

5-1-2024

Murder and a Mother's Love: Understanding Maternal Altruistic Filicide and Reshaping the Legal System's Approach to Mentally Ill Mothers Who Kill Their Children

Morgan Woodbridge

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>



Part of the [Courts Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Family Law Commons](#), [Health Law and Policy Commons](#), [Judges Commons](#), and the [Law and Gender Commons](#)

Recommended Citation

Morgan Woodbridge, *Murder and a Mother's Love: Understanding Maternal Altruistic Filicide and Reshaping the Legal System's Approach to Mentally Ill Mothers Who Kill Their Children*, 32 J. L. & Pol'y 251 (2024).

Available at: <https://brooklynworks.brooklaw.edu/jlp/vol32/iss2/7>

This Note is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

**MURDER AND A MOTHER'S LOVE: UNDERSTANDING
MATERNAL ALTRUISTIC FILICIDE AND RESHAPING
THE LEGAL SYSTEM'S APPROACH TO MENTALLY ILL
MOTHERS WHO KILL THEIR CHILDREN**

*Morgan Woodbridge**

Trigger Warning: This Note details graphic, real-life accounts of self-harm, suicide, and violence against children.

Every year, thousands of children are killed by their parents. Some of these killings are committed by mentally ill mothers who believe that death is in their children's best interest. This category of killings is called maternal altruistic filicide. Numerous studies have found that mothers who commit altruistic filicide are severely mentally ill and have histories of psychiatric illness, trauma, and suicidality. Despite this, mothers who commit altruistic filicide are often

* J.D Candidate, Brooklyn Law School, 2025. B.A., George Washington University, 2022. This Note is dedicated to all those who have struggled with mental illness. I am in awe of your courage and strength. Please know that you are not alone, and that there are so many other people walking this path with you. We will continue to advocate on your behalf and fight towards building a better legal system for you. I would like to thank my family and friends for supporting me throughout the Note writing process and during law school. Without your love, and encouragement, none of this would have been possible. I would also like to thank the *Journal of Law and Policy* staff for helping me get my Note to where it is today. I would especially like to convey my appreciation for Sam Kunzman and Devin Barbaro for their support and for pushing me to think outside the box. I would also like to thank the Executive Board for affording me this opportunity to publish my work and for dedicating their time and energy into making this a reality. I hope that this Note can inspire others to look more critically at our contemporary criminal legal system and how it treats those experiencing mental illness. Ultimately, I hope readers are reminded of how important empathy and kindness are. The world can be a hard place, but we all have the ability to lift each other up and make life a little brighter for someone else.

railroaded through the criminal legal system without access to adequate mental health care. Traditional legal procedures designed to assist the mentally ill, such as the insanity defense or the “guilty but mentally ill” verdict, are unworkable and insufficient remedies for these mothers. As a result, most mothers who commit altruistic filicide are incarcerated with very long sentences. This has created a system of injustice whereby mothers who commit altruistic filicide are forced to live in prison environments without access to adequate psychiatric care. This typically results in an exacerbation of preexisting mental health problems, and it prevents the mothers from attaining a meaningful recovery. This Note examines the current criminal legal approach to mothers who commit altruistic filicide and discusses its inadequacies. After outlining the problematic nature of the current legal approach towards mothers who commit altruistic filicide, this Note argues for the implementation of a system where, instead of incarceration, these mothers are automatically transferred to mental health courts to undergo mental health treatment and receive community-based support. This approach will allow mothers who commit altruistic filicide to receive quality treatment for their mental illness while also getting the opportunity to transition back into the community.

INTRODUCTION

On June 20, 2001, Andrea Yates drowned each of her five children in a bathtub.¹ Right after drowning her children, Ms. Yates called 911 and, when the police arrived at her home, she told them what she did.² At trial, Ms. Yates was charged with three counts of first-degree murder, and the prosecution sought the death penalty.³ Ms. Yates’ attorneys entered a defense of insanity.⁴

Ms. Yates had a history of severe postpartum depression and was believed to be suffering from psychosis, schizo affective

¹ Melissa Chan, *Revisiting Andrea Yates Fifteen Years After She Drowned Her Children*, TIME (June 20, 2016, 3:59 PM), <https://time.com/4375398/andrea-yates-15-years-drown-children/>.

² Phillip J. Resnick, *The Andrea Yates Case: Insanity on Trial*, 55 CLEV. ST. L. REV. 147, 149 (2007).

³ *Id.* at 147; *see also* *Yates v. State*, 171 S.W.3d 215, 216 (Tex. App. 2005).

⁴ *The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 127.

disorder, paranoid delusions, and auditory and visual hallucinations.⁵ Additionally, Ms. Yates attempted suicide multiple times, and was admitted to the hospital for psychiatric treatment on numerous occasions.⁶

In the years leading up to the killings, Ms. Yates exhibited many psychiatric symptoms associated with altruistic filicide.⁷ In cases of altruistic filicide, a parent kills their child because they believe they are protecting or saving them from some real or imagined harm.⁸ Ms. Yates experienced delusions of television characters telling her she was a horrible mother and that people were spying on her because her poor mothering was preventing her children from developing properly.⁹ She also had hallucinations that her children would die horrible deaths because of her, and that Satan was tormenting her children.¹⁰ Ms. Yates believed that it was in her children's best interest for them to die because, if she did not take her children's lives, they would be tortured by Satan and be sentenced to eternal punishment.¹¹

Both the prosecution's and the defense's expert witnesses agreed that Ms. Yates was severely mentally ill when she drowned her

⁵ *Id.* at 148, 150; *see also Yates*, 171 S.W.3d at 217.

⁶ *The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 148. Ms. Yates was hospitalized for psychiatric treatment on: June 18, 1999, July 26, 1999, March 31, 2001, and May 4, 2001. Ms. Yates also attempted suicide on June 18, 1999, by overdosing on medication, on July 20, 1999, by cutting her own throat with a knife, and on May 3, 2001, by trying to drown herself in a bathtub. *The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 148; *see also Yates*, 171 S.W.3d at 216–17.

⁷ *See The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 149–50.

⁸ Susan Hatters Friedman, & Phillip J. Resnick, *Mothers Thinking of Murder: Considerations for Prevention*, 23 PSYCHIATRIC TIMES 1, 2 (Sept. 1, 2006).

⁹ Faith McLellan, *Mental Health and Justice: The Case of Andrea Yates*, 368 LANCET J. 1951, 1951 (2006); *see also The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 148.

¹⁰ *The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 148–49.

¹¹ *Id.* at 148–50; Cydney Contreras, *Where Is Andrea Yates Now, More Than 20 Years After Drowning Her Children*, OXYGEN.COM (Mar. 14, 2023, 11:38 AM), <https://www.oxygen.com/crime-news/who-is-andrea-yates-mother-who-drowned-her-5-children>.

children.¹² However, the jury rejected her insanity defense and found her guilty.¹³ Ms. Yates was then sentenced to life in prison.¹⁴

The story of Andrea Yates closely resembles the stories of most mothers who commit altruistic filicide in the United States.¹⁵ Every year, roughly 3,000 children are victims of filicide in the United States.¹⁶ About half of these murders are committed by the children's mothers.¹⁷ A majority of these mothers share two common characteristics: (1) they are severely mentally ill, and (2) they kill their children for altruistic reasons.¹⁸ These two characteristics are not independent of each other.¹⁹ Many of these

¹² Sara G. West, *An Overview of Filicide*, 4 PSYCH. (EDGMONT) 48, 55 (2007); see also *The Andrea Yates Case: Insanity on Trial*, supra note 2, at 150.

¹³ *Yates v. State*, 171 S.W.3d 215, 216 (Tex. App. 2005).

¹⁴ *The Andrea Yates Case: Insanity on Trial*, supra note 2, at 152. In 2005, the Texas Court of Appeals reversed Andrea Yates conviction and granted her a new case because of erroneous testimony given by the prosecution's expert witness. *Yates*, 171 S.W.3d at 221.

¹⁵ Only a minority of filicidal mothers are sentenced to mental health treatment instead of incarceration. Telephone Interview with Doctor Phillip Resnick, Director, Forensic Psychiatry, UH Cleveland Medical Center (Oct. 30, 2023); see also April Dembosky, *She Killed Her Children, Can We Forgive Her?*, KQED (Feb. 6, 2020, 12:11 PM), <https://www.kqed.org/news/11797827/postpartum> (finding that out of 100 mothers convicted of maternal filicide in California, seventy percent of those mothers were serving life sentences).

¹⁶ Matthias Gafni, *Why Do Moms Kill Their Children?*, WASH. POST (June 26, 2014), https://www.washingtonpost.com/national/why-do-moms-kill-their-children/2014/06/26/55085d98-d6c3-11e3-aae8-c2d44bd79778_story.html (citing a study from Brown University that analyzed 32 years' worth of data on child homicide in the United States).

¹⁷ *Id.* (citing a study from the Department of Justice stating that "[a]ccording to the Department of Justice, women commit only 14 percent of violent crimes in the United States. But a study on filicide shows they commit nearly half of all parental murders.").

¹⁸ See Susan Hatters Friedman & Phillip J. Resnick, *Child Murder by Mothers: Patterns and Prevention*, 6 WORLD PSYCHIATRY 137, 137–38 (2007); see also Margarita Poteyeva & Margaret Leigey, *An Examination of the Mental Health and Negative Life Events of Women Who Killed Their Children*, 7 SOC. SCI. 1, 4–6 (2018); West, supra note 12, at 50–51.

¹⁹ See Geraldine Holloway, *Maternal Filicide: Grounded Theorising From Interviews with Mothers with a Diagnosis of Mental Illness* (June 2016) (Ph.D. thesis, University of Essex) (on file with Essex Research Repository); West,

mothers suffer from acute versions of mental illnesses like schizophrenia, postpartum depression, psychosis, and bipolar disorder, which lead them to kill their children.²⁰ These mothers experience hallucinations and delusion-based thoughts that their children are better off dead and that they would be acting in their child's best interest by killing them.²¹ This results in what is commonly characterized as maternal altruistic filicide.²²

Despite the close interplay between their mental illnesses and the altruistic-motivated killing of their children, these mothers are treated by society as evil and wicked.²³ Most commonly, these mothers are charged with first-degree murder, and many prosecutors have sought the death penalty.²⁴ Traditional mechanisms created to mitigate the culpability of mentally ill individuals, like the insanity defense or the "guilty but mentally ill" verdict, are often not successful or adequate in helping these mothers get mental health

supra note 12, at 51; Dominique Bourget et al., *A Review of Maternal and Paternal Filicide*, 35 J. THE AM. ACAD. OF PSYCHIATRY AND THE L. 74, 77 (2007); Kirsten Windfuhr et al., *FILICIDE: A LITERATURE REVIEW*, 1, 31 (2009); Agata Debowska et al., *Victim, Perpetrator, and Offense Characteristics in Filicide and Filicide-Suicide*, 21 AGGRESSION AND VIOLENT BEHAVIOR 113 (2015).

²⁰ Poteyeva & Leigey, *supra* note 18, at 4–5; Holloway, *supra* note 19, at 24–25; Bourget et al., *supra* note 19, at 76–77.

²¹ Holloway, *supra* note 19, at 16–17; Giulia Milia & Maria Noonan, *Experiences and Perspectives of Women Who Have Committed Neonaticide, Infanticide and Filicide: A Systematic Review and Qualitative Evidence Synthesis*, 29 J. PSYCHIATRIC AND MENTAL HEALTH NURSING 813, 823 (2022).

²² See *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 137–38.

²³ Milia & Noonan, *supra* note 21, at 813–14 (stating that “[h]istorically, women involved in neonaticide, infanticide or filicide are often defined as ‘mad’ or ‘evil’ by the public and the media. This is because their actions contradict those a maternal figure should present in our society: a protecting and loving figure whose priority is her children’s physical and emotional wellbeing”); Melissa Pandika, *A Psychiatrist Told Us Why Her Patient Killed Her Children*, VICE (May 1, 2018), <https://www.vice.com/en/article/d35bqq/why-women-kill-children>; Phillip J. Resnick, *Filicide in the United States*, 58 INDIAN J. PSYCHIATRY 1, 2–3 (2016); see also Milia & Noonan, *supra* note 21, at 824.

