incarcerated women and children and have greater funding. Thus, these facilities (namely those in Buenos Aires, La Plata, Los Hornos, San Martin, and Cordoba) are more likely to contain dedicated nurseries or Housing Sectors for Pregnant People and or People with Children (*Sectores de Alojamiento para Personas Embarazadas y/o con Niñas o Niños, SAPENN*) that exclusively house mothers and children, separate them from the general population, and provide additional resources for children.<sup>32</sup>

Meanwhile, smaller provincial facilities have less funding and a smaller population of pregnant women and children. As a result, they are less likely to offer a specialized nursery or mothers' unit. In these prisons, mothers, children, and pregnant women may be housed together with the general population but grouped in one specific area of general population housing.<sup>33</sup>

Because the majority of incarcerated mothers are serving time for drug-related crimes, which are mostly classified as federal offenses, they are usually housed in Federal or Buenos Aires prisons, which are more likely to contain specialized mothers' units, have better living conditions, and greater opportunities for work opportunities or educational programs in comparison to provincial facilities.<sup>34</sup> Thus, the majority of incarcerated mothers and children do live in a dedicated nursery.

The National Law of Criminal Enforcement mandates that all Argentine prisons be safe and clean, with sufficient access to medical care. However, the conditions and degree of access to such resources vary by province and facility.<sup>35</sup> There are conflicting data regarding the conditions of mothers living with their children in prison. A government survey by the National Directorate of Criminal Policy collected data from every prison in Argentina housing children from 2018 to 2022. In 2022, the majority of mothers and children surveyed (around 80%) lived in specialized mothers units or prison nurseries, a significant difference from the living situation of this

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<sup>31</sup> Hofmann, interview.

<sup>32</sup> Hofmann, interview.

<sup>33</sup> Hofmann, interview.

<sup>34</sup> Hofmann, interview.

<sup>35</sup> Law No. 24660, Jun. 19, 1996, B.O. 28436 (Arg.).

population in 2019, where nearly 90 percent of mother-child pairs lived among the general population.<sup>36</sup> This shift was in part due to the COVID-19 pandemic when a greater effort was made to segregate vulnerable populations (such as children) to prevent the spread and consequences of Coronavirus.<sup>37</sup> In 2022, the same survey reported that 70 percent of children in Argentine prisons attended a daycare or nursery in the prison, and 80 percent of children had access to pediatric medical care.<sup>38</sup>

Federal Penitentiary Complex VII (formerly known as Unit 31), a women’s prison in Buenos Aires, provides one example of the conditions found in federal prison nurseries. Complex VII provides separate pavilions for women and children, resources (diapers, food, private rooms, etc.), outdoor play areas with play structures and swings, and a staffed daycare center that allows mothers to work during the day. Older children are transported to nearby educational facilities outside of the prison.<sup>39</sup> The specific conditions for provincial prisons—which lack the infrastructure and funding of federal facilities—are mostly unknown. Surveys of women transferred to other facilities from Complex VII report reduced access to material resources, medical care, and work opportunities.<sup>40</sup>

Data and testimonies from incarcerated mothers compiled by the Center for Legal and Social Studies (CELS Argentina) and YoNoFui (a collective that provides a multitude of work, emotional, and legal support to women who are incarcerated, formerly incarcerated, or community members) reveal more concerning conditions for incarcerated mothers and their children.<sup>41</sup> The most significant issues revealed by these testimonies are related to accessing adequate medical care, especially reproductive care and specialized care during pregnancy and birth. Incarcerated mothers have described the situation as “obstetric violence,” citing its occurrence even in the facilities of Buenos Aires.<sup>42</sup> A 2019 government survey of incarcerated pregnant women and mothers revealed instances of obstetric violence, which included the use of restraints during birth and postpartum, medical staff failing to provide information prior to performing invasive medical procedures (resulting in a lack of informed consent), and constant surveillance from prison guards who oftentimes, were male.<sup>43</sup>

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<sup>36</sup> De Cesare et al., “Niños y niñas que conviven con sus madres privadas de libertad (2018-2022).”

