

## Short Commentary

# A Commentary on “The Criminalization of Women with Postpartum Psychosis: A Call for Action for Judicial Change”

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Postpartum psychosis is a unique and serious mental health challenge. Women are more vulnerable to mental illness surrounding childbirth due to genetic, hormonal and psychosocial factors. The most severe form of postpartum mental illness, postpartum psychosis affects 1 to 2 of 1,000 women or 4,000 or more women in the U.S. each year (Friedman et al.2023; Griffen 2023; Perry et al. 2021; Postpartum Support International: PSI statement on psychosis related tragedies 2004; VanderKruik et al. 2017). These mothers are at an increased risk of suicide (4 to 5 percent), and infanticide, neonaticide and filicide (1 to 4 percent). For 40 to 50 percent of those with postpartum psychosis, this is a first occurrence with no prior history of mental illness (Friedman et al. 2023; Griffen 2023; MGH Center for Women’s Mental Health: Reproductive Psychiatry Resource & Information Center 2018; Perry et al. 2021; Postpartum Support International: PSI statement on psychosis related tragedies 2004). To prevent tragic outcomes, mothers with postpartum psychosis or severe depression with psychotic features require crisis intervention, immediate hospitalization and psychiatric treatment.

The article, “The criminalization of women with postpartum psychosis: a call for action for judicial change,” published in the Archives of Women’s Mental Health, promotes postpartum criminal laws in the U.S. and abroad when criminal culpability is linked to maternal mental illness. Similarly, it is essential to include postpartum psychosis as a diagnostic criteria and classification in the Diagnostic and Statistical Manual of Mental Disorders (DSM) (American Psychiatric Association 2013; Spinelli 2021).

These changes would have enormous influence in trial and sentencing when homicide cases are a consequence of maternal mental illness.

In the U.S., the judicial system has not utilized the advancements and growing body of scientific developments regarding reproductive mental health in the last decades in psychiatry and medicine. This is evident when women with postpartum mental illness are prosecuted. In more than thirty countries worldwide, there is treatment, rehabilitation and mitigation when women commit infanticide as a consequence of psychosis and severe postpartum mental illness in the year following childbirth.

In 1938, the U.K. emphasized treatment and prevention over punishment (Infanticide Act 1938) by adopting laws safeguarding mothers suffering from postpartum depression or psychosis. Currently in the U.K and many other countries, a woman who causes the death of her child within 12 months of delivery is presumed to be mentally ill.

In the U.S., Illinois is the only state that considers maternal mental health as a factor in cases of infanticide. Public Act 100–0574 signed into law in January 2018 and amended in 2019 by PA 101–411, recognizes postpartum depression and postpartum psychosis as mitigating factors to be considered in trial and sentencing. This law allows women who are currently incarcerated to file for resentencing and allows consideration of postpartum mental illness in past, present and future cases.

It is essential to prioritize awareness and prevention of postpartum mental illness to save the lives of mothers and babies. We must enact comprehensive postpartum laws in every state to address screening and treatment as well as to consider mental health as a mitigating factor when unrecognized and untreated mental illness leads to tragedy and involvement with the criminal justice system. The time is NOW to enact postpartum criminal laws and judicial change throughout the U.S. and abroad.

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