²⁴ Telephone Interview with Doctor Phillip Resnick, Director, Forensic Psychiatry, UH Cleveland Medical Center (Feb. 4, 2024).

treatment.²⁵ As a result, most women who commit altruistic filicide are imprisoned with little or no access to the mental health treatment they so desperately need.²⁶ This system prioritizes punishment over treatment of mental illness, and the system urgently needs to change. Mental health courts currently provide the least punitive approach for getting mothers who commit altruistic filicide adequate mental health treatment.²⁷

Part I of this Note provides background information on altruistic filicide and its close connection with mental illness, how societal notions of motherhood play a role in altruistic filicide, and the problematic state of mental health care in American carceral facilities. Part II(A) discusses the insanity defense and why it is often unsuccessful for mothers who commit altruistic filicide. Part II(B) analyzes the “guilty but mentally ill” verdict and why it is an inadequate remedy in helping mothers get mental health treatment. Part III of this Note proposes a new approach to supporting women

²⁵ Jessie Manchester, *Beyond Accommodation: Reconstructing the Insanity Defense to Provide an Adequate Remedy for Postpartum Psychotic Women*, 93 J. CRIM. L. & CRIMINOLOGY 713, 715–16, 734–38 (2003); Susan Hatters Friedman & Renée Sorrentino, *Commentary: Postpartum Psychosis, Infanticide, and Insanity—Implications for Forensic Psychiatry*, 40 J. AM. ACAD. PSYCHIATRY & L. 326, 327 (2012); T. V. Asokan, *The Insanity Defense: Related Issues*, 58 INDIAN J. PSYCHIATRY 191, 192 (2016); Linda C. Fentiman, “*Guilty but Mentally Ill*”: *The Real Verdict Is Guilty*, 26 B.C. L. REV. 601, 615 (1985). The “guilty but mentally ill” verdict allows a judge or a jury to find an individual guilty of a crime while also recognizing that the individual is mentally ill. Defendants found “guilty but mentally ill” are often incarcerated with the promise of receiving psychiatric treatment while imprisoned. However, adequate treatment is rarely provided. Fentiman, *supra* note 25, at 615.

²⁶ See Telephone Interview with Doctor Phillip Resnick, *supra* note 24; Kelli Canada et al., *Multi-Level Barriers to Prison Mental Health and Physical Health Care for Individuals with Mental Illness*, 13 FRONTIERS PSYCH. 1, 2; Sasha Abramsky & Jamie Fellner, *Ill-Equipped: U.S. Prisons and Offenders with Mental Illness* 1 (Joseph Sanders & James Ross eds. 2003); Maia Szalavitz, *Psychiatrist Phillip Resnick on Why Parents Kill Their Own Kids*, TIME (Feb. 1, 2011), <https://healthland.time.com/2011/02/01/psychiatrist-phillip-resnick-on-why-parents-kill-their-own-kids/2/>.

²⁷ See Gregg Goodale et al., *What Can We Say About Mental Health Courts Today?*, 64 J. PSYCH. SERV. 298, 298–99 (2013); Lauren Almquist & Elizabeth Dodd, *Mental Health Courts: A Guide to Research-Informed Policy and Practice*, 1, 25 (2009).

who commit altruistic filicide through mental health courts and outside the traditional confines of the criminal legal system.

I. BACKGROUND

Maternal filicide is defined as “child murder by the mother.”²⁸ In 1969, Dr. Phillip Resnick, a forensic psychiatrist and psychiatry professor, categorized five different types of filicide based on the parents’ motives.²⁹ The five categories are: (1) altruistic filicide, (2) acutely psychotic filicide, (3) fatal maltreatment filicide, (4) unwanted child filicide, and (5) spousal revenge filicide.³⁰ For mothers who commit filicide, the most common motive for killing their children is altruistic.³¹ Dr. Resnick defined maternal altruistic filicide as when “a mother kills her child out of love [because] she believes death to be in the child’s best interest.”³²

Altruistic filicide is usually based on two different rationales, psychotic and non-psychotic.³³ A non-psychotic rationale usually involves a mother who is suicidal and plans to kill her child along with herself because she does not want to leave the child alone in a world that she sees as cruel or scary.³⁴ Mothers typically commit non-psychotic altruistic filicide more than fathers because they view

²⁸ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 137.

²⁹ West, *supra* note 12, at 50.

³⁰ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 137.

³¹ In Phillip Resnick’s 1969 study where he reviewed 131 cases of filicide between 1751 and 1967, he found that 49% of the filicide perpetrators were motivated by altruism and were most often committed by the mother. West, *supra* note 12, at 50, 53; *see also* Susan Hatters Friedman et al., *Child Murder Committed by Severely Mentally Ill Mothers: An Examination of Mothers Found Not Guilty By Reason of Insanity*, J. FORENSIC SCI., Nov. 2005, at 5; Nancy Wride, *A Mother’s Final Deadly Act: Slaying: ‘Altruistic’ Killings Carried Out in the Throes of Depression Appear to Be the Common Thread in Last Year’s Five Family Murder-Suicides*, L.A. TIMES (Jan. 12, 1992, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1992-01-12-vw-501-story.html>.

³² *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 137.

³³ Friedman et al., *supra* note 31, at 1.

³⁴ *Id.*

themselves as inseparable from their children and they do not want their children to grow-up motherless.³⁵ Dr. Resnick discussed the way mothers think under the non-psychotic rationale, saying that these mothers believe that, “[t]o take the child with them is to do the child a favor” and that the mother “sees a hell on earth. It’s so miserable that she can no longer stand to live. Then you have a 3-year-old child. To leave that child in that world . . . and motherless on top of it, would be more terrible than to murder.”³⁶

Alternatively, a psychotic rationale usually involves a mother who kills their child because they believe they are saving their child from some real or delusion-based harm, such as sexual abuse or torture.³⁷ Mothers with psychotic rationales typically view the killing of their children as a form of protection and that it is the right thing to do amidst this perceived suffering they believe they will face.³⁸ For example, in November of 2010, Marci Webber, a mother diagnosed with schizoaffective disorder, borderline personality disorder, and major depressive disorder with psychosis, killed her four-year-old daughter because she thought it was necessary to protect her from being abducted and sexually assaulted by Satan.³⁹

A. The Connection Between Maternal Altruistic Filicide and Mental Illness

Researchers have consistently found that mental illness is the most significant risk factor for all forms of maternal filicide.⁴⁰ The most common diagnoses for women who have committed maternal

³⁵ Wride, *supra* note 31; *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 137; Pandika, *supra* note 23.

³⁶ Wride, *supra* note 31.

³⁷ See Susan Hatters Friedman, *Murder in the Family: Filicide*, PSYCHIATRY NEWS (Apr. 18, 2019), <https://psychnews.psychiatryonline.org/doi/10.1176/appi.pn.2019.4b5>; Friedman et al., *supra* note 31, at 1, 3.

³⁸ Pandika, *supra* note 23; West, *supra* note 12, at 50; *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 139.

³⁹ *People v. Webber*, No. 10-CF-2643, 2021 WL 2375928, at *1, 4, 5 (Ill. App. Ct. June 9, 2021).

⁴⁰ Holloway, *supra* note 19, at 21–25; West, *supra* note 12, at 51; Windfuhr et al., *supra* note 19, at 31; Debowska et al., *supra* note 19, at 21.

filicide include major depressive disorder, psychosis, and schizophrenia.⁴¹ The rates of these mental disorders are very high in mothers who commit filicide, and numerous studies have asserted that filicide is likely a “direct consequence of a perpetrator’s . . . mental illness,” particularly depression and psychosis.⁴² In a study done by Dr. Resnick, he found that out of 88 mothers who committed filicide, sixty-seven percent were psychotic.⁴³ Additionally, another study found that out of thirty-nine women who committed filicide, eighty-two percent of the women had diagnoses for a psychotic disorder or a mood disorder with psychosis.⁴⁴

Notably, the rates of severe mental illness are even higher for mothers who commit altruistic filicide compared to other types of filicide, such as fatal maltreatment filicide, where mothers are most often overwhelmed with life stressors and childcare.⁴⁵ For mothers who commit altruistic filicide, there are high incidences of depression and psychosis.⁴⁶ Multiple researchers have found that mental illness is the leading risk factor contributing to maternal altruistic filicide.⁴⁷

⁴¹ Bourget et al., *supra* note 19, at 77. One study reviewed maternal filicide cases in Quebec between 1991 and 2001 and found that 85 percent of the mothers who committed filicide had diagnoses for major depressive disorder, schizophrenia, or psychosis. Windfuhr et al., *supra* note 19, at 31.

⁴² Debowska et al., *supra* note 19; Bourget et al., *supra* note 19, at 77; Windfuhr et al., *supra* note 19, at 31; Another study found that out of 39 women who committed filicide, 82 percent of the women had diagnoses for a psychotic disorder or a mood disorder with psychosis. Friedman et al., *supra* note 31, at 3.

⁴³ Bourget et al., *supra* note 19, at 77.

⁴⁴ Friedman et al., *supra* note 31, at 3.

⁴⁵ Resnick, *supra* note 15.

⁴⁶ *Id.*

⁴⁷ See e.g., Debowska et al., *supra* note 19, at 8; West, *supra* note 12, at 51; Holloway, *supra* note 19, at 21, 27–28; Bourget et al., *supra* note 19, at 76. One 2019 study found that “severe mental health issues were predominant” among women who committed filicide and their “main reasons for engaging in filicide were delusion-based mercy-killing or extension of suicide.” Milia & Noonan, *supra* note 21, at 821–22. Another study analyzed 378 cases of filicide and found that most mothers who committed filicide had mental health problems and killed their children for altruistic reasons. Debowska et al., *supra* note 19, at 13–14. Researchers analyzing hospital records from 39 severely mentally ill mothers who committed filicide found that the women’s motives were

Maternal altruistic filicide also commonly occurs in conjunction with suicide or attempted suicide by the mother.⁴⁸ Many mothers plan to commit filicide before their suicide because they worry about the impact their suicide will have on their children, or because they fear that their children will be in imminent harm or danger without them.⁴⁹ Most filicidal mothers have a history of previous suicide attempts, and a history of suicidality is a significant risk factor for maternal altruistic filicide.⁵⁰

The strong link between mental illness and altruistic filicide cannot be understated.⁵¹ Recognition of the interrelation between altruistic filicide and mental illness is critical in terms of both understanding how problematic the current criminal legal approach is and how we can better support these mothers.

B. The Social Construction of Motherhood and its Role in Altruistic Filicide

Women are in an inherently unique position compared to men because of how social expectations of motherhood can affect their mental health and lead to filicide.⁵² Mothers are expected to be nurturing, loving, and caring and to put childcare above everything

predominantly altruistic, and that 69 percent of the women experienced auditory hallucinations during the filicide, 49 percent were depressed at the time of the filicide, and seventy-two percent required previous mental health treatment. Friedman et al., *supra* note 31, at 1.

⁴⁸ Debowska et al., *supra* note 19, at 9, 15, 29; Friedman et al., *supra* at note 31, at 3.

⁴⁹ Holloway, *supra* note 19, at 126; Pandika, *supra* note 23.

⁵⁰ West, *supra* note 12, at 51. A 2007 study found that most filicidal mothers kill their children for altruistic reasons, attempt suicide after they kill their children, and are mentally ill. Holloway, *supra* note 19, at 21–29. Another 2007 study found that most mothers who committed filicide-suicide were acting based on altruistic motives and were suffering from depressive disorders. Debowska et al., *supra* note 19, at 15. Another study found that it is common for mothers who commit filicide-suicide to have “extreme psychiatric disturbances.” *Id.* at 9.

⁵¹ See Friedman et al., *supra* note 31, at 1; Milia & Noonan, *supra* note 21, at 821–23; Poteyeva & Leigey, *supra* note 18, at 4–6.

⁵² Holloway, *supra* note 19, at 114, 117–18.

else.⁵³ One researcher characterized this as the “myth of motherhood” and stated “there is an expectation on women: . . . to want to have children; to love them immediately, dearly and always; to put their interests first at all times; to enjoy every aspect of childcare and domestic responsibilities; and to be ever smiling, ever cheerful, all perfect.”⁵⁴ These expectations put immense pressure on women to be perfect mothers, which is extremely difficult and can take a toll on their mental wellbeing.⁵⁵ Moreover, meeting these social expectations of motherhood is especially difficult for women who face socioeconomic disadvantages, which researchers have found to be common among women who commit filicide.⁵⁶ When so much of one’s identity is dependent on one’s ability to be a good mother, failure to meet the social construction of a “perfect” mother can have serious consequences on their mental and emotional health.⁵⁷

Multiple studies have found that filicidal women experience mental illness at considerably higher rates than filicidal men.⁵⁸ One study even found that twice as many filicidal women have mental health disorders when compared to filicidal men.⁵⁹ Despite this, women who commit altruistic filicide are heavily demonized and reprimanded by society.⁶⁰ For example, after Andrea Yates was imprisoned, multiple news outlets published stories calling her a “child killer” and a “maniacal mom” and questioned whether she was a “villain or a victim.”⁶¹

⁵³ *Id.* at 117.

⁵⁴ *Id.*

⁵⁵ *Id.* at 117–18; Windfuhr, *supra* note 19, at 28.

⁵⁶ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Researchers have found that “in the context of severe social and economic adversity any ideali[z]ed notion of motherhood would [be] difficult to achieve.” Holloway, *supra* note 19, at 117.

⁵⁷ Holloway, *supra* note 19, at 117.

⁵⁸ Poteyeva & Leigey, *supra* note 18, at 6.

⁵⁹ *Id.*

⁶⁰ *Filicide in the United States*, *supra* note 23, at 2–3; Milia & Noonan, *supra* note 21, at 824.

