

Reproductive Health

Locked Up



An Examination of Pennsylvania Jail Policies



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preface

I am very proud to share this report with you about incarcerated women and reproductive health care services in Pennsylvania. The ACLU of Pennsylvania's Clara Bell Duvall Reproductive Freedom Project has devoted an untold number of hours and careful thought to its preparation. Before you delve into the report, however, I would like to take a moment to frame this issue in the broader context of incarceration in America.

The United States has become the world's largest jailer. Only 5% of the world's population lives within our borders, yet the U.S. houses 25% of the world's prison population. With 1 in 100 adults incarcerated in prisons and jails across the nation, we have both the largest number of people behind bars and the highest incarceration rate in the world.

The racial disparity of our incarcerated population is both alarming and unacceptable, with Black individuals imprisoned at six times the rate of whites and Latinos imprisoned at almost twice their rate, thanks largely to the so-called War on Drugs. A significant proportion of those incarcerated pose little or no risk to public safety. Decades of research shows that alternatives to prison (such as treatment or probation) for lower-risk, non-violent offenders not only cost significantly less than jail time, but also ensure lower rates of recidivism. Incarcerating small-time offenders doesn't increase public safety—it only increases the burden on taxpayers.

Over-incarceration imposes special burdens on women. In the last 25 years, the number of women and girls caught up in the criminal justice system has skyrocketed; many have been swept up in the War on Drugs and subject to punitive sentencing policies for non-violent offenses. There are now more than 200,000 women behind bars and more than one million on probation or parole. Many of these women struggle with substance abuse or mental illness, and have histories of physical or sexual abuse. Few get the services they need. The toll on women, girls, and their families is devastating.

Women's crimes grow out of two trends: addiction and untreated mental illness. Overwhelmingly, incarcerated women come from lives of violence. The prevalence of emotional, physical and sexual violence against women is a significant contributing factor to women's use of illegal drugs. The second key trend is the significant proportion of women who are confined suffering from a major mental illness.

The unique needs of women for drug treatment, mental health treatment, and reproductive health care have been neglected, primarily because women are relative newcomers to the criminal justice system and because their numbers are lower than men's.

The majority of women in jail are mothers and most were the primary caretaker of their children prior to incarceration. When women are incarcerated, it impacts the entire community. When women are heads of families and sole breadwinners, their incarceration leads families to fall apart, causing a devastating rippling effect throughout the community. Alternative sentencing, such as community drug treatment, allows women to maintain ties with their families and keep jobs, and offers the chance of breaking the cycle for the next generation.

We are paying a very high price to maintain the system as it is. Even if society treats the incarcerated as people who don't count—they do cost, and the current system costs a lot. Community-based programs are both cheaper and more effective at ensuring public safety.

In addition to the human cost of incarcerating women, the public pays a steep financial price:

- It costs the public over \$33,000 annually to house an inmate in a Pennsylvania prison.
- The cost of foster care for each child of an incarcerated mother adds an additional \$25,000 a year.
- Combined, the annual cost for each family that enters the prison and child welfare system is at least \$58,000.
- It costs a state more than seven times as much to imprison a woman than to provide her with drug treatment services.

While we contemplate much-needed reform at all levels, tens of thousands of Pennsylvania women spend time behind bars every year, often cycling in and out of county jails. As you will learn on the following pages, many of their basic reproductive health needs are not being met. Improving these conditions will benefit many women, reduce costs to taxpayers, and improve the health and stability of families and communities.

Do we pay for incarceration or for the things that enrich our communities? That's the fundamental question. If we re-imagined incarceration and looked to alternative sentencing, bail modifications, and other reforms, we could use our precious resources to build playgrounds, employ teachers and grow our communities. As severe budget deficits threaten communities as never before, now is the time to embrace cost-effective reforms that reduce inmate populations without undermining public safety.

Reggie Shuford
Executive Director
January 2012

executive summary

The number of women incarcerated in the United States is rapidly growing at the rate of 11.2% annually – twice the rate of incarceration for men. About 3,800 women are housed in Pennsylvania’s county correctional facilities. Similar to other states, approximately three-quarters are of reproductive age (ages 18–44). Most women in county jails are incarcerated for nonviolent crimes, are undereducated, come from minority groups, and fall below the poverty line. Incarcerated women experience disproportionately higher levels of abuse and have worse health status than their non-incarcerated counterparts.