<sup>37</sup> De Cesare et al., “Niños y niñas que conviven con sus madres privadas de libertad (2018-2022).”

<sup>38</sup> De Cesare et al., “Niños y niñas que conviven con sus madres privadas de libertad (2018-2022).”

<sup>39</sup> University of Chicago Law School Human Rights Clinic et al., *Women in Prison in Argentina*.

<sup>40</sup> Savloff, “Deviant Motherhood.”

<sup>41</sup> YoNoFui and the Center for Legal and Social Studies Argentina, *Castigo a domicilio: la vida de las mujeres presas en sus casas* [House Arrest: The Lives of Women Imprisoned in Their Homes], 2021, <https://www.cels.org.ar/web/wp-content/uploads/2021/03/Castigo-a-domicilio-Web.pdf>.

<sup>42</sup> YoNoFui et al., *Castigo a domicilio*.

<sup>43</sup> Argentina Office of the Government Procurator for the Prison System, Ombudsman of the Province of Buenos Aires, and the Public Ministry of Defense, “*Pari como una condenada*” *Experiencias de violencia obstétrica de mujeres privadas de la libertad* [“I Gave Birth as a Prisoner” Incarcerated Women’s Experiences of Obstetric Violence], 2019, 84-87, <https://ppn.gov.ar/pdf/publicaciones/ediciones-especiales/pari-como-una-condenada.pdf>.

## Federal Regulations

In December of 2023, a new set of regulations for the management of federal prisons was approved. Put forth by the Ministry of Justice and Human Rights, the regulations aim to protect the human rights of mothers, pregnant women, and children who reside in SAPENN units or nurseries.<sup>44</sup> Prison administrators are to incorporate the goals and responsibilities of the guidelines into their individual organizations' structures and policies.<sup>45</sup>

Under the December 2023 management regulations, facilities containing nurseries or maternal units are to revise both the physical features (such as building structure, furniture, staff uniform, etc.) and procedural elements (security processes, counts, registration, etc.) of these spaces.<sup>46</sup> To the extent that is possible, they should be redesigned in a manner that is “less invasive to the mother-child bond” and considerate of the presence of young children.<sup>47</sup>

Additionally, the guidelines establish the creation of two interdisciplinary teams, The Children's Area Division and the Integral Council of Children (ICC).<sup>48</sup> The objective of the Children's Area Division (CAD) is to accompany the mothers and children living in nurseries or SAPENN units using a human rights approach.<sup>49</sup> The team is to be composed of professionals specializing in psychology, social work, obstetrics, and other related fields, in addition to prison staff who work within the maternal unit.<sup>50</sup> The guidelines outline an extensive list of the CAD team's responsibilities, some of which include providing individualized support, creating a mechanism by which children can voice their opinions and have them taken into consideration, establishing institutional partnerships that ensure the satisfaction of children's best interests, generating individual files for children, facilitating contact with family and community members, and establishing a process by which children exit the prison.<sup>51</sup>

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<sup>44</sup> Federal Penitentiary Service, “*Reglamento de Gestión Integral Para Personas Privadas de la Libertad Gestantes o que Conviven con sus Hijas/os, y para los Niños y Niñas Alojadas en la Órbita del Servicio Penitenciario Federal*” y “*Modelos de Actas Complementarias*” [“Comprehensive Management Regulations for Pregnant Persons Deprived of Their Liberty or Those Cohabiting With Their Children, and for Children Housed in the Federal Penitentiary Service” and “Models of Complementary Acts”], Dec. 12, 2023, Public Normative Bulletin No. 829.

<sup>45</sup> Regulatory Public Bulletin No. 829, Argentina Federal Penitentiary Service.

<sup>46</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 1, Article 32, Argentina Federal Penitentiary Service.

<sup>47</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 1, Article 32, Argentina Federal Penitentiary Service.

<sup>48</sup> Regulatory Public Bulletin No. 829, Annex I, Title I, Chapter 1, Articles 3-4, Argentina Federal Penitentiary Service.