⁶¹ See, e.g., Mike Foster, *Andrea Yates Beaten in Prison*, WKLY. WORLD NEWS, July 24, 2001, at 7; see also *Women Who Kill*, CENTENNIAL CRIME SPECIAL, Dec. 23, 2019; Steve Helling, *Andrea Yates, Who Drowned Her 5 Kids*

Even though these mothers are often portrayed as horrible and wicked, studies have found that prior to committing altruistic filicide, many of them were good mothers who “tried to excel at motherhood.”⁶² One study analyzing filicidal mothers found that most of the mothers in their sample were “‘perfect’ mothers who took good, even meticulous care of their children” prior to the filicide, and another study found that most mothers in their sample tried to suppress any harmful or negative feelings they were experiencing about their children.⁶³ But by killing their children, filicidal mothers directly betray the social construction of motherhood and what society expects of mothers.⁶⁴ This leads to intense and widespread criminalization and demonization of mothers without regard to the factors that led them to kill their children in the first place.⁶⁵

Several research studies that focused on the connection between motherhood and filicide consider these expectations to be a significant aspect of maternal filicide.⁶⁶ This risk is exacerbated in the post-partum period.⁶⁷ Women are most at risk of developing mental illness while in the post-partum period.⁶⁸ One researcher estimated that more than forty percent of depressed mothers with

in a Tub in 2001, Annually Declines Release from Mental Hospital, PEOPLE (Apr. 5, 2022, 1:05 PM), <https://people.com/crime/andrea-yates-who-drowned-kids-in-bathtub-in-2001-annually-declines-release-from-mental-hospital/>.

⁶² Holloway, *supra* note 19, at 113–14; Milia & Noonan, *supra* note 21, at 824.

⁶³ Holloway, *supra* note 19, at 113–14.

⁶⁴ Pandika, *supra* note 23.

⁶⁵ Milia & Noonan, *supra* note 21, at 824; Poteyeva & Leigey, *supra* note 18, at 1.

⁶⁶ Holloway, *supra* note 19, at 117–18. In her thesis, Geraldine Holloway cited to multiple studies that have found “the social construction of motherhood to be a significant aspect of filicide.”

⁶⁷ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; West, *supra* note 12, at 48, 55; Holloway, *supra* note 19, at 14; *Filicide in the United States*, *supra* note 23, at 6.

⁶⁸ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; *Filicide in the United States*, *supra* note 23, at 6; Holloway, *supra* note 19, at 14 (stating “[a] post-partum period of increased risk of harm to the infant has been found and the time in a women’s life immediately after giving birth is a time when she is at greatest risk of mental illness.”).

children, aged three or under, have serious thoughts of harming their children.⁶⁹ Additionally many studies have found that maternal filicide occurs most often in the post-partum time period and most commonly are based on altruistic motives.⁷⁰ Dr. Resnick characterized post-partum stresses, including psychological changes, dealing with a new baby, and a lack of sleep, as important contributing factors to maternal altruistic filicide.⁷¹ One mother who was interviewed while incarcerated for filicide stated, “When my first child was a baby . . . I would wake up in the morning thinking it would be so much easier if neither of us woke up . . . just too much to cope with. I don’t know what was too much to cope with, I just didn’t feel right.”⁷² In a 2005 study analyzing thirty-nine severely mentally ill mothers who committed filicide, researchers found that over one-third of the filicides were committed either while pregnant with another child or during the post-partum period, and that many of the mothers had a history of post-partum psychosis or depression.⁷³

Although any parent can commit altruistic filicide, women have unique stressors associated with motherhood that increase their vulnerability to mental illness.⁷⁴ Many mothers have spoken online about their experiences with postpartum mental illness and having filicidal thoughts.⁷⁵ One mother wrote, “Within days of giving birth I began having intrusive thoughts and extreme anxiety. I constantly thought about putting a knife into my baby’s fontanel, the soft spot on her skull.”⁷⁶ Another mother stated,

If my baby would cry and I couldn’t soothe him, my mind would tell me that I didn’t deserve to live, that

⁶⁹ West, *supra* note 12, at 56.

⁷⁰ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138.

⁷¹ Resnick, *supra* note 15.

⁷² Holloway, *supra* note 19, at 103.

⁷³ Friedman et al., *supra* note 31, at 1.

⁷⁴ Holloway, *supra* note 19, at 103, 113–14, 117–21; West, *supra* note 12, at 55–56.

⁷⁵ Alyce Collins, ‘I Wanted to Put a Knife into My Baby’: Moms on Their Postpartum Psychosis, *NEWSWEEK* (Feb. 4, 2023, 8:00 AM), <https://www.newsweek.com/postpartum-psychosis-lindsay-clancy-1778724>.

⁷⁶ *Id.*

I should spare him growing up with a mom who couldn't make him happy. But then I also felt like I couldn't leave him behind knowing he needed me to survive.⁷⁷

These mental health problems are made worse by the fact that mothers often do not seek help for their mental health struggles out of fear of being shamed or labeled a bad mother.⁷⁸ One researcher stated that “[w]e don't always give a chance for a woman to say she's not sleeping, or needs help, or feeling blue, or having thoughts that are really disturbing. We don't make room for that because we have made motherhood into the world's happiest experience. It's a Pinterest board.”⁷⁹

As a result, it is difficult for mothers to receive treatment, and for psychiatrists or other healthcare officials to intervene, before a mother's mental illness may lead her to commit filicide or harm her child in some other way.⁸⁰ This is not to say that all mothers who experience mental illness will harm their child or commit filicide; however, the pressures and expectations placed upon women to be a good mother leaves many women at an increased risk of mental illness, which in turn can manifest into filicide, most commonly altruistic filicide.⁸¹

C. Other Noteworthy Risk Factors for Maternal Filicide

Although the strongest general risk factor for maternal filicide is mental illness, it is important to recognize other circumstances that increase the likelihood of developing mental illness and committing filicide.⁸² Mothers at the highest risk of committing filicide are those

⁷⁷ *Id.*

⁷⁸ Pandika, *supra* note 23; Milia & Noonan, *supra* note 21, at 825.

⁷⁹ Pandika, *supra* note 23. Pinterest is a social network site that allows users to put images, websites, and products together for inspiration and ideas. See *All About Pinterest*, PINTEREST, <https://help.pinterest.com/en/guide/all-about-pinterest> (last visited Oct. 12, 2023).

⁸⁰ See Pandika, *supra* note 23; see also West, *supra* note 12, at 55.

⁸¹ Holloway, *supra* note 19, at 114–18.

⁸² Holloway, *supra* note 19, at 21–25; West, *supra* note 12, at 51; Windfuhr et al., *supra* note 19, at 31; Debowska et al., *supra* note 19, at 21; Bourget, *supra* note 19, at 76–77.

with disadvantaged socioeconomic backgrounds.⁸³ Most mothers who commit filicide are impoverished, unemployed, and serving as the full-time caregivers for their children.⁸⁴ One researcher found that out of a sample of forty-eight filicidal mothers, over two-thirds of the mothers were experiencing financial and housing difficulties at the time of the filicide.⁸⁵ The lower socioeconomic status common with women who commit filicide is important to consider given the close connection between poverty and mental illness.⁸⁶ Poverty is a significant contributor to adverse mental health outcomes.⁸⁷ More specifically, poverty is associated with higher rates of depressive disorders, psychological distress, and suicide.⁸⁸ This connection between mental illness and poverty is important to consider in the context of filicidal women because most filicidal women have experienced economic marginalization in some way.⁸⁹

Generational trauma has also been identified as a common factor among mothers who commit filicide.⁹⁰ Multiple studies have linked a history of domestic violence or childhood abuse with filicidal mothers.⁹¹ Mothers who commit filicide commonly suffered from

⁸³ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Holloway, *supra* note 19, at 19, 111–15.

⁸⁴ *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Holloway, *supra* note 19, at 19, 111–15; Poteyeva & Leigey, *supra* note 18, at 3–4, 13.

⁸⁵ Holloway, *supra* note 19, at 19.

⁸⁶ Kevin M. Simon, Marc W. Manseau, & Michaela Beder, *Addressing Poverty and Mental Illness*, PSYCHIATRIC TIMES (June 29, 2018), <https://www.psychiatrictimes.com/view/addressing-poverty-and-mental-illness>.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138; see also West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Holloway, *supra* note 19, at 19, 111–15; Poteyeva & Leigey, *supra* note 18, at 3–4, 13.

⁹⁰ See West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Jessica L. Shouse, *Behavioral Characteristics of Maternal Filicide: A Case Study*, (May 2017) (Thesis, THE UNIV. OF CENTRAL OK.) (on file with the W. Roger Webb Forensic Science Institute); Holloway, *supra* note 19, at 20–21.

⁹¹ See West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Shouse, *supra* note 90, at 32–33; Holloway, *supra* note 19, at 20–21.

physical, or sexual abuse as children and experienced financial difficulties along with parental mental health problems.⁹² In a study analyzing thirty-nine mothers charged with filicide, researchers found that thirty-eight percent of the women had experienced physical or sexual abuse, and forty-nine percent had experienced maternal abandonment.⁹³ One researcher analyzing the life experiences of filicidal mothers noted that “[b]efore [the filicidal mothers] were offenders, many were victims and many were economically disadvantaged.”⁹⁴

The aforementioned research suggests that poverty and generational trauma can create lasting harm on mothers. Therefore, recognition of these factors remains important when assessing methods for both prevention and treatment of maternal filicide. Without consideration of these harms and ways to reduce them, any solution seeking support mothers who commit altruistic filicide will be inadequate.

D. The Current State of Mental Health Services in American Carceral Facilities

Despite the close connection between mental illness and maternal altruistic filicide, only a minority of women who commit altruistic filicide are sentenced to hospitalization or mental health treatment.⁹⁵ Instead, the majority of women who commit altruistic filicide are prosecuted for first-degree murder and are incarcerated, where they have little chance of receiving adequate mental health treatment.⁹⁶

⁹² See West, *supra* note 12, at 51; Bourget et al., *supra* note 19, at 76; Shouse, *supra* note 90, at 32–33; Holloway, *supra* note 19, at 20–21; *Child Murder by Mothers: Patterns and Prevention*, *supra* note 18, at 138.

⁹³ West, *supra* note 12.

⁹⁴ Poteyeva & Leigey, *supra* note 18, at 13.

⁹⁵ Holloway, *supra* note 19, at 1; see Szalavitz, *supra* note 26.

⁹⁶ Abramsky & Fellner, *supra* note 26, at 1; Michelle Oberman, *Mothers Who Kill: Coming to Terms with Modern American Infanticide*, 8 DEPAUL J. HEALTH CARE L. 3, 4, 50 (2004). It is very difficult for mothers who commit filicide to succeed with an affirmative defense like the insanity defense and they usually receive long sentences of incarceration when found guilty. Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

On average, around 300,000 people with severe mental illness are incarcerated in the United States every day.⁹⁷ As a result, carceral facilities have become one of the largest mental health service providers.⁹⁸ However, carceral facilities were not designed to provide the comprehensive mental health treatment that mentally ill incarcerated individuals require.⁹⁹ Issues such as overcrowding, prisoner neglect, insufficient facilities, understaffing, and a lack of resources prevent carceral facilities from providing incarcerated individuals with adequate mental health treatment.¹⁰⁰

This issue was highlighted in 2011 when the United States Supreme Court decided *Brown v. Plata*.¹⁰¹ There, incarcerated individuals in California with severe mental illness brought a class action lawsuit alleging that they were receiving inadequate medical care, including mental health treatment.¹⁰² The plaintiffs presented

⁹⁷ K. Foxhall, *Congress Creates Grants for Mental Health Courts*, AM. PSYCH. ASS'N (Jan. 2021, 1:39 PM), <https://www.apa.org/monitor/jan01/congressgrants>; Abramsky & Fellner, *supra* note 26, at 16.

⁹⁸ Canada et al., *supra* note 26, at 2.

⁹⁹ *Id.*; See also Sam McCann, *Locking Up People with Mental Health Conditions Does Not Make Anyone Safer*, VERA INST. OF JUST. (Aug. 25, 2022, 1:04 PM), <https://www.vera.org/news/locking-up-people-with-mental-health-conditions-doesnt-make-anyone-safer>; Abramsky & Fellner, *supra* note 26, at 4.

¹⁰⁰ *Position Statement 56: Mental Health Treatment in Correctional Facilities*, MENTAL HEALTH AM. (Mar. 7, 2015, 1:30 PM), <https://mhanational.org/issues/position-statement-56-mental-health-treatment-correctional-facilities>. The World Health Organization stated, “[t]here are factors in many prisons that have negative effects on mental health, including: overcrowding, various forms of violence, enforced solitude or conversely, lack of privacy, lack of meaningful activity, isolation from social networks, insecurity about future prospects (work, relationships, etc.), and inadequate health services, especially mental health services. This list of mentally damaging conditions accurately describes most U.S. jails and prisons.” Katie Rose Quandt & Alexi Jones, *Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health*, PRISON POL’Y INITIATIVE (May 13, 2021, 1:48 PM), <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>; Researchers also noted that many incarcerated individuals with deteriorating mental states commonly self-harm or self-mutilate, attempt or commit suicide, experience hallucinations, and cover themselves in their own feces. See Abramsky & Fellner, *supra* note 26, at 1–2.