The American Civil Liberties Union (ACLU) has long-standing commitments to the rights of women, the incarcerated, and reproductive freedom. These three interests led to our involvement in the successful Pennsylvania effort to ban shackling and other restraints for incarcerated women during the latter stages of pregnancy. However sweet the victory, eliminating restraints during pregnancy represents a mere sliver of the reproductive health concerns facing Pennsylvania’s incarcerated women. We decided to look at the issue more broadly with the goal of identifying other aspects of reproductive health care that could be improved through advocacy, legislation, or legal challenges.

This report was compiled after reviewing the policies of the 57 county jails in Pennsylvania that house women. We focused on county jails rather than state prisons because the needs of women in these facilities have never been systematically explored. By identifying trends across the state and in individual counties, we aim to help advocates improve women’s reproductive health care behind bars.

Methods

Using Pennsylvania’s Right to Know Law, the state version of the federal Freedom of Information Act, the ACLU of Pennsylvania obtained county jail policies about reproductive health care for women, medical contracts, sick call procedures, and more. Requests were sent to every county correctional facility with a 100% response rate. Six county facilities do not house women, so the report covers the policies of 57 Pennsylvania county facilities that do house women. The policies were reviewed for information about routine gynecological care, contraception, pregnancy testing, abortion access, prenatal care, labor and delivery, postpartum care, mental health care following miscarriage and pregnancy termination, and testing and treatment of sexually transmitted diseases.

Our findings have a major limitation. They only report on the written policies of county facilities. Actual practices may vary significantly from written policies. In addition, having a written policy does not guarantee that the policy is followed. A county facility may have a detailed written policy about prenatal services that is not followed, while another county may lack a written policy, but women there actually receive high quality prenatal care. Ideally, counties will have good policies that are followed, leading to good practices.

Findings and Discussion

Routine Care: Although Pennsylvania law requires a health screening within 24 hours of incarceration and a physical within 14 days, eight county jails did not have policies about taking medical histories or performing physicals on female inmates. Only a quarter (24%) of those that perform physicals provide any gender-specific screening.

Contraception: No county jails in Pennsylvania allow women to use contraceptives for the purpose of pregnancy prevention during incarceration. Over half of the correctional facilities had no policy about contraception and those that did only allowed hormonal contraception for a medical reason other than pregnancy prevention. Irregular use of hormonal contraception can greatly increase the risk of pregnancy, and given the short average jail stay for women (less than two weeks), this can have a large impact on unintended pregnancies and overall public health.

Pregnancy Testing: Approximately 6% of all female inmates are pregnant upon admission to jail. Ten correctional facilities lacked policies regarding pregnancy testing. If pregnancy testing is not a routine part of the intake procedure, a pregnancy can go undetected with serious health implications for the fetus and the woman should she wish to continue the pregnancy, and also greater risk of complications should she decide to have an abortion.

Prenatal Care: Eleven jails (20%) did not have a policy regarding providing prenatal care, despite a Pennsylvania law requiring all correctional facilities to provide prenatal care. Women who do not receive prenatal care during their pregnancies are more likely to have poor birth outcomes, such as low birth weight, pregnancy complications, and maternal or infant health problems. Only one jail has a policy stating that they provide information about how inmates can obtain prenatal care once they are released.

Postpartum Care: 65% of jails have some policy outlining the availability of postpartum mental health services for inmates. Yet only two correctional facilities make postpartum care available for women regardless of the outcome of their pregnancy (miscarriage, abortion, or live birth).

Restraints: In July 2010, Pennsylvania became the tenth state to pass legislation limiting the use of restraints on pregnant inmates. Because our Right to Know requests were sent prior to the passage of the Health Birth for Incarcerated Women Act, we do not know if counties have changed their policies about restraints to comply with the law. At the time of our requests, 42 facilities had no policy about the use of restraints during labor and delivery.

Labor and Delivery: Only seven jails had written policies specifying at what point a pregnant woman should be taken to the hospital during her labor or provided instruction for correctional personnel on how to avoid a birth in jail or en route to the hospital. Due to their poor health status incarcerated women are more likely to experience premature labor and other birth complications. Without specific policies and training of correctional personnel, jails are putting incarcerated women at risk.