<sup>49</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Article 34, Argentina Federal Penitentiary Service.

<sup>50</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Articles 33-44, Argentina Federal Penitentiary Service.

<sup>51</sup> Regulatory Public Bulletin No. 829, Annex I, Title I, Chapter 1, Articles 4d-h and Title II, Chapter 2, Article 40, Argentina Federal Penitentiary Service.

The second team, the Integral Council of Children (ICC), is to be composed of a variety of treatment professionals and will be led by the director of the prison in which it operates.<sup>52</sup> The ICC will include staff representatives from various divisions of the prison, such as internal security, medical, visiting, education, legal and social support, and the CAD.<sup>53</sup> The ICC is to coordinate with the CAD through joint meetings, where the CAD will provide an agenda and working topics.<sup>54</sup> The ICC's responsibilities include designing and implementing internal strategies that address children's rights in accordance with public policy, facilitating rights-protecting interventions carried out by child protection agencies, communicating with intervening institutions to ensure new policies have sufficient institutional support, establishing criteria that consider children as rights-holders for intervention actions, and producing interdisciplinary reports that evaluate the technical actions taken by the ICC under the framework of the child's best interest.<sup>55</sup> All actions taken by the ICC are to be documented and archived, creating a chronological register of each meeting held, the topic discussed, and the agreements made.<sup>56</sup>

As these guidelines were passed recently, there is no information regarding the status of their implementation or effect at the time of writing.

### **Alternatives to Incarceration: The Use of Electronic Home Monitoring or Home Arrest for Mothers and Pregnant Women**

As an alternative to custodial sentences, in 2008, Argentina extended eligibility for house arrest to pregnant women and mothers of young children so long as it did not conflict with the best interests of the child.<sup>57</sup> The alternative of home arrest was afforded to mothers as an effort by the government to address issues of prison overcrowding and to avoid violating children's rights by subjecting them to the environment of prison.<sup>58</sup>

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<sup>52</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Article 43, Argentina Federal Penitentiary Service.

<sup>53</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Article 43, Argentina Federal Penitentiary Service.

<sup>54</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Article 44, Argentina Federal Penitentiary Service.

<sup>55</sup> Regulatory Public Bulletin No. 829, Annex I, Title II, Chapter 2, Article 45, Argentina Federal Penitentiary Service.

<sup>56</sup> Regulatory Public Bulletin No.829, Annex I, Title II, Chapter 2, Article 47, Argentina Federal Penitentiary Service.

<sup>57</sup> Law No. 24660, Jan. 12, 2009, B.O. 31576 (Arg.); Rocio Comas, "Gender Invisibility and the Best Interests of the Child in the Administration of Justice: Analysis of the Request for House Arrest by Ana María Fernández," (master's thesis, National University of San Martin, 2015),

<https://repository.gchumanrights.org/items/f511657e-e106-4987-8571-38e479d0bfcd>.

<sup>58</sup> Lorenzino, *Informe de Situación Mujeres Madres con Niños y Niñas en Contextos de Encierro*.



However, unlike the mother's right to bring her child into prison, her ability to access house arrest is not guaranteed and is subject to judicial discretion.<sup>59</sup> Although international agreements such as the Bangkok Rules and UN Guidelines for the Alternative Care of Children posit that judges should prioritize non-custodial sentences (such as home arrest) for primary caregivers of children, mothers must specifically request the alternative of EHM during their sentencing process.<sup>60</sup> This takes the form of a written request submitted to the court by the defendant and or their attorney.<sup>61</sup> The written request must include the set of facts and circumstances that qualify the defendant for home arrest, the address where the sentence will be completed, a list of responsible persons that will supervise the defendant's compliance with home arrest conditions, and their relationship with the defendant, and a list of proposed conditions and restrictions the defendant proposes to comply with.<sup>62</sup>

Some mothers may not be aware of their eligibility for the program. When women do request home arrest in order to care for their child, judges must consider whether it is an appropriate punishment for the mother and the best option for the child.<sup>63</sup>