¹⁰¹ *Position Statement 56*, *supra* note 100.

¹⁰² *Brown v. Plata*, 563 U.S. 493, 499–500 (2011).

evidence such as a backlog showing that over 700 incarcerated individuals were waiting up to twelve months for medical care, including mental health treatment, and inhumane treatment of mentally ill incarcerated individuals.¹⁰³ The Court held that California was providing inadequate mental health services and medical care to incarcerated individuals, which violated the Eighth Amendment right against cruel and unusual punishment.¹⁰⁴

After the Court's decision in *Brown v. Plata*, many state and federal courts recognized incarcerated individuals' constitutional right to mental health treatment.¹⁰⁵ However, carceral facilities around the country remain wholly inadequate in terms of treating and helping mentally ill incarcerated individuals.¹⁰⁶ Most carceral facilities have extremely long waiting times to receive mental health care, and have insufficient resources to adequately care for those with mental illness.¹⁰⁷ For example, in 1980, Dr. Dennis Jurczak, a prison psychiatrist at Michigan's Jackson Prison, testified about the state of mental health care in U.S. prisons at the sentencing hearing of a mentally ill defendant.¹⁰⁸ Dr. Jurczak testified that he served as the only psychiatrist for over 5,600 severely mentally ill incarcerated individuals and that there was roughly one nurse per 100 incarcerated individuals hospitalized in the psychiatric ward.¹⁰⁹ Additionally, Dr. Jurczak stated that there were not enough beds or resources to care for and monitor those that were severely mentally ill.¹¹⁰ As a result, he and the nurse's mental healthcare services (?) consisted primarily of the administration of psychotropic medication and isolation to prevent serious psychiatric breakdowns and harm to other incarcerated individuals.¹¹¹

¹⁰³ *Id.* at 519.

¹⁰⁴ *Id.* at 499.

¹⁰⁵ Fentiman, *supra* note 25, at 630.

¹⁰⁶ Abramsky & Fellner, *supra* note 26, at 1–3; Quandt & Jones, *supra* note 100; Courtney Black, *Mental-Health Courts: Expanding the Model in an Era of Criminal Justice Reform*, 63 WASH. UNIV. J. L. & POL'Y 299–300 (2020).

¹⁰⁷ See Quandt & Jones, *supra* note 100; Abramsky & Fellner, *supra* note 26, at 4.

¹⁰⁸ Fentiman, *supra* note 25, at 629.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

Dr. Jurczak's testimony illustrates the inadequate nature of mental health treatment in U.S. prisons and jails. Contemporary research shows that mental health treatment in U.S. carceral facilities has not improved since Dr. Jurczak testified in 1980.¹¹² Only about two out of five incarcerated individuals with mental illness receive mental health treatment,¹¹³ and even if they do receive treatment, it is often minimal and insufficient in addressing mental illness.¹¹⁴ As a result, many incarcerated individuals are left untreated, and their mental illness is often exacerbated.¹¹⁵

The insufficient nature of mental health treatment in American carceral facilities is problematic for all mentally ill individuals, including mothers who commit altruistic filicide, because they deserve adequate care and they have distinct mental health needs that need to be addressed.¹¹⁶

II. THE INADEQUACY OF TRADITIONAL DEFENSE MECHANISMS IN HELPING MOTHERS WHO COMMIT ALTRUISTIC FILICIDE OBTAIN MENTAL HEALTH TREATMENT

A. *The Difficulties of Succeeding with the Insanity Defense for Mothers Who Commit Altruistic Filicide*

The insanity defense is an affirmative defense that criminal defendants can assert, which, if successful, negates their criminal responsibility because of mental illness or mental defects.¹¹⁷ If a defendant is found not guilty by reason of insanity, the defendant is not held culpable for their criminal act and is usually sentenced to a

¹¹² See Abramsky & Fellner, *supra* note 26, at 94–127.

¹¹³ McCann, *supra* note 99.

¹¹⁴ Abramsky & Fellner, *supra* note 26, at 1–3; Black, *supra* note 106, at 300.

¹¹⁵ Christine Montross, *We Must Change How Our Criminal Justice System Treats People with Mental Illness*, TIME (Aug. 5, 2020, 3:44 PM), <https://time.com/5876045/we-must-change-how-our-criminal-justice-system-treats-people-with-mental-illness/>; Quandt & Jones, *supra* note 100.

¹¹⁶ Abramsky & Fellner, *supra* note 26, at 2.

¹¹⁷ Limor Ezioni, *International Misconceptions: The Insanity Defense in Filicide Cases - Israel as a Case Study*, 55 CRIM. L. BULL. 205, 206 (2019).

psychiatric hospital for treatment.¹¹⁸ In theory, the insanity defense is the perfect remedy for mentally ill mothers who commit altruistic filicide because it is supposed to prevent them from being incarcerated and ensure they receive mental health treatment. However, this is far from reality.¹¹⁹

Insanity defenses are rarely successful.¹²⁰ Approximately one percent of criminal defendants use the insanity defense, and only around ten to twenty percent of those cases result in a verdict of not-guilty by reason of insanity.¹²¹ It is especially difficult for mothers who commit filicide to succeed with the insanity defense.¹²² This is largely because of the narrow and archaic standards the insanity defense is based on.¹²³ Most states use the M’Naghten test as their standard for the insanity defense.¹²⁴ The M’Naghten test requires a defendant to prove that at the time of the crime, they had a mental illness or mental defect that prevented them from discerning right from wrong.¹²⁵ Today, twenty-five states apply the M’Naghten test or a modified version of it.¹²⁶

¹¹⁸ Louis Kachulis, Note, *Insane in the Mens Rea: Why Insanity Defense Reform Is Long Overdue*, 26 REV. L. & SOC. JUST. 245, 251 (2017).

¹¹⁹ Telephone Interview with Doctor Phillip Resnick, *supra* note 24. When Dr. Resnick and I spoke, he said that it is an exception for filicidal mothers to succeed with the insanity defense and the majority, if found guilty, receive long sentences of incarceration. *Id.*

¹²⁰ Manchester, *supra* note 25, at 738; *see also* Dembosky, *supra* note 15.

¹²¹ *The Andrea Yates Case: Insanity on Trial*, *supra* note 2, at 154; *see also* Manchester, *supra* note 25, at 738.

¹²² Ezioni, *supra* note 117, at 210 (stating that “[t]he filicide cases in which the insanity plea was accepted in the U.S. are few and far between”); *see also* Manchester, *supra* note 25, at 715–16.

¹²³ Dale E. Bennett, *The Insanity Defense - A Perplexing Problem of Criminal Justice*, 16 LA. L. REV. 484, 485 (1956). “Dissatisfaction with the M’Naghten’s rules is widespread among American psychiatrists, and it has been variously characterized as a crystallization of ‘antiquated, outworn, archaic ways of thinking,’ and as a ‘hangover . . . from theological and moral ideas that have survived their period of usefulness in this twentieth century civilization.’” *Id.*

¹²⁴ Manchester, *supra* note 25, at 725.

¹²⁵ Kachulis, *supra* note 118, at 248.

¹²⁶ *The Insanity Defense Among the States*, US LEGAL, <https://criminallaw.uslegal.com/defense-of-insanity/the-insanity-defense-among-the-states/> (last visited Oct. 14, 2023).

The M'Naghten standard has been widely criticized, especially by psychiatrists, because it is an extremely difficult standard to satisfy.¹²⁷ The M'Naghten test exclusively focuses on whether the defendant knew right from wrong without taking into account other relevant factors of mental illness that can affect an individual's mental state or conduct.¹²⁸ The M'Naghten test only looks at the cognitive aspect of insanity and allows for a verdict of "not guilty by reason of insanity" only if the defendant was unable to distinguish right from wrong.¹²⁹ This standard ignores the other degrees of insanity, such as where a defendant may understand that their conduct is wrong, but may be unable to control themselves.¹³⁰

Additionally, the M'Naghten standard does not explicitly define the meaning of "wrong."¹³¹ Wrongfulness can be defined based on legal wrongfulness and moral wrongfulness.¹³² A M'Naghten standard limited to legal wrongfulness is satisfied when an individual, due to mental disease or defect, was unable to discern that what they did was legally wrong.¹³³ On the other hand, a M'Naghten standard open to moral wrongfulness can be satisfied if

¹²⁷ Bennett, *supra* note 123, at 485; *see also* Manchester, *supra* note 25, at 716.

¹²⁸ Manchester, *supra* note 25, at 718 (stating "the [M'Naghten] test is too narrow because it confines the legal insanity test to a consideration of whether the individual knew the difference between right or wrong and not other aspects of mental illness that are equally relevant.").

¹²⁹ Ezioni, *supra* note 117, at 208; Vue Yang, *Postpartum Depression and the Insanity Defense: A Poor Mother's Two Worst Nightmares*, 24 WIS. J. L., GENDER, AND SOC'Y 230, 246 (2009).

¹³⁰ Ezioni, *supra* note 117, at 208; *see also* Yang, *supra* note 129, at 231; Manchester, *supra* note 25, at 741–42 (stating that "Modern psychiatrists have emphasized the importance of volitional capacity in assessing mental illness.").

¹³¹ *See* Robert Lloyd Goldstein et al., *The Psychiatrist's Guide to Right and Wrong: Judicial Standards of Wrongfulness since M'Naghten*, 16 BULL. AM. ACAD. PSYCH. L. 359, 359 (1988).

¹³² *Id.*; *See also* Samuel Strom, *The M'Naghten Rule*, FIND LAW (Nov. 30, 2023), <https://www.findlaw.com/criminal/criminal-procedure/the-m-naghten-rule.html#:~:text=Courts%20in%20the%20United%20States,understanding%20what%20they've%20done>. The M'Naghten standard is unclear on whether it is limited to legal wrongfulness or open to moral wrongfulness. As a result, state court's who apply the M'Naghten standard vary on whether "wrong" means morally or legally wrong.

¹³³ Goldstein et al., *supra* note 131, at 361.

an individual, due to mental disease or defect, was unable to discern that what they did was morally wrong.¹³⁴

Some state courts have explicitly defined the M’Naghten as limited to legal wrongfulness, and other state courts have defined the M’Naghten standard as open to moral wrongfulness.¹³⁵ By contrast, some jurisdictions have left it up to the jury to decide whether “wrong” means morally wrong or legally wrong.¹³⁶

Today, most courts have limited the M’Naghten standard to only allowing for an insanity finding when the defendant knew of legal wrongfulness of their conduct.¹³⁷ This approach is especially problematic for mothers who commit altruistic filicide.¹³⁸ Almost all mothers who commit altruistic filicide know that it is against the law to kill their children, however, they do not believe it is morally wrong.¹³⁹ Most of these mothers think they are doing what is morally right to protect their children from a fate worse than death.¹⁴⁰

As a result, it is an exception for mothers who commit altruistic filicide to succeed with the insanity defense.¹⁴¹ The success rates are even lower when a mother’s insanity is contested by an expert from the prosecution, which is very common.¹⁴² Dr. Resnick stated, “In view of how difficult it is to succeed with insanity, the majority [of

¹³⁴ *Id.*

¹³⁵ Telephone Interview with Doctor Phillip Resnick, *supra* note 24; see also James Mason, *What’s Wrong with Wrongfulness? Reconsidering the Wrongness Limb of the Insanity Defense*, 1 J. CRIME & CRIM. BEHAV. 21, 22 (2021) (stating that Courts across different jurisdictions “have failed to reach a consensus on how to” define wrongfulness in the context of the M’Naghten standard).

¹³⁶ Resnick, *supra* note 15.

¹³⁷ Kate Bloch et al., *Legal Indeterminacy in Insanity Cases: Clarifying Wrongfulness and Applying a Triadic Approach to Forensic Evaluations*, 67 HASTINGS L. J. 913, 925–26 (2016) (stating that “[t]he ‘violates the law’ or ‘legal wrongfulness’ standard qualifies as one of the two definitions of ‘wrongfulness’ most frequently adopted by courts in the United States”).

¹³⁸ Resnick, *supra* note 15.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

mothers who commit altruistic filicide] are incarcerated rather than found legally insane and receive extremely long sentences.”¹⁴³

One prominent example of this was seen in the case of Carol Coronado.¹⁴⁴ On May 20, 2014, Ms. Coronado, a married mother of three living in Tracy, California, killed her three daughters, the youngest of whom was three months old.¹⁴⁵ Prior to the killings, Ms. Coronado exhibited concerning behavior.¹⁴⁶ Ms. Coronado left her mother frantic voicemails, lost significant weight, had hallucinations of voices, unplugged the power to her house, and allowed her daughters to spread human fecal matter around her house.¹⁴⁷ Ms. Coronado also had experienced trauma as a child.¹⁴⁸ At five years old, she was molested while the perpetrator held her at gunpoint, and as a teenager she was gang-raped.¹⁴⁹ Additionally, since having her three daughters, Ms. Coronado was their primary caretaker both during the day and at night, and her husband said that she rarely slept.¹⁵⁰

On the day of the murder, Ms. Coronado woke up screaming and left her mother a voicemail saying, “Mommy, please call me. Please—Please—Please. I’m tired. I’m exhausted. I’m hungry.”¹⁵¹ Later that day, Ms. Coronado’s mother and husband found Ms.