Mental Health Care Following Delivery, Miscarriage, and Termination: Only 37 correctional facilities state that postpartum mental health care is available for female inmates. This is problematic because pregnant women in prison have higher rates of depression and anxiety during their pregnancies and after birth. Only two county jails make such care available to women with other pregnancy outcomes. None had policies about what medical care a woman should receive if she miscarries.

Abortion: Twenty of the jails have no abortion policies. The remaining 37 jails classify abortion as an elective procedure, which can cause significant delays in accessing this time-sensitive service; these jails also do not specify how to request an abortion or provide the timeline for processing requests.

Abortion Counseling: Of the 37 correctional facilities that have policies about abortion, three do not require counseling prior to scheduling a procedure. Required counseling can add delays or pose as a barrier to receiving abortion care. Further, an untrained professional could easily sway a vulnerable woman by sharing biased opinions.

Paying for Abortion: Because there are no state laws or regulations (only court cases) requiring jails, their medical providers, or counties to pay for an indigent inmate's abortion, this fosters the incorrect assumption that an incarcerated woman who is unable to pay for her abortion may be denied one. Ten correctional facilities have no policy about who pays for an inmate's abortion. All the other counties vary in their policies regarding who pays, and some policies are incompatible with legal requirements.

Sexually Transmitted Diseases (or Infections): Two-thirds (38) of jails provide STD testing for at least some of their inmates. Only two jails require all inmates to be tested at intake. Thirty-five jails outline treatment options for those who test positive for STDs, and the other three jails have no policy regarding treatment. Because STDs, including HIV, disproportionately affect incarcerated women, policies about testing and treatment should be explicit, particularly because state law requires treatment for inmates who test positive for an STD or HIV.

Conclusions

Overall, the policies at Pennsylvania jails are not meeting the reproductive health needs of incarcerated women. Policies were more detailed and prevalent where a state law or regulation requires care—such as health screenings, prenatal and postpartum care, and STD/HIV testing and treatment. Absent a law, policies were more likely to be non-existent or inadequate—like those for pregnancy testing, contraception, labor and delivery and, not surprisingly, abortion. The roots of this lie in the evolution of a jail population from one that was primarily male to one that houses an increasing number of women, along with punitive attitudes toward those in jail and a system of county jails that has little oversight.

As the population of women in jail continues to grow, counties will increasingly be vulnerable to lawsuits brought by prisoners whose medical treatment or lack of treatment has caused them harm or violated their constitutional rights. The public will be harmed as women leaving jail re-enter the community with unaddressed health needs. And finally, we as a society are harmed when we squander the opportunity to help the most vulnerable among us.

introduction



The number of incarcerated individuals in the United States is growing rapidly, with over a million people in custody at the federal, state, and county levels.¹ Women are the fastest growing group of incarcerated persons in the country; their rates of incarceration have been increasing at 11.2% annually, twice the incarceration rate of men.² The majority of these women are: serving time for nonviolent crimes, from minority racial and ethnic backgrounds, undereducated, and fall below the federal poverty line.^{3,4} Additionally, approximately 6% of women are pregnant when they enter prison.⁵

In Pennsylvania, female inmates serve in either the state correctional system or in the county-level jails. Those serving in state prisons have longer sentences (usually two years or more), while those in county jails have shorter sentences, have recently been arrested, or are awaiting trial. Incarcerated women are disproportionately in poor health, have histories of abuse, and have limited access to health care in their communities of origin.⁶ As a result, periods of incarceration provide a unique opportunity for women to receive necessary reproductive health care services and improve their overall health. There are over 6,000 women incarcerated in Pennsylvania whose health and well-being is reliant on correctional health care, and the majority of them are housed in county jails.⁷

This report provides an overview of county correctional health care policies affecting women's access to reproductive health care during their incarceration. The report includes information about current correctional policies, the absence of policies, and an analysis of the adequacy of such policies, based on both legal requirements and reproductive health needs of incarcerated women. Finally, general recommendations for policy improvements that facilities can implement are discussed.

¹ Sufrin, C.B., Creinin, M.D., & Chang, J.C. (2009). Incarcerated women and abortion provision: A survey of correctional health providers. *Perspectives on Sexual and Reproductive Health*. 41, 6-11.

² Hutchison, K.C., Moore, G.A., Propper, C.B., & Mariaskin, A. (2008). Incarcerated women's psychological functioning during pregnancy. *Psychology of Women Quarterly*. 32, 440-453.

³ Amnesty International. (2000). Pregnant and imprisoned in the United States. *Birth: Issues in Perinatal Care*. 27, 266-271.