While there is no specific list of factors for judicial consideration, analyses of judicial arguments used to deny requests for EHM reveal how the safety and well-being of the child are taken into account. These considerations are often marked by gender bias relating to women's criminality and motherhood.<sup>64</sup> The most common reasons for denial of house arrest have to do with the "dangerousness" or "immorality" of the mother.<sup>65</sup> Other reasons for denial include the lack of an educational certificate for the child, prior criminal history of the mother, and lack of social support that can assist the mother. Judges may also believe that if the mother committed a crime while caring for her child, she is an unfit mother and should not access the "privilege" of house arrest to be with her child.<sup>66</sup> Ultimately, the judicial denial of house arrest in many cases is rooted in the idea of "bad motherhood."<sup>67</sup> This reaffirms the gendered stereotype that a woman who commits a crime cannot be a good mother, despite the fact that many of the crimes committed by Argentine women are non-violent, minor drug offenses committed out of necessity or conditions

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<sup>59</sup> University of Chicago Law School, *Women in Prison in Argentina*, 33.

<sup>60</sup> University of Chicago Law School, *Women in Prison in Argentina*, 5.

<sup>61</sup> Laura Sánchez García, "Arresto Domiciliario: Requisitos Legales y Cómo Obtenerlo" [Home Arrest: Legal Requisites and How to Obtain It] *Legal Guide (blog)*, accessed August 2024, <https://guia-legal.com/arresto-domiciliario-requisitos-legales-y-como-obtenerlo/>.

<sup>62</sup> Sánchez García, "Arresto Domiciliario: Requisitos Legales y Cómo Obtenerlo."

<sup>63</sup> "Asistencia de personas bajo vigilancia electrónica" [Assistance for People Under Electronic Surveillance], Government of Argentina Ministry of Justice, accessed February 2024, <https://www.argentina.gob.ar/la-justicia-argentina/asistencia-de-personas-bajo-vigilancia-electronica>.

<sup>64</sup> Hofmann, interview; Comas, "Gender Invisibility and the Best Interests of the Child in the Administration of Justice"; Savloff, "Deviant Motherhood."

<sup>65</sup> YoNoFui et al., *Castigo a domicilio*, 24.

<sup>66</sup> YoNoFui et al., *Castigo a domicilio*, 24.

<sup>67</sup> YoNoFui et al., *Castigo a domicilio*, 24.

of poverty.<sup>68</sup> In many cases, judges have denied mothers' requests for home arrest based on the severity of their sentence (especially when related to drugs).<sup>69</sup> This creates a barrier to accessing home arrest since a significant number of women and mothers are serving time for drug-related offenses.<sup>70</sup>

Other socioeconomic factors impede a mother's ability to access house arrest, especially those with migrant status or who are living in poverty. Many impoverished women are convicted for selling drugs. In some of these cases, the judge's denial of the mother's request for house arrest is rooted in the argument that living in a home where drugs may have been sold is not appropriate for the child.<sup>71</sup> This presents a problem for poor mothers, as they often do not have the social support or capital to find another home to complete home arrest, and they reside in dangerous, vulnerable neighborhoods.<sup>72</sup> Similarly, many migrant women who enter the country with their children and do not have a stable home in which they can complete their sentences, are also unable to access this alternative. Instead of recognizing the circumstances that prevent mothers from accessing house arrest as indicators of vulnerability, courts interpret these factors as risks that justify their incarceration.<sup>73</sup>

Despite these instances of denial, house arrest has become increasingly popular—especially during and after the COVID-19 pandemic, which exacerbated the vulnerability of children living in prison and created additional challenges for prison staff to protect children and mothers from the virus.<sup>74</sup> Because of this, the overall population of mothers and children across Argentine prisons has significantly declined in the last few years. In 2020 (the first year of the pandemic), the total number of women living with their children in prison decreased by nearly 50 percent compared to 2019.<sup>75</sup>

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<sup>68</sup> Hofmann, interview; YoNoFui et al., *Castigo a domicilio*, 15, 64-65.