¹⁴³ *Id.*

¹⁴⁴ At Ms. Coronado’s trial, Doctor Diana Barnes, a psychologist and therapist, testified that she believed Ms. Coronado killed her daughters as an act of altruistic filicide. *See People v. Coronado*, No. B269983, 2018 WL 1026407, at *7–8 (Cal. Ct. App. Feb. 23, 2018).

¹⁴⁵ *Id.* at 1; AP, *California Mother Convicted of Killing 3 Daughters*, CBS NEWS (Dec. 1, 2015, 10:41 AM), <https://www.cbsnews.com/news/carol-ann-coronado-california-mother-convicted-of-killing-3-daughters/>.

¹⁴⁶ Pandika, *supra* note 23. A physician who treated Ms. Coronado after the murders stated, “[e]ven before the children were killed there were clinical signs that something was off.” Dembosky, *supra* note 15.

¹⁴⁷ Dembosky, *supra* note 15; *see also* Larry Altman, *Expert: Killer Mom Carol Coronado Wanted to Send Children to Safety in Heaven*, DAILY BREEZE (Dec. 7, 2015, 9:12 PM), <https://www.dailybreeze.com/2015/12/07/expert-killer-mom-carol-coronado-wanted-to-send-children-to-safety-in-heaven/>; *see also Coronado*, 2018 WL 1026407, at *2.

¹⁴⁸ Pandika, *supra* note 23.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Dembosky, *supra* note 15.

Coronado naked, covered in blood, crouching over the dead bodies of her three daughters.¹⁵² All three of Ms. Coronado's daughters had been stabbed.¹⁵³ Ms. Coronado also stabbed herself with a knife, and was using her fingers to rip open her stab wound.¹⁵⁴ When police arrived, Ms. Coronado was lying next to the dead bodies of her daughters and staring blankly, unresponsive to police officers.¹⁵⁵

Ms. Coronado was charged with three counts of first-degree murder.¹⁵⁶ During trial, Ms. Coronado entered a plea of not-guilty by reason of insanity and elected a bench trial.¹⁵⁷ After her competency to stand trial was questioned by her defense attorney, a court-appointed psychiatrist diagnosed Ms. Coronado with "major depression with peri-partum onset and personality traits highly suggestive of Borderline Personality Disorder."¹⁵⁸ The court noted that Ms. Coronado was rambling through the trial, asking for her children, and at one point, had to be removed from the courtroom because she was screaming.¹⁵⁹ Despite this, the court found her competent because the court-appointed psychiatrist testified that Ms. Coronado was "calm and cooperative" when given two different anti-psychotic medications and a sedative.¹⁶⁰

During the sanity phase of her trial, Ms. Coronado's defense attorney argued that she was suffering from post-partum psychosis when she killed her daughters.¹⁶¹ The defense called four psychiatrists to testify about Ms. Coronado's mental state.¹⁶² Two psychiatrists, Dr. Anil Sharma and Dr. Michael Choi, evaluated Ms. Coronado in the days after her arrest.¹⁶³ Dr. Sharma testified that Ms. Coronado had "major depression, severe, recurrent, with

¹⁵² *Coronado*, 2018 WL 1026407, at *2.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at *1.

¹⁵⁷ *Id.* at *2.

¹⁵⁸ *People v. Coronado*, No. B269983, 2018 WL 1026407, at *2 (Cal. Ct. App. Feb. 23, 2018).

¹⁵⁹ *See id.*

¹⁶⁰ *See id.*

¹⁶¹ *Id.* at *3.

¹⁶² *See id.* at *7–8.

¹⁶³ *Id.* at *6–7.

psychotic features” and that she needed antipsychotic medication.¹⁶⁴ Dr. Choi testified that Ms. Coronado was suffering from a psychotic disorder and that she was “not in touch with reality” during the killings.¹⁶⁵

A third psychiatrist, Dr. Torang Sepah, who treated Ms. Coronado for a year while she awaited trial, testified that she had “a major depressive disorder with psychotic features with peripartum onset.”¹⁶⁶ Additionally, a fourth psychiatrist, Dr. Diana Barnes, testified that Ms. Coronado was suffering from “major depressive disorder with psychotic and catatonic features and peripartum onset.” Dr. Barnes stated that Ms. Coronado had paranoid hallucinations leading up to the killings and that she had an impaired understanding of the external world because of her delusions.¹⁶⁷ According to Dr. Barnes, Ms. Coronado believed that killing her daughters was in their best interest and that they would be safer in heaven than on earth.¹⁶⁸ Dr. Barnes also noted that Ms. Coronado’s attempted suicide after killing her daughters showed that she had psychosis and likely was acting out of altruistic motives.¹⁶⁹ According to Dr. Barnes, Ms. Coronado, “was concerned with her children’s safety, possibly due to her own history of trauma, and she killed the children to send them to heaven where she knew they could be safe.”¹⁷⁰

The prosecution initially sought out Dr. Erin Murphy Barzilay to testify as an expert witness.¹⁷¹ However, after giving Dr. Murphy Barzilay the opportunity to review the police report, interview transcripts, and speak with other doctors who had interviewed Ms. Coronado, the prosecution decided not to call her to the stand.¹⁷² The prosecution then agreed to stipulate that Dr. Murphy Barzilay

¹⁶⁴ *People v. Coronado*, No. B269983, 2018 WL 1026407, at *6–7 (Cal. Ct. App. Feb. 23, 2018).

¹⁶⁵ *Id.* at *3.

¹⁶⁶ *Id.*

¹⁶⁷ *See id.*

¹⁶⁸ Altman, *supra* note 147.

¹⁶⁹ *People v. Coronado*, No. B269983, 2018 WL 1026407, at *3 (Cal. Ct. App. Feb. 23, 2018).

¹⁷⁰ *Id.* at *8.

¹⁷¹ *Id.* at *3

¹⁷² *Id.*

“would have testified that [Ms.] Coronado was insane at the time of the killings.”¹⁷³

The prosecution called only one expert witness, Dr. Gordon Plotkin, who testified that Ms. Coronado did not have a serious mental illness.¹⁷⁴ Dr. Plotkin was the only witness who testified that Ms. Coronado was not psychotic at the time of the killings and he only started interviewing Ms. Coronado eight months after the killings occurred.¹⁷⁵ Dr. Plotkin testified that Ms. Coronado understood the wrongfulness of her conduct because she knew that by stabbing her daughters they would die, she used a knife to kill her daughters, and she got into a dispute with her husband after the killings.¹⁷⁶ The court agreed with Dr. Plotkin and found Ms. Coronado sane and guilty, sentencing her to three life terms of imprisonment without the possibility of parole.¹⁷⁷

On appeal, the court reaffirmed the decision stating,

While Dr. Barnes’s opinion indicates Coronado committed the killings under the mistaken impression they would result in protecting her children, it also unequivocally reveals that the murders were intentional, willful, deliberate, and premeditated. If Coronado killed her children believing death was better for them than living, she intended to kill them, planned to kill them after thinking it out, and did so deliberately. It does not matter that her intentions were “altruistic.”¹⁷⁸

The court also endorsed the M’Naghten standard and stated that insanity depends on whether the defendant knew right from wrong when the crime occurred.¹⁷⁹

The case of Ms. Coronado illustrates how outdated the M’Naghten standard is from current understandings of mental

¹⁷³ *Id.*

¹⁷⁴ *Id.* at *4.

¹⁷⁵ *People v. Coronado*, No. B269983, 2018 WL 1026407, at *5 (Cal. Ct. App. Feb. 23, 2018).

¹⁷⁶ *Id.* at *4.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at *7.

¹⁷⁹ *Id.* at *5.

illness.¹⁸⁰ Ms. Coronado may have understood that killing her daughters was against the law, but her mental illness-induced delusions made her think the killings were the right thing to do to protect her daughters.¹⁸¹ Many cases of maternal altruistic filicide resemble that of Ms. Coronado and have failed to satisfy the narrow M’Naghten standard.¹⁸² The M’Naghten standard disregards numerous ways that mental illness can affect someone’s conduct beyond the traditional understanding of what is right and wrong.¹⁸³ It contradicts current understandings within the field of psychiatry today that insanity may present itself in many different ways.¹⁸⁴ For mothers who commit altruistic filicide, the M’Naghten standard is often defined too narrowly by jurors or the state courts in terms of what is “wrong,” and is therefore an unsuccessful remedy for most of them.¹⁸⁵

B. The Failure of the “Guilty but Mentally Ill” Verdict in Ensuring Mental Health Treatment

Given the difficulties in succeeding with the insanity defense, mothers who commit altruistic filicide may have to look towards other mechanisms to obtain mental health treatment in the criminal legal system.¹⁸⁶ One possible mechanism is the “guilty but mentally ill” verdict.

In 1975, the Michigan legislature created and implemented the first “guilty but mentally ill” law.¹⁸⁷ Under this law, the judge or jury can find a defendant “guilty but mentally ill” if the defendant does not meet the legal requirements for the insanity defense but was

¹⁸⁰ Manchester, *supra* note 25, at 715–16, 718 (stating that the “Yates case is most significant because it demonstrates the pressing need for insanity defense reform to address the realities of postpartum psychosis and other mental illnesses”).

¹⁸¹ See generally McLellan, *supra* note 9, at 1953.

¹⁸² See Dembosky, *supra* note 15; see also Yang, *supra* note 129, at 236; Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

¹⁸³ See Yang, *supra* note 129, at 246.

¹⁸⁴ See *id.*

¹⁸⁵ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

¹⁸⁶ See Ezioni, *supra* note 117, at 210.

¹⁸⁷ Fentiman, *supra* note 25, at 614.

mentally ill when they committed the crime.¹⁸⁸ When a defendant receives a verdict of “guilty but mentally ill,” they are usually sentenced to incarceration with an order to undergo mental health treatment while incarcerated.¹⁸⁹

On its face, the “guilty but mentally ill” verdict seems like a plausible way for mothers who commit altruistic filicide to obtain mental health treatment. However, the “guilty but mentally ill” verdict has been widely criticized for its failure to ensure that defendants receive treatment when incarcerated.¹⁹⁰ The “guilty but mentally ill” verdict does not guarantee mental health treatment.¹⁹¹ In fact, many researchers have found that most defendants who are incarcerated by a “guilty but mentally ill” verdict receive little to no treatment at all.¹⁹²

Even when a defendant does receive treatment while incarcerated, the treatment is minimal and inherently inadequate.¹⁹³ In the rare instances that a defendant does receive sufficient treatment while incarcerated and is able to recover, they still have to remain incarcerated for the duration of their sentence.¹⁹⁴ As a result, defendants who are found “guilty but mentally ill” are not able to

¹⁸⁸ Manchester, *supra* note 25, at 734–35.

¹⁸⁹ Asokan, *supra* note 25, at 195.

¹⁹⁰ Manchester, *supra* note 25, at 734–35 (stating that numerous professional organizations such as the American Bar Association and the American Psychiatry Association have opposed the adoption of the “guilty but mentally ill” verdict because of treatment-related issues); *see also* Asokan, *supra* note 25, at 195–96.

¹⁹¹ Manchester, *supra* note 25, at 734–35.

¹⁹² Manchester, *supra* note 25, at 734–35; *see also* Fentiman, *supra* note 25, at 628–30. In a study by the American Psychiatric Association that analyzed incarcerated individuals who received “guilty but mentally ill” verdicts on felony convictions found that the individuals “received no more treatment than they would have prior to the new [GBMI] law.” Another study found that less than forty percent of incarcerated individuals in Illinois who received “guilty but mentally ill” verdicts received psychiatric treatment while incarcerated. Fentiman, *supra* note 25, at 628–30.

¹⁹³ Fentiman, *supra* note 25, at 629, 632.

¹⁹⁴ Ezioni, *supra* note 117, at 207; *see also* Fentiman, *supra* note 25, at 630.

reintegrate into their communities and are isolated to the carceral setting.¹⁹⁵

The harm associated with the “guilty but mentally ill” verdict is illustrated by the case of Kimberly Bolanos. In May of 2013, Ms. Bolanos killed her five month old son.¹⁹⁶ Police found Ms. Bolanos covered in blood with over 25 self-inflicted stab wounds to her stomach.¹⁹⁷ They also found her five-month old son with multiple stab wounds.¹⁹⁸ After her arrest, Ms. Bolanos told the police that she “wasn’t sure if her baby was dead and that she would feel better if he was dead.”¹⁹⁹

Ms. Bolanos was charged with multiple counts of first-degree murder and decided to proceed with a bench trial.²⁰⁰ Initially, Ms. Bolanos pleaded not guilty by reason of insanity.²⁰¹ However, before trial, Ms. Bolanos’ defense attorney told the court that she was not going to proceed on the insanity defense and requested a guilty-plea conference.²⁰² Ms. Bolanos subsequently pleaded “guilty but mentally ill.”²⁰³

At trial, Ms. Bolanos’ attorney introduced significant evidence showing that she was severely mentally ill and that she was

¹⁹⁵ Fentiman, *supra* note 25, at 633. One researcher stated, “[a]lthough the verdict is ‘guilty but mentally ill,’ the effective message is ‘guilty and mentally ill.’” *Guilty but Mentally Ill Verdict and Due Process*, 92 YALE L. J., 475, 482 (1983).