⁴ Schroeder, C. & Bell, J. (2005). Doula birth support for incarcerated pregnant women. *Public Health Nursing*. 22, 53-58.

⁵ Bureau of Justice Statistics, 2008.

⁶ ACOG Special Populations, 2004.

⁷ County In-House Population, County "Snapshot" 1/30/2009.
https://www.portal.state.pa.us/portal/server.pt/document/915819/in_house_population_pdf?qid=31185383&rank=1

background

At any given time, approximately 3,800 women are housed in Pennsylvania county correctional facilities.⁸ This is just over 11% of the county correctional population, which is similar to national statistics.⁹ Over 76% of these women are of reproductive health age, between the ages of 18 and 44.

More than half of the women in Pennsylvania's county jails are white (55%), nearly 34% are black, and only 7% are Hispanic or another race.¹⁰ Compared with national figures on women in jails, Pennsylvania has a higher proportion of white women, while the proportion of Latinas incarcerated at the county level is significantly lower, reflecting the overall population demographics of the state. The proportion of black women in county jails in Pennsylvania is only slightly lower than the proportion nationally. National demographic information about the ages of women incarcerated in jails is not available, but Pennsylvania's age demographics do not appear to be unusual.

Relationship Between DOC and County Jails

The Pennsylvania Department of Corrections (DOC) has limited oversight over the county correctional system. The Department of Correction's Office of County Inspection and Services monitors the operations of all 63 county jails in the state.¹¹ Routine inspections of county facilities are performed to ensure compliance with minimum standards established by Pennsylvania statutes and regulations, case law, DOC policies and procedures, and basic professional standards.¹² This division of the DOC also provides technical assistance, interpretation of state laws and regulations, and resources for staff development. Although the Office of County Inspection and Services does receive complaints associated with county jail operations, their ability to enforce policy or resolve problems is limited; at most the office can try to facilitate a resolution of the problem with the county facility.¹³ Beyond the duties described here, the DOC does not oversee the operations of county correctional facilities.

⁸ County In-House Population, County "Snapshot" 1/30/2009.

https://www.portal.state.pa.us/portal/server.pt/document/915819/in_house_population_pdf?qid=31185383&rank=1

⁹ As of 2009, 12.2% of inmates in US local jails were women. National number of inmates in local jails, midyear 2009.

<http://bjs.ojp.usdoj.gov/content/pub/pdf/jim09st.pdf>

¹⁰ Demographics of Incarcerated Women in Pennsylvania by County.

http://www.portal.state.pa.us/portal/server.pt/community/hidden_county_jails/11433/snapshot_files/566617

¹¹ Pennsylvania Department of Corrections, Office of County Inspection and Services.

<http://www.cor.state.pa.us/county/site/default.asp>

¹² Pennsylvania Department of Corrections, Office of County Inspection and Services.

<http://www.cor.state.pa.us/county/site/default.asp>

¹³ Pennsylvania Department of Corrections, Office of County Inspection and Services.

http://www.portal.state.pa.us/portal/server.pt/community/hidden_county_jails/11433

Methodology

We obtained the jail policies from Pennsylvania's counties by filing requests for information under Pennsylvania's Right to Know Law, the state version of the federal Freedom of Information Act. The initial requests were submitted in October of 2009 and asked for information regarding the following: medical contracts; health care available to women, including prenatal care, where pregnant women deliver, use of restraints, post-delivery services, and availability of abortion services; sick call procedures; grievance procedures; and any documents recording the number of pregnant women housed in the correctional facility and documents recording pregnancy outcomes. Among the 67 counties in Pennsylvania, four do not have a county correctional facility.¹⁴ The remaining 63 counties were sent Right to Know requests. Forty-seven counties responded to the initial request. Requests were resubmitted in June 2010 to the counties that did not respond to the initial request. Sixty-three counties eventually provided correctional policies through the Right to Know requests (100% response rate). Facilities in six of these counties do not house female inmates, so our final sample size is 57 jails.¹⁵

After reviewing the initial responses, we decided to submit requests for additional information to a smaller sample of 20 counties. Selections were based on female population of each jail, racial demographics, and location. At least three counties from each

of the six regions in the state are in the sample. We tried to choose a large, mid-sized, and small jail from each region. One of the sampled counties from south central Pennsylvania was not sent the second request for information due to their initial failure to respond to our first Right to Know request.¹⁶ We received additional information from the 19 remaining counties (95% of the sample). This information was used to supplement the initial requests for policies.