<sup>69</sup> YoNoFui et al., *Castigo a domicilio*, 24.

<sup>70</sup> YoNoFui et al., *Castigo a domicilio*.

<sup>71</sup> Hofmann, interview.

<sup>72</sup> YoNoFui et al., *Castigo a domicilio*, 24.

<sup>73</sup> YoNoFui et al., *Castigo a domicilio*.

<sup>74</sup> Hofmann, interview; Argentina Ministry of Justice and Human Rights, *Sistema Nacional de Estadística*.

<sup>75</sup> Argentina Ministry of Justice and Human Rights, *Sistema Nacional de Estadística*.

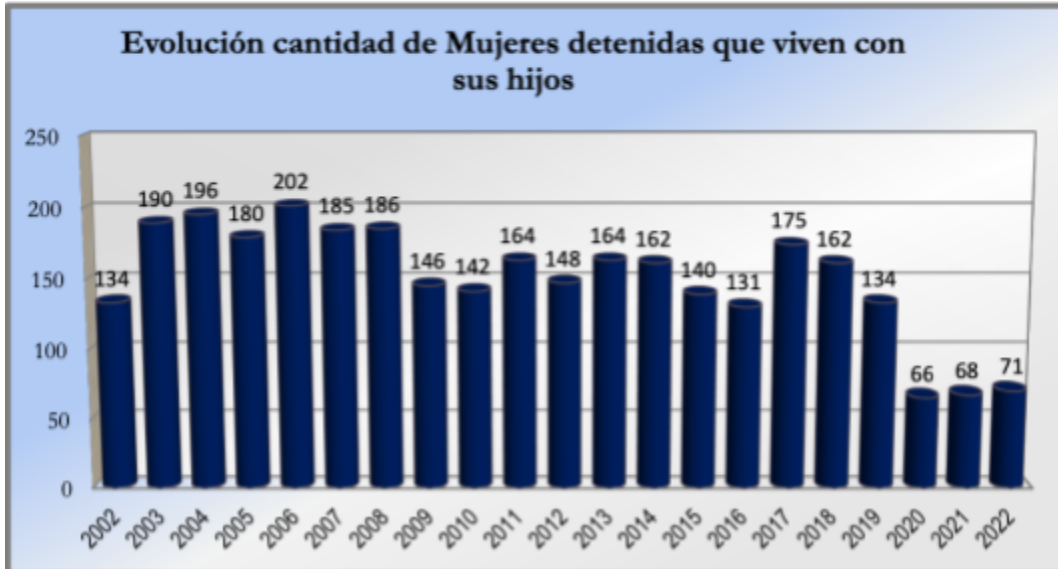


Fig. 1 Evolution of the number of incarcerated women that live with their children. Chart from the Argentina Ministry of Justice and Human Rights - National Directorate of Criminal Policy in Matters of Justice and Penal Legislation, National System of Statistics on the Execution of Sentences (NSSES), 2022. [https://www.argentina.gob.ar/sites/default/files/2023/09/informe\\_sneep\\_argentina\\_2022.pdf](https://www.argentina.gob.ar/sites/default/files/2023/09/informe_sneep_argentina_2022.pdf).

### Implications of Home Arrest for Mothers

Generally, most women prefer living with their children under EHM as opposed to in prison. However, it is an imperfect alternative to incarceration. First, the state does not have the same obligation to care for those under home arrest as it would under a custodial sentence (i.e., providing healthcare, employment opportunities, resources, etc.).<sup>76</sup> For many of the mothers living under the conditions of EHM, it can be extremely difficult to care for children while confined to the home—especially if they lack social and economic support from family.<sup>77</sup> Most women are not able to work, and must seek permission from judges to leave the home for any reason—including going to the hospital, transporting the child to school, or leaving the home with the child for recreational activities.<sup>78</sup> Ultimately, poor and migrant women face the most challenges living with and caring for their children under home arrest, and in some cases, even ask to return to prison where they will have work opportunities and access to material resources and care.<sup>79</sup>

Argentina’s Judicial Branch has a program that assists and supports individuals serving federal sentences under home arrest. The Directorate of Assistance for Persons Under Electronic Surveillance (*La Dirección de Asistencia de Personas bajo Vigilancia Electrónica*) is responsible for supervising those under EHM for federal offenses, including mothers.<sup>80</sup> This program works

<sup>76</sup> Hofmann, interview; Asensio, interview.