¹⁹⁶ *People v. Bolanos*, 215 N.E.3d 221, 222–23 (Ill. App. Ct. 2022).

¹⁹⁷ Emily Le Beau Lucchesi, *When Giving Birth Leads to Psychosis, then to Infanticide: Mothers Suffering from Postpartum Psychosis Sometimes Hurt or Kill Their Children, but the Law Isn’t Sure How to Separate Illness from Intent*, THE ATLANTIC (Sept. 6, 2018, 12:14 PM), <https://www.theatlantic.com/family/archive/2018/09/postpartum-psychosis-infanticide-when-mothers-kill-their-children/569386/>; *see also Bolanos*, 215 N.E.3d at 225.

¹⁹⁸ *Bolanos*, 215 N.E.3d at 225.

¹⁹⁹ *Mom Admitted Stabbing Baby to Death at North Side Motel: Prosecutors*, CBS CHICAGO (June 7, 2013, 7:11 PM), <https://www.cbsnews.com/chicago/news/mom-admitted-stabbing-baby-to-death-at-north-side-motel-prosecutors/>.

²⁰⁰ *Bolanos*, 215 N.E.3d at 223; *see also Lucchesi*, *supra* note 197.

²⁰¹ *People v. Bolanos*, 215 N.E.3d 221, 223 (Ill. App. Ct. 2022).

²⁰² *Id.* at 227.

²⁰³ *Id.*

motivated by altruism when she killed her son.²⁰⁴ Evidence showed that while in high school, Ms. Bolanos engaged in self-harm, attempted suicide, had delusions that people were following her, and was hospitalized for psychiatric treatment.²⁰⁵ Additionally, there was evidence indicating that Ms. Bolanos may have been a victim of sexual assault.²⁰⁶ After high school, Ms. Bolanos made another suicide attempt where she injected herself with wasp poison.²⁰⁷

When her son was born, hospital staff ordered a psychiatric consultation for Ms. Bolanos because she made concerning comments.²⁰⁸ Ms. Bolanos believed that her son was being tortured by hospital staff and that people were following her.²⁰⁹ After her release from the hospital, Ms. Bolanos engaged in erratic behaviors based on the belief that her family, including her son, was being tortured by “People at the Top.”²¹⁰ She was also having delusions that she could hear people screaming and that people were being tortured.²¹¹ Ms. Bolanos believed that if she did not kill her son, he would be tortured and raped.²¹² Additionally, Ms. Bolanos stated that she believed someone had surgically altered her son’s brain and that the only way she was going to see him again was in heaven.²¹³

Multiple doctors and psychiatrists assessed Ms. Bolanos.²¹⁴ Right after the killing, two doctors, a nurse, and a social worker found Ms. Bolanos to be psychotic.²¹⁵ Additionally, multiple doctors at the hospital where she was admitted to undergo psychiatric treatment after the killing stated that she was experiencing “bizarre delusions and auditory hallucinations.”²¹⁶ Another doctor, Dr. Jonathan Howard, diagnosed Ms. Bolanos with

²⁰⁴ *See id.* at 223–26.

²⁰⁵ *Id.*

²⁰⁶ *Id.* at 223.

²⁰⁷ *People v. Bolanos*, 215 N.E.3d 221, 223 (Ill. App. Ct. 2022).

²⁰⁸ *Id.* at 224.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *People v. Bolanos*, 215 N.E.3d 221, 224–25 (Ill. App. Ct. 2022).

²¹⁴ *Id.* at 226–27.

²¹⁵ *Id.* at 225.

²¹⁶ *Id.*

“textbook postpartum psychosis” and said that she was having a “delusion that persons wanted to harm her and [her son].”²¹⁷ An additional doctor, Dr. Gunaratmen, diagnosed Ms. Bolanos with schizophrenia and testified that Ms. Bolanos was living for “a long time with symptoms she didn’t know weren’t normal.”²¹⁸ A fifth doctor, Dr. Roni Seltzberg, diagnosed Ms. Bolanos with a schizoaffective disorder of a bipolar type and put forward that he thought she was legally insane at the time of the killing because she was experiencing “an acute exacerbation of her previously undiagnosed psychotic mental disease, likely further exacerbated by postpartum psychosis.”²¹⁹ Dr. Seltzberg also testified that Ms. Bolanos killed her son because of delusions and hallucinations that made her believe that her son was going to be tortured and that she needed to kill him to save him.²²⁰ Dr. Seltzberg noted that Ms. Bolanos was having delusions for months after the killing and that she had “minimal insight” into reality.²²¹ Additionally, Dr. Seltzberg testified that Ms. Bolanos was incapable of understanding *Miranda* warnings when she was arrested and that she was only fit to stand trial if she was medicated.²²²

Two times during the trial, Ms. Bolanos displayed worrisome behavior requiring the Court to check in with her.²²³ At one point the Judge said “Ms. Bolanos, stay with me, will you, please” and at another point the Judge stated to Ms. Bolanos’ attorney to either: (1) “[k]eep [Ms. Bolanos] up;” or (2) “[k]eep the defendant up.”²²⁴

The Court accepted Ms. Bolanos’ plea of “guilty but mentally ill” and sentenced her to thirty-eight years in prison.²²⁵ When sentencing Ms. Bolanos, the Judge noted,

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *People v. Bolanos*, 215 N.E.3d 221, 226 (Ill. App. Ct. 2022).

²²⁰ *Id.* at 223–26.

²²¹ *Id.*

²²² *Id.* at 226.

²²³ *See id.* at 226–27, 229.

²²⁴ *Id.*

²²⁵ *People v. Bolanos*, 215 N.E.3d 221, 227 (Ill. App. Ct. 2022). The Illinois Appeals Court later reversed Ms. Bolanos’ case because of doubt on whether she had been competent enough to stand trial. *Id.* at 230.

The trial court found this case to be very tragic and very chilling. Although the court would allow defendant to plead guilty but mentally ill, it found she did not deserve a sentence close to the minimum.²²⁶

After making her plea and being transferred to Logan Correctional facility in Illinois, Ms. Bolanos gouged out her own eyes.²²⁷

Since beginning her sentence, Ms. Bolanos has been regularly confined to the mental health unit at Logan Correctional Facility.²²⁸ In 2016, the Illinois Department of Corrections (“IDOC”) settled a lawsuit in the case of *Rasho v. Jeffreys* concerning the treatment of mentally ill individuals at Illinois correctional facilities like Logan Correctional Facility, where Ms. Bolanos is serving her sentence.²²⁹ The plaintiff, Ashoor Rasho, brought suit against the IDOC for failing to provide adequate mental health treatment in violation of the Eighth Amendment.²³⁰ In response to this lawsuit, a federal judge assigned a panel of experts to analyze the IDOC’s treatment of mentally ill individuals.²³¹ The panel published a 113-page report calling mental health treatment at IDOC facilities like Logan Correctional Facility “grossly insufficient,” “extremely poor,” and “oftentimes dangerous.”²³² In addition, the report listed various issues with the mental health units including: insufficient psychiatric staff, backlogs in the thousands for psychiatric care, failure to provide medication, dangerous uses of solitary confinement, and use

²²⁶ *Id.* at 227.

²²⁷ *Id.*

²²⁸ *See id.* at 228.

²²⁹ *Rasho v. Jeffreys*, UPTOWN PEOPLE’S L. CTR., <https://www.uplcchicago.org/what-we-do/prison/rasho.html> (last visited Feb. 18, 2024); Bolanos, 215 N.E.3d at 227.

²³⁰ UPTOWN PEOPLE’S L. CTR., *supra* note 229; *see also* Doug Finke, *Expansion of Mental Health Unit Planned at Logan Correctional Center*, NAT’L ALL. ON MENTAL ILLNESS, <https://namiillinois.org/expansion-mental-health-unit-planned-logan-correctional-center/> (last visited Feb. 18, 2024).

²³¹ *Report: Illinois’ Treatment of Mentally Ill Prisoners “Exceedingly Poor and Often Dangerous,”* EQUIP FOR EQUAL., <https://www.equipforequality.org/news-item/report-illinois-treatment-mentally-ill-prisoners-exceedingly-poor-often-dangerous/> (last visited Feb. 18, 2024).

²³² *Id.*; UPTOWN PEOPLE’S L. CTR., *supra* note 229; EQUIP FOR EQUAL., *supra* note 231.

of force.²³³ Since the settlement, the IDOC has been admonished several times by advocates for failing to implement the terms of the settlement which were designed to improve conditions for mentally ill individuals incarcerated at IDOC facilities.²³⁴ Additionally, in 2017, a motion to enforce the settlement terms was filed after federal monitors found that IDOC was continuing to fail at providing adequate mental health care and they characterized mental health care at IDOC facilities as “a state of emergency.”²³⁵

The *Rasho v. Jeffreys* suit illustrates the inherent problem with the “guilty but mentally ill” verdict for mothers who commit altruistic filicide. Mothers like Ms. Bolanos will spend decades in prison where they will likely not receive the mental health treatment they so desperately need.²³⁶ The case of Ms. Bolanos is so extreme that it clearly demonstrates the criminal legal system’s complete inability to address the complicated issues raised when a mentally ill mother kills her children.

III. REDIRECTING MOTHERS WHO COMMIT ALTRUISTIC FILICIDE TO MENTAL HEALTH COURTS

The experiences of Ms. Coronado and Ms. Bolanos illustrate how problematic our current criminal legal system is for mothers

²³³ EQUIP FOR EQUAL., *supra* note 231. The IDOC admitted to having a backlog of around 2,000 people for psychiatric care. Brian Mackey, *After Promising Better Mental Health Treatment for Prisoners, Advocates Say Illinois Dragging Feet*, NPR ILLINOIS (Oct. 11, 2017, 8:35 AM), <https://www.nprillinois.org/statehouse/2017-10-11/after-promising-better-mental-health-treatment-for-prisoners-advocates-say-illinois-dragging-feet>; *Mentally Ill Prisoners Seek Intervention Addressing “State of Emergency” in IDOC’s Psychiatric Care*, EQUIP FOR EQUAL., <https://www.equipforequality.org/news-item/mentally-ill-prisoners-seek-judicial-intervention/> (last visited Feb. 18, 2024).

²³⁴ See Tom Wray, *Report: IDOC Mental Health Care Still ‘Unconstitutional’ After Class Action Settlement*, ILL. EAGLE (Aug. 23, 2021), <https://illinoiseagle.com/2021/08/23/report-idoc-mental-health-care-still-unconstitutional-after-class-action-settlement/>; see also EQUIP FOR EQUAL., *supra* note 230.

²³⁵ EQUIP FOR EQUAL., *supra* note 231; see also Wray, *supra* note 234.

²³⁶ See Manchester, *supra* note 25, at 734–35; see also Fentiman, *supra* note 25, at 628.

who commit altruistic filicide. A punitive, carceral approach is not appropriate nor humane for these mothers. Consistent and quality mental health treatment is needed so that they can manage their mental illness and ultimately return to society as productive individuals.²³⁷ Mental health courts provide an opportunity for this.

A. The Basic Structure and Functions of Mental Health Courts

Mental health courts were created in the 1990s because of an increasing number of individuals with mental illness entering the criminal legal system and a growing awareness that jails and prisons could not adequately manage or treat them.²³⁸ As of 2013, there were over 397 mental health courts operating across the country.²³⁹ Mental health courts provide an alternative to the traditional criminal legal system where the focus is on treating mentally ill individuals rather than punishing them.²⁴⁰ Instead of incarceration, individuals can be diverted to mental health courts to receive a comprehensive and community-based treatment plan dedicated to caring for their underlying mental illness.²⁴¹ The treatment plan is usually developed and supervised by a team of people including a judge, case managers, social workers, mental health professionals, and representatives or attorneys from both the prosecution and defense.²⁴²

Community-based treatment plans typically involve connecting the defendant to services in their local community including residential treatment facilities, outpatient mental health service

²³⁷ Resnick, *supra* note 15.

²³⁸ *Mental Health Courts*, MENTAL HEALTH AM., <https://mhanational.org/issues/mental-health-courts> (last visited Feb. 28, 2024).

²³⁹ Goodale et al., *supra* note 27, at 299.

²⁴⁰ See MENTAL HEALTH AM., *supra* note 238; see also Almquist & Dodd, *supra* note 27, at 5.

²⁴¹ Almquist & Dodd, *supra* note 27, at 5; see also Robert Bernstein & Tammy Seltzer, *Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform*, 7 UNIV. D.C. L. REV. 143, 148–49 (2003).