We ultimately reviewed the policies of 57 county jails that house women for information about routine gynecological care, contraception, pregnancy testing, abortion access, prenatal care, labor and delivery, postpartum care, mental health care following miscarriage and pregnancy termination, and testing and treatment of sexually transmitted diseases. Policies from 19 jails were subsequently reviewed for information regarding health care screening at intake, medical training for correctional officers, and protocols for emergency medical situations.

¹⁴ Cameron, Forest, Fulton, and Sullivan counties do not have county correctional facilities.

¹⁵ Huntingdon, Juniata, Union, Montour, Potter, and Perry counties do not house female inmates. Greene County does not house pregnant inmates.

¹⁶ York County.

The number of...

Counties in Pennsylvania 67

Counties with a jail 63

Jails that house women 57

Pennsylvania has 67 counties, but four counties do not have a correctional facility. Among the 63 counties with correctional facilities, six do not house female inmates, leaving 57 counties. Our report examines the policies of the 57 counties in Pennsylvania that house women.

Purpose of Report

The purpose of this report is to assess the reproductive health care available to women who are incarcerated in Pennsylvania's county correctional systems. The report considers reproductive health care broadly and includes routine care (services women receive during an annual gynecological exam), testing and treatment for sexually transmitted diseases (STDs), contraception, pregnancy testing, options counseling, prenatal care, labor and delivery services, abortion access, services following miscarriage, and postpartum care. Though not all women will need all of these services during the time they are incarcerated, reproductive health services are a central part of health care for women that warrant careful assessment. This report will describe the current state of reproductive health care available to incarcerated women and make recommendations for specific areas in need of improvement.

Policy vs. Practice

The difference between correctional policies and correctional practice warrants significant attention. This report examines only the health care policies of county correctional systems in Pennsylvania. While the policies established by a correctional facility provide broad guidelines for health care protocols and minimum standards of care, many policies leave room for interpretation. This allows jail administrators, medical staff, and correctional officers to respond to women's medical requests at their discretion, meaning that care can vary depending on who responds to a request for assistance. This can lead to decisions that violate the law and rights of women and cause harm to inmates. Women can be denied access to an abortion, pregnancies can go undetected, and there can be long waits for receiving routine screenings. This not only jeopardizes women's health, but also exposes correctional facilities to legal liability. Conversely, jail practices may also be better than what appears based on written policies. Assessing jail policies is only the first step; how policies are implemented has the most significant impact on the reproductive health care women actually receive.

Legal Standards

The Right to Medical Care

Individuals incarcerated in the United States are the only people to whom the United States Constitution guarantees a right to medical care. In *Estelle v. Gamble* (1976), the Supreme Court stated that the 8th Amendment protection from cruel and unusual punishment extends to protect against the deliberate indifference to an inmate's serious medical needs. The Court reasoned: "it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself."

While the health concerns of the incarcerated may not differ markedly from those outside the prison walls, an individual in prison has no power to care for herself. Incarceration completely restricts her liberty, including access to any and all medical care. Because deliberately ignoring an inmate's serious medical needs would constitute cruel and unusual punishment, a prison or jail is obligated to tend to those needs.¹⁷

"The landmark case of *Estelle v. Gamble* guarantees health care to all prisoners.... The Supreme Court held that disregard for the health care needs of the incarcerated violated the Eighth Amendment prohibition against cruel and unusual punishment."

Safyer, S. & Richmond, L., Pregnancy Behind Bars, 1995

The *Estelle* decision outlined a two-part test to determine what conduct rises to the level of unconstitutional cruel and unusual punishment:

- 1 – Whether a serious medical need exists; and
- 2 – Whether officials display deliberate indifference to those needs.

The "seriousness" of an inmate's medical need is defined in terms of what a doctor or a layperson would define as "serious." The official must be consciously indifferent to an inmate's serious medical need; the indifference may stem from either intentional denial or delay of treatment or intentional interference with treatment. To meet this two-part standard, the official must have actual knowledge of an inmate's serious medical need and be indifferent to it.¹⁸

¹⁷ *Estelle v. Gamble* 429 US 97 (1976).

¹⁸ *Estelle v. Gamble* 429 US 97 (1976).