<sup>77</sup> University of Chicago Law School et al., *Women in Prison in Argentina*; Hofmann, interview; Asensio, interview.

<sup>78</sup> Savloff, “Deviant Motherhood”; “Acceso a derechos para mujeres con arresto domiciliario” [Access to Rights for Women Under House Arrest], Argentina Ministry of Justice Centers for Access to Justice, September 8, 2022, <https://www.argentina.gob.ar/noticias/acceso-derechos-para-mujeres-con-arresto-domiciliario>.

<sup>79</sup> Hofmann, interview; YoNoFui et al., *Castigo a domicilio*.

<sup>80</sup> “Asistencia de personas bajo vigilancia electrónica,” Government of Argentina Ministry of Justice.

in collaboration with the judiciary to ensure the electronic home monitoring devices (ankle bracelets) function properly, and changes to one's conditions of home arrest are communicated.<sup>81</sup> According to the government's description of the program, it is also intended to be a mechanism by which the rights and well-being of those under EHM can be upheld, as the directorate consists of an interdisciplinary team (psychologists and social workers) who work to promote the strengthening of healthy social bonds and reintegration into the community.<sup>82</sup>

Due to the restrictions of house arrest, providing adequate care for children can be extremely difficult when mothers are not allowed to leave the home to take the children to the hospital or school without receiving prior approval. Based on the experiences of mothers living under EHM collected and reported by YoNoFui and CELS, the restrictions and conditions do not take into account the specific circumstances and needs of individual cases.<sup>83</sup> Further, women have commented on the limited and difficult communication with authorities from the monitoring program, who are the primary contact points for expressing concerns and requesting permissions.<sup>84</sup> As one woman put it, "When the monitoring guy came and put the bracelet on me, he told me, you would have to get out or call us if you are dying. If not, no. That is why sometimes I do not even want to call them."<sup>85</sup>

Other testimonies have described the lack of adequate support and little consideration of family needs, which resulted in negative impacts for children living with mothers under EHM. One mother, Lorena, said the court denied her request to go out on the patio for her daughter's birthday party. Just before the party, surveillance staff appeared in front of her home and informed her she was not allowed to host people in her home and she could not go on the patio.<sup>86</sup> Denials such as these can create emotional and social consequences for both the mother and child, and prevent integration into the family and community. Other conditions of home monitoring can and have posed threats to the well-being and rights of children. In another interview, one woman recounted the panic she experienced when the lights and electricity cut out in her home.<sup>87</sup> Not being able to leave, she had to beg her neighbor to help—reflecting the conditions of vulnerability and dependency experienced by some mothers under EHM. In another case, which occurred during the pandemic, a woman's monitoring device required that the landline be disconnected from the Internet. In order for the device to work and for the woman to remain in compliance with the conditions of home arrest, the children could not access the Internet in the home. This prevented the children from attending school that was entirely online

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<sup>81</sup> "Asistencia de personas bajo vigilancia electrónica," Government of Argentina Ministry of Justice.

<sup>82</sup> "Asistencia de personas bajo vigilancia electrónica," Government of Argentina Ministry of Justice.

<sup>83</sup> YoNoFui et al., *Castigo a domicilio*.

<sup>84</sup> YoNoFui et al., *Castigo a domicilio*.

<sup>85</sup> YoNoFui et al., *Castigo a domicilio*, 30.

<sup>86</sup> YoNoFui et al., *Castigo a domicilio*, 29.

<sup>87</sup> YoNoFui et al., *Castigo a domicilio*, 33.

during the pandemic, jeopardizing their access to education.<sup>88</sup> Although EHM appears to be a preferable alternative to residing in prison, in many ways, it presents significant challenges to children's rights and mothers' ability to care for their children.