²⁴² Almquist & Dodd, *supra* note 27, at 5, 14.

agencies, and substance abuse detox facilities.²⁴³ Once an individual is connected to these local services and agencies, their providers become a part of their mental health court treatment team and assist in updating the Court on their progress, and their needs.²⁴⁴

Mental health courts have entirely separate dockets and personnel from conventional criminal courts.²⁴⁵ Individuals are usually referred to mental health courts by defense attorneys, and the criminal court judge or even outsiders like the individual's family.²⁴⁶ An individual has complete freedom on whether to accept the transfer to mental health courts or not, because transfer would virtually mean that the individual is surrendering their right to a criminal trial.²⁴⁷ If the individual meets the criteria of the mental health court, they will then be moved to the specialized docket and mental health court personnel will create an individualized treatment plan for them.²⁴⁸ The treatment plan will usually involve connecting the defendant to community-based mental health services and the individual's progress will be closely monitored by the judge and other mental health court personnel to promote the individual's recovery.²⁴⁹

B. The Framework for Diverting Mothers Who Commit Altruistic Filicide to Mental Health Courts

Instead of processing mothers who commit altruistic filicide through the traditional criminal legal system, which is incredibly

²⁴³ Edwards et al., *Connecting Mental Health Court Participants with Services: Process, Challenges, and Recommendations*, 26 PYSCH. PUB. POL. & L. 463, 464 (2020).

²⁴⁴ *Id.*

²⁴⁵ Bernstein & Seltzer, *supra* note 241, at 150.

²⁴⁶ Almquist & Dodd, *supra* note 27, at vi.

²⁴⁷ Bernstein & Seltzer, *supra* note 241, at 152.

²⁴⁸ Almquist & Dodd, *supra* note 27, at 5; Bernstein & Seltzer, *supra* note 241, at 149.

²⁴⁹ Almquist & Dodd, *supra* note 27, at 5, 31–32; *Position Statement 53: Mental Health Courts*, MENTAL HEALTH AM. (June 13, 2019, 1:41 PM), <https://mhanational.org/issues/position-statement-53-mental-health-courts> (stating that “mental health courts may serve to assure treatment for persons with serious mental illnesses convicted of crimes and divert them from incarceration, if not from conviction”).

harmful for those with mental health issues,²⁵⁰ mothers who commit altruistic filicide should be automatically referred to mental health courts upon psychiatric evaluation and with their consent.²⁵¹ A psychiatric evaluation will ensure that mothers meet the criteria of altruistic filicide including that they were severely mentally ill at the time of the killing and that they were motivated by altruism.²⁵² Additionally, a psychiatric evaluation will ensure that the mothers are mentally competent when agreeing to diversion to mental health courts.²⁵³ Diversion to mental health courts would allow mothers who commit altruistic filicide to avoid incarceration, and to receive treatment and support for their mental illness within their community.²⁵⁴

There is also little risk that these mothers pose a danger to society.²⁵⁵ It is very rare for a woman to commit altruistic filicide twice.²⁵⁶ Dr. Resnick stated, “Women who kill their children for altruistic reasons are unlikely to be a menace to society,” and their actions usually are an isolated occurrence.²⁵⁷ Multiple studies have also found that most mothers who commit filicide have no prior criminal history, and that their mental illnesses are the largest risk factor for their filicidal behavior.²⁵⁸ Other studies have also found that most mothers who commit filicide lack premeditation, compared to other individuals who commit homicide, and that they commonly commit filicide within “the context of delusion-based altruistic acts and psychotic disorders with auditory

²⁵⁰ *Position Statement 56*, *supra* note 100; Montrose, *supra* note 115; Cherie Armour, *Mental Health in Prison: A Trauma Perspective on Importation and Deprivation*, 5 INT. J. CRIM. SOC. THEORY 886, 888 (2012); Quandt & Jones, *supra* note 100, at 3; Canada, et al., *supra* note 26, at 2.

²⁵¹ See Abramsky & Fellner, *supra* note 26, at 1.

²⁵² See Holloway, *supra* note 19, at 16–17; see also Windfuhr et al., *supra* note 19, at 6; see Nancy Wolf et al., *Mental Health Court and Their Selection Processes: Modeling Variation for Consistency*, 35 L. HUM. BEHAV. 1, 6–7 (Oct. 2011); Almquist & Dodd, *supra* note 27, at 5.

²⁵³ Almquist & Dodd, *supra* note 27, at 19.

²⁵⁴ *Id.* at v–vi.

²⁵⁵ Resnick, *supra* note 15; Szalavitz, *supra* note 26.

²⁵⁶ Resnick, *supra* note 15; Szalavitz, *supra* note 26.

²⁵⁷ Resnick, *supra* note 15; Szalavitz, *supra* note 26.

²⁵⁸ Friedman et al., *supra* note 31, at 4.

hallucinations.”²⁵⁹ Because there is little risk that a mother will commit altruistic filicide again, having these mothers return to the community would be a much more humane alternative than imprisonment.²⁶⁰

Additionally, imposing harsh penalties, like long sentences of incarceration, on mothers who commit altruistic filicide serves little deterrence function.²⁶¹ Most mothers who commit altruistic filicide are mentally ill leading up to and during the killings of their child(ren).²⁶² As a result, most of these mothers do not stop and consider what the penalties will be for killing their children.²⁶³ Therefore, having harsh penalties does not reduce the incidence of altruistic filicide and it prevents these mothers from receiving the mental health treatment they need.²⁶⁴

Diverting these mothers to mental health courts provides them with the opportunity to receive comprehensive mental health treatment that they would likely never receive if incarcerated.²⁶⁵

Moreover, a non-carceral approach would prevent the worsening of these mothers' psychiatric symptoms which is common amongst mentally ill individuals in prisons and jails.²⁶⁶ Many aspects of the carceral setting, including overcrowding, isolation, inadequate mental health services, and exposure to violence are linked to adverse mental health outcomes.²⁶⁷ In 2005, the World Health

²⁵⁹ Milia & Noonan, *supra* note 21, at 823.

²⁶⁰ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Goodale et al., *supra* note 27, at 298–99; Almquist & Dodd, *supra* note 27, at 5.

²⁶⁶ *Position Statement 56*, *supra* note 100; Montrose, *supra* note 115. One psychiatrist stated that “The prison environment is almost diabolically conceived to force the offender to experience the pangs of what many psychiatrists would describe as mental illness.” See Quandt & Jones, *supra* note 100; see also Cherie, *supra* note 250, at 887.

²⁶⁷ See Quandt & Jones, *supra* note 100, at 3; see also Cherie, *supra* note 250, at 888; Megan J. Wolff, *Fact Sheet: Incarceration and Mental Health*, WEILL CORNELL PSYCHIATRY (May 30, 2017), <https://psychiatry.weill.cornell.edu/research-institutes/dewitt-wallace-institute->

Organization published a report discussing how many of the defining characteristics of American carceral facilities can lead to the emergence or exacerbation of psychiatric symptoms.²⁶⁸ These problematic features of carceral facilities are even more damaging for individuals with preexisting mental illness, like mothers who commit altruistic filicide, because they tend to be placed in isolation and solitary confinement more than the average individual, and they are at an increased risk of physical and sexual victimization.²⁶⁹ This research indicating how prison and jail conditions can compound mental illness further shows that a carceral setting is inappropriate for mothers who commit altruistic filicide.

C. The Importance of a Treatment Plan that is Uniquely Tailored, Nonjudgmental, and Harm Reducing

Developing an appropriate treatment plan for mothers who commit altruistic filicide is integral to their well-being and recovery. There is no singular “blueprint” for a treatment plan because every mother who commits altruistic filicide is different.²⁷⁰ As a result, it is essential that every treatment plan is individually tailored to the needs of the mother. This remains especially true when considering that childhood trauma and domestic violence is a common characteristic among filicidal women.²⁷¹ Therefore, it is important that treatment plans are built with consideration of the unique experiences and trauma of each mother. Without consideration of the different factors that may have led to the filicide, it could prevent or inhibit the recovery of the mother.

Moreover, any mental health court team assigned to a mother who committed altruistic filicide should approach her treatment in a nonjudgmental manner. Many filicidal mothers struggle to forgive themselves for their actions, and they often blame themselves for

psychiatry/issues-mental-health-policy/fact-sheet-0; Canada et al., *supra* note 26, at 2.

²⁶⁸ Cherie, *supra* note 250, at 888; Quandt & Jones, *supra* note 100, at 3; Canada et al., *supra* note 26, at 2.

²⁶⁹ Wolff, *supra* note 267; Canada et al., *supra* note 26, at 2.

²⁷⁰ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

²⁷¹ See West, *supra* note 12, at 51; Shouse, *supra* note 90, at 32–33; see also Holloway, *supra* note 19, at 20–21.

failing to recognize their deteriorating mental health.²⁷² Additionally, these mothers commonly face villainization from the media and the outside world.²⁷³ As a result, a nonjudgmental approach is necessary in the mental health court environment so that the mother feels supported and they feel deserving of recovery. An important step for the mental health court team will be helping these mothers forgive themselves and a nonjudgmental atmosphere will be the most beneficial in terms of assisting these mothers at rebuilding their lives.

Finally, any treatment plan should be developed to reduce or prevent harm to the mother. Altruistic filicide specifically is closely connected to suicidality and attempted suicide by the mother.²⁷⁴ This remains true even after the filicide occurs.²⁷⁵ In the aftermath of filicide, the filicidal mothers suffer in many different ways.²⁷⁶ Not only do they grieve and struggle over the loss of their children but they also can experience trauma and suffering from the killing itself.²⁷⁷ Dr. Resnick noted that filicidal parents typically are more unwilling to forgive themselves for the killing than society is.²⁷⁸ Additionally, many filicidal mothers experience intense self-hate and pain after the filicide.²⁷⁹ As a result, the risk of suicide is heightened for these mothers and their mental health court team should develop their treatment plan with the utmost consciousness of this potential harm.²⁸⁰

²⁷² *Filicide in the United States*, *supra* note 23, at 5.

²⁷³ *Id.*; Milia & Noonan, *supra* note 21, at 824.

²⁷⁴ Debowska et al., *supra* note 19, at 9, 15, 29; Friedman et al., *supra* note 31, at 3.

²⁷⁵ *Filicide in the United States*, *supra* note 23, at 5.

²⁷⁶ *See id.*; *See also* Milia & Noonan, *supra* note 21, at 824–25.

²⁷⁷ *See The Andrea Yates Case: Insanity on Trial*, *supra* note 2; *see also* Milia & Noonan, *supra* note 21, at 824–25.

²⁷⁸ *Filicide in the United States*, *supra* note 23.

²⁷⁹ Milia & Noonan, *supra* note 21, at 823–24.

²⁸⁰ *See Filicide in the United States*, *supra* note 23.

D. A Case Study Showing the Efficacy of Mental Health Courts for Mothers Who Commit Altruistic Filicide

Despite the fact that mental health courts are a relatively new phenomena, research about their effectiveness has been positive.²⁸¹ Many studies have shown that mental health courts are more effective in providing individuals with mental health services than prisons or jails.²⁸² There is also evidence showing that mental health courts can have a positive impact on an individual's mental health outcomes.²⁸³ As a result, various mental health experts and organizations have supported the development of mental health courts.²⁸⁴

The effectiveness of mental health court's in treating mothers who commit altruistic filicide is illustrated by the story of Sheryl Lynn Massip.²⁸⁵ In April of 1987, Ms. Massip committed altruistic filicide and was convicted of second-degree murder.²⁸⁶ Before the killing, Ms. Massip was described as a "caring, loving, mother" and as a "happy, healthy, nonviolent person."²⁸⁷ However, Ms. Massip's mental state changed after she gave birth.²⁸⁸ Ms. Massip's baby cried for over fifteen hours a day, and Ms. Massip felt like a worthless mother.²⁸⁹ During this time, Ms. Massip rarely slept or ate, started having suicidal thoughts, had a nervous breakdown, and began hallucinating voices saying that her baby was in pain and that he was suffering.²⁹⁰

²⁸¹ See *Position Statement 53*, *supra* note 249; see also Almquist & Dodd, *supra* note 27, at 21; see also Goodale et al., *supra* note 27, at 298–99.

²⁸² See Goodale et al., *supra* note 27, at 299; Almquist & Dodd, *supra* note 27, at 25.

²⁸³ See Goodale et al., *supra* note 27, at 298–99; Almquist & Dodd, *supra* note 27, at 25.

²⁸⁴ *Position Statement 53*, *supra* note 249.

²⁸⁵ See *People v. Massip*, 271 Cal. Rptr. 868, 869 (Ct. App.), *rev'd*, 798 P.2d 1212 (Cal. 1990).

²⁸⁶ *Id.* at 869.

²⁸⁷ *Id.* at 868.

²⁸⁸ *Id.* at 868–69.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

On April 29, 1987, Ms. Massip heard her baby crying and took him outside and threw him in front of a moving car.²⁹¹ Ms. Massip then picked up her baby and placed him under the wheel of her car and ran him over, killing him.²⁹² Ms. Massip believed she needed to kill her baby to “put him out of his misery.”²⁹³

At trial, Ms. Massip pled guilty by reason of insanity but the jury found her sane at the time of the offense and convicted her of second-degree murder.²⁹⁴ However, in a shocking decision, the trial judge set aside the jury verdict and reduced the verdict to voluntary manslaughter and found Ms. Massip not guilty by reason of insanity.²⁹⁵ At the time, mental health courts were not in existence yet, but the judge sentenced Ms. Massip to an outpatient treatment program in her local community, similar to what may be prescribed in a mental health court treatment plan.²⁹⁶

This treatment plan was very successful for Ms. Massip.²⁹⁷ As a result of her outpatient treatment program, Ms. Massip was never required to serve time in prison or an in-patient psychiatric facility; she was able to heal while also gradually rebuilding her life.²⁹⁸ Ms.