Pregnancy as a Serious Medical Need

The Third Circuit Court of Appeals, which covers Pennsylvania, recognized that pregnancy is a serious medical need in a case called *Monmouth County Correctional Institution Inmates v. Lanzaro*.¹⁹ In *Monmouth*, the court stated that pregnancy is a “serious medical need” even when there are no complications or abnormalities.²⁰ Importantly, the court confirmed that serious medical needs during pregnancy encompass abortion care.

The Right to Choose Abortion

Federal and state courts have consistently held, or recognized, that prison policies prohibiting, delaying, or unnecessarily restricting pregnant inmates’ access to abortions are unconstitutional under the 14th Amendment.²¹

Further, the Third Circuit Court of Appeals held that a woman’s decision to terminate a pregnancy constitutes a serious medical need that institutions must respond to. In other words, institutions must ensure pregnant women in their custody are able to obtain abortion care, whether or not a woman can afford to pay for the procedure.²²

What is the difference between an “elective abortion” and one that is “medically necessary” and how does this relate to the obligations of correctional facilities?

In popular culture, the medical term “elective” in the context of abortion refers to the situation in which a woman chooses to have an abortion because she does not want to continue her pregnancy to term, as opposed to an abortion she is having to avoid medical problems or in an emergency. This distinction has been misapplied in public debate and policy to characterize non-emergency abortions as medically unnecessary for women. But for pregnant women who do not want to continue their pregnancies, an abortion is medically necessary, just as prenatal care is medically necessary for pregnant women who want to continue their pregnancies. The court cases that apply to Pennsylvania recognize this.

¹⁹ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

²⁰ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

²¹ See, e.g., *Roe v. Crawford*, 514 F.3d 789 (2008), cert denied, 129 S.Ct. 109 (2008); *Doe v. Arpaio*, 150 P.3d 1258 (Ariz. Ct. App. 2007), cert. denied 128 S.Ct. 1704 (2008); *Bryant v. Maffucci*, 923 F.2d 979 (2d Cir. 1991); *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987); *Roe v. Leis*, No. C-1-00-651, 2001 WL 1842459 (S.D. Ohio Jan. 10, 2001), *Doe v. Barron*, 92 F. Supp.2d 694 (S.D. Ohio 1999).

²² *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

In Pennsylvania, two cases are particularly relevant:

- In *Monmouth County Correctional Institutional Inmates v. Lanzaro*, the court found that requiring inmates to secure a court order before obtaining an “elective” abortion was unconstitutional. Pregnancy-related services are serious medical needs, access to which must be provided under the 8th Amendment. The court order in question here was specific to “elective” abortions, not all elective medical procedures. The court found that the court order requirement violated the inmate’s 8th and 14th Amendment rights. The court also stated a prison may not condition the provision of needed medical care (including abortion) on an inmate’s ability to pay and that, in the absence of alternative sources of funding, the County must assume the costs of providing its inmates with needed medical care.²³
- In *Ptaschnik v. Luzerne County Prison Board* (also referred to as “Ptaschnik decree”), based on the Monmouth County decision, the court enjoined the Luzerne County Prison from preventing the particular inmate from obtaining an abortion and ordered the prison to provide transportation to the off-site clinic. The court also required the prison to honor all future requests for abortion as necessary medical procedures. The inmate is responsible for paying for her abortion, unless she cannot afford to, in which case the county will cover the cost of the procedure.²⁴

Thus, Pennsylvania corrections officials who set up a dichotomy between “elective” and “medically necessary” abortions are violating key findings of both the Monmouth decision and the Ptaschnik decree and therefore are violating the constitutional rights of the inmate.

²³ *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

²⁴ *Ptaschnik v. Luzerne County Prison Board* (No. 3:CV-98-1887, M.D.PA 1998).

Paying for Medical Care

With respect to prisons, Pennsylvania law created the “Medical Services Program,” which gives the Department of Corrections (DOC) authority to set specific policy for medical care for DOC inmates. The law states that no inmate will be denied services based on an inability to pay.²⁵ The DOC (which governs all state institutions) instituted a medical co-pay system in 1998. A co-pay is required for a “non-emergency medical service, initial medication prescription, any medical service provided to determine whether the inmate’s physical condition is suitable for participation in a sport; work, housing or medical status; unless such medical service is provided as part of an inmate’s routine medical screening/physical examination scheduled by the Department.” In 2007, the co-pay amount was raised to \$5. Co-