The Directorate of Assistance for Persons Under Electronic Surveillance can be a helpful tool for addressing issues and problems that arise under home arrest. In one example, staff from the program came to visit a woman whose anklet kept flagging the system, indicating that she was leaving the bounds of her home.<sup>89</sup> The team discovered that she was in a situation of domestic abuse, and was able to intervene and assist in avoiding punishment that could have resulted from violating the conditions of her arrest.<sup>90</sup> Ultimately, the Directorate has both enabling and constraining consequences for mothers.

### **Current Strategies**

Both governmental and non-governmental organizations are actively working to address the needs of legally-entangled mothers and mitigate the negative impacts on their children. In an interview, the director of the Ministry of Public Defense's Commission on Gender Raquel Asensio shared how her commission is working towards better sentencing outcomes for mothers by developing resources for public defenders that incorporate defense arguments and strategies to better protect the rights of women and children.<sup>91</sup> One of the most predominant strategies of her office focuses on incorporating a gender perspective in criminal proceedings to prevent unjust sentences, or in the case of a conviction, to reduce the length of sentences for drug-related offenses. The Commission takes the stance that the mandatory minimums for minor drug offenses are excessively severe and do not take into account the gender-specific vulnerabilities and circumstances that lead to these offenses.<sup>92</sup> It is in these arguments, where the interests of the child are emphasized, as the Commission encourages public defenders to weigh the impacts of incarceration or criminal punishment on convicted mothers and their families against the severity of the offense, which, according to Asensio, is often disproportionate.<sup>93</sup> Thus, some organizations and divisions within the government are seeking to reduce incarceration and punishment all together, using a gender-based perspective.<sup>94</sup>

YoNoFui is a collective operating under the Fondo de Mujeres del Sur (Foundation for Women of the South), a foundation which supports organizations that promote the rights of women in

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<sup>88</sup> YoNoFui et al., *Castigo a domicilio*, 33.

<sup>89</sup> Asensio, interview.

<sup>90</sup> Asensio, interview.

<sup>91</sup> Asensio, interview.

<sup>92</sup> Asensio, interview.

<sup>93</sup> Asensio, interview.

<sup>94</sup> Asensio, interview; Hofmann, interview.

southern Latin America.<sup>95</sup> YoNoFui began as a poetry workshop operating inside women’s prisons in Argentina, and quickly evolved into a feminist anti-prison collective that included the organizing of formerly incarcerated women outside of prison.<sup>96</sup> Via the organization and collaboration of incarcerated and formerly incarcerated women and community members, the specific needs and vulnerabilities of women and mothers were brought to light, and eventually, the poetry workshop expanded into a training opportunity for women to develop sewing, bookbinding, and other labor skills.<sup>97</sup> Not only does YoNoFui support women inside and outside of prison by providing them with work and creative opportunities, but also the collective has assisted many mothers living under home arrest by providing laboral opportunities (namely sewing and bookbinding) that can be done from within the home and can help to alleviate some of their economic burdens.<sup>98</sup> Finally, YoNoFui has collaborated with organizations such as Argentina’s Center for Legal and Social Studies to collect information and conduct interviews with justice-impacted mothers and women in Argentina. These publications not only shed an important light on issues concerning rights of children with incarcerated caregivers in the country but have provided information that has been extremely useful to this report and other research projects concerning incarcerated women in Argentina.

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<sup>95</sup> “What is Fondo de Mujeres del Sur?” Fondo de Mujeres del Sur, accessed February 2024, <https://www.mujeresdelsur.org/en/about-us/>.

<sup>96</sup> “YoNoFui: Prison is No Place to Live,” Fondo de Mujeres del Sur, June 26, 2023, <https://www.mujeresdelsur.org/en/2023/06/26/yonofui-prison-is-no-place-to-live/>.

<sup>97</sup> “YoNoFui: Prison is No Place to Live,” Fondo de Mujeres del Sur.

<sup>98</sup> YoNoFui et al., *Castigo a domicilio*, 12.