²⁹¹ *People v. Massip*, 271 Cal. Rptr. 868, 868–69 (Ct. App.), *rev'd*, 798 P.2d 1212 (Cal. 1990).

²⁹² *Id.* at 869.

²⁹³ *Id.*; *See also Mom Accused of Killing Baby Returns to OC Court*, CBS NEWS (Dec. 2, 2010, 5:15 AM), <https://www.cbsnews.com/losangeles/news/mom-accused-of-killing-baby-returns-to-oc-court/>.

²⁹⁴ *People v. Massip*, 271 Cal. Rptr. 868, 869 (Ct. App.), *rev'd*, 798 P.2d 1212 (Cal. 1990).

²⁹⁵ *Id.*

²⁹⁶ *See id.*; *See also Almquist & Dodd*, *supra* note 27, at v (stating that mental health courts combine “court supervision with community-based treatment services, usually in lieu of a jail or prison sentence”); Black, *supra* note 106, at 309–10.

²⁹⁷ *See Mom Accused of Killing Baby Returns to OC Court*, *supra* note 293.

²⁹⁸ Matt Coker, [*Updated*] *Sheryl Lynn Massip, Who Killed and Ran Over Her Baby in 1998, Loses Sanity Bid*, OC WEEKLY (Dec. 16, 2010), <https://www.ocweekly.com/updated-sheryl-lynn-massip-who-killed-and-ran-over-her-baby-in-1988-loses-sanity-bid-6455190/>.

Massip fully recovered from her mental illness and has since remarried and had another child who is now fourteen years old.²⁹⁹

Even though Ms. Massip's experience was not within a mental health court, it may be analogous to the treatment that mothers who commit altruistic filicide could experience within mental health courts.³⁰⁰ It is important to note that not all mothers who commit altruistic filicide are in the same position as Ms. Massip. Outpatient treatment plans may not be appropriate for all mothers who commit altruistic filicide because some mothers are unable to forgive themselves for their actions and are suicidal.³⁰¹ Mothers who are suicidal often require more intensive treatment plans and need to be placed within in-patient treatment programs.³⁰² However, for mothers who require treatment distinct from an outpatient program, their mental health court team can assess them and create an individualized treatment plan based on their needs.³⁰³

²⁹⁹ *Mom Accused of Killing Baby Returns to OC Court*, *supra* note 293.

Even though Ms. Massip has fully recovered, she remains a participant of her outpatient treatment program and is currently petitioning for her sanity to be restored under the California Penal Law which would no longer require her to participate in the outpatient treatment program. *See Coker*, *supra* note 298.

³⁰⁰ Sheryl Lynn Massip was sentenced to an outpatient treatment program by a mental health agency in Orange County, California. This mental health agency is called the Orange County Conditional Release Program (CONREP). In its description, CONREP describes itself as "This is the Department of Mental Health's statewide system of community-based services for specified forensic patients. The goal of CONREP is to ensure greater public protection in California communities via an effective and standardized community outpatient treatment system." *See CONREP (Conditional Release Program)*, CNTY. OF ORANGE HEALTH CARE AGENCY, <https://www.ochealthinfo.com/services-programs/mental-health-crisis-recovery/adult-18-services/justice-involved-services/conrep> (last visited Oct. 28, 2023); *see also* *People v. Massip*, 271 Cal. Rptr. 868 (Ct. App.), *rev'd*, 798 P.2d 1212 (Cal. 1990). Like this treatment program, mental health courts typically provide their participants with outpatient, community-based treatment programs. *Almquist & Dodd*, *supra* note 27, at v; *Black*, *supra* note 106, at 309–10.

³⁰¹ *Resnick*, *supra* note 15.

³⁰² *Id.*

³⁰³ *See Almquist & Dodd*, *supra* note 27, at 5; *Bernstein & Seltzer*, *supra* note 241, at 149. Referrals to residential treatment facilities is common for mental health courts. In fact, in New York, 25-50% of mental health court

E. Present Limitations on Implementation

There are various limitations to mental health courts which would need to be altered if this proposal were to be implemented. First, many mental health courts do not accept individuals who have committed violent crimes.³⁰⁴ In order for this proposal to be feasible, this would need to change because mothers who commit altruistic filicide are most commonly charged with violent felonies like first-degree murder.³⁰⁵ This change is already being implemented; many mental health courts are moving in that direction and are increasingly allowing individuals charged with violent felonies on their dockets.³⁰⁶

Additionally, mental health courts, although first created in the 1990s, are still new and growing.³⁰⁷ As a result, there are still many changes being made to them and there is limited research on their effectiveness.³⁰⁸ However, the research currently available indicates successful mental health outcomes and these outcomes are only expected to increase as they develop through trial and error.³⁰⁹

Mental health courts have also been criticized for being punitive in nature because of their use of sanctions.³¹⁰ Many mental health courts apply sanctions to their participants if they do not meet the conditions or requirements of their treatment plan.³¹¹ Sanctions can

participants are referred to in-patient treatment facilities to undergo intensive mental health care. Edwards et al., *supra* note 243, at 6.

³⁰⁴ Almquist & Dodd, *supra* note 27, at 5.

³⁰⁵ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

³⁰⁶ Almquist & Dodd, *supra* note 27, at 9; In 2002, when the Brooklyn, New York, Mental Health Court started, the Court only allowed individuals with nonviolent felonies on their docket, however today, they have expanded to include individuals accused of nonviolent felonies and 39 percent of individuals on the Court's docket have been charged with a violent felony. Almquist & Dodd, *supra* note 27, at 8.

³⁰⁷ Almquist & Dodd, *supra* note 27, at 21.

³⁰⁸ *Id.*

³⁰⁹ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

³¹⁰ See Janet Reno et al., *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts*, BUREAU OF JUST. STATIS. at 1, 72-75 (April 2000).

³¹¹ Almquist & Dodd, *supra* note 27, at vi.

range from jail time, reprimands, and increased visits to court.³¹² The use of sanctions can be problematic because they risk mental health courts becoming more punitive rather than therapeutic. Sanctions also may create an environment that is inherently coercive.³¹³ Despite these concerns, research indicates that sanctions are used sparingly. Moreover, the most severe type of sanction, jail time, is rarely used by mental health courts.³¹⁴ Research shows that many mental health court judges are reluctant to utilize jail time as a consequence of noncompliance.³¹⁵ Researchers analyzing the function and structure of mental health courts found that out of ninety mental health courts in the United States, only thirty-three percent used incarceration as a sanction and incarceration was only ever selected as a sanction in less than five percent of their cases.³¹⁶ Despite jail time rarely being employed as a sanction, it is critical that mental health courts further limit or entirely remove their use of jail time as a sanction.

Finally, this proposal may be something to which society never agrees.³¹⁷ It is very difficult for many to look beyond acts of violence, especially ones towards children.³¹⁸ The idea of allowing a mother who kills her child to avoid carceral punishment is something that most would strongly condemn.³¹⁹ American society is one that wants to see retribution for the killing of children and thus, they would likely never feel comfortable with a proposal that takes the power out of a jury's hands and instead, focuses on what is best for the mother.³²⁰ Automatic disposition to a mental health court would be something inherently difficult for society to accept.³²¹ However, a societal shift in viewing mental illness, which

³¹² Almquist & Dodd, *supra* note 27, at 17–18.

³¹³ See Reno et al., *supra* note 310, xiii–xiv, 75.

³¹⁴ See Almquist & Dodd, *supra* note 27, at 17; see also Patricia A. Griffin et al., *The Use of Criminal Charges and Sanctions in Mental Health Courts*, 53 AM. PSYCH. PUB. 1285, 1288 (Oct. 2002).

³¹⁵ See Almquist & Dodd, *supra* note 27, at 17–18.

³¹⁶ *Id.*

³¹⁷ Resnick, *supra* note 15.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Telephone Interview with Doctor Phillip Resnick, *supra* note 24.

prioritizes care over punishment, may help put an end to the criminalization of mental illness.

F. Diversion to Mental Health Courts as Only One Part of the Solution

It is important to note that mental health courts should not be considered the end-all, be-all solution to dealing with mothers who commit altruistic filicide. There is a close connection between inadequate mental health services and the increasing numbers of mentally ill individuals who are being incarcerated.³²² In the United States, mentally ill individuals are ten times more likely to be incarcerated than they are to be hospitalized.³²³ As of 2003, the number of individuals with severe mental illness was three times greater in prisons than it is in psychiatric facilities.³²⁴

If community-based mental health services were more comprehensive and accessible, this could prevent mentally ill individuals from becoming involved in the criminal legal system.³²⁵ Without these services, mentally ill individuals will continue to go untreated and their mental health will deteriorate, greatly increasing their risk of becoming involved in the criminal legal system.³²⁶

It is preferable that mothers who commit altruistic filicide never become involved in the criminal legal system in the first place and that their children never face the consequences of untreated mental illness. Instances of maternal altruistic filicide could be reduced if high-quality mental health services were more accessible in society, especially to new mothers dealing with the stress of motherhood.³²⁷

³²² Abramsky & Fellner, *supra* note 26, at 23.

³²³ Patricia Warth, *Unjust Punishment: The Impact of Incarceration on Mental Health*, N.Y. STATE BAR ASS'N (Dec. 5, 2022), <https://nysba.org/unjust-punishment-the-impact-of-incarceration-on-mental-health/>.

³²⁴ Wolff, *supra* note 267.

³²⁵ See Abramsky & Fellner, *supra* note 26, at 23; see Szalavitz, *supra* note 26.

³²⁶ *Id.*

³²⁷ Telephone Interview with Doctor Phillip Resnick, *supra* note 24. In our interview, Doctor Resnick noted that along with access to adequate mental health treatment, mothers who commit altruistic filicide also need motivation to receive treatment. Some mothers may be in such a psychotic state that they are

Our society has failed to adequately support those with mental illness, which has resulted in significant numbers of mentally ill individuals becoming involved in the criminal legal system.³²⁸ As a result, greater resources need to be put towards accessible and quality community based mental health services so that incidents like that of maternal altruistic filicide can be reduced and the numbers of mentally ill individuals entering carceral facilities can be minimized.³²⁹

CONCLUSION

Dr. Torang Sepah, a psychiatrist who testified at Ms. Coronado's trial, called maternal altruistic filicide "a tragic manifestation of maternal instinct."³³⁰ This is exactly the case. Women with severe mental illness, commonly induced by the stress of motherhood, are driven to kill their children under a delusion-based belief that they are acting in their child's best interest.³³¹ However, the tragedy does not stop there. These mothers are then railroaded through the American criminal legal system and most are incarcerated with almost no plausible remedies to help them get the mental health treatment they need.³³² These tragedies illustrate two things. First, the criminal legal system prioritizes the punishment of mental illness over the treatment of mental illness. Second, the criminal legal system does not care about the distinct experiences of mothers with mental illness. If the criminal legal system continues in this

not able to seek out this treatment on their own and thus, not all instances of altruistic filicide are preventable. Resnick, *supra* note 15.

³²⁸ *Position Statement 53, supra* note 249; *see also* McCann, *supra* note 99; *see also* Abramsky & Fellner, *supra* note 26, at 19.

³²⁹ Resnick, *supra* note 15.

³³⁰ Pandika, *supra* note 23.

³³¹ *See* Milia & Noonan, *supra* note 21, at 821–23; *see also* Pandika, *supra* note 23; *Child Murder by Mothers: Patterns and Prevention, supra* note 18, at 138.

³³² *See* Ezioni, *supra* note 117, at 210; *see also* Manchester, *supra* note 25, at 715, 734–35 (2003); Friedman & Sorrentino, *supra* note 25, at 327; Asokan, *supra* note 25, at 192; Brenda Barton, *When Murdering Hands Rock the Cradle: An Overview of America's Incoherent Treatment of Infanticidal Mothers*, 51 SMU L. REV., 592, 600 (1998); *see generally* Asokan, *supra* note 25, at 192; Szalavitz, *supra* note 26.

way, many mothers will continue to spend the rest of their lives in prison with no opportunity to recover and rebuild their lives. These mothers have already paid the ultimate price of mental illness—their children are dead. To continue to penalize them for their mental illness is indecent and inhumane. It is critical that society looks beyond their commonly felt emotions of anger or disgust to understand how maternal altruistic filicide is caused by severe mental illness. Mental health courts are an attainable and effective solution to help these mothers get the treatment they so desperately need.³³³ Mental health courts will reshape the criminal legal system for the better by focusing on the treatment of mothers with mental illness and by helping put an end to the criminalization of severe mental illness.

³³³ See generally Almquist & Dodd, *supra* note 27, at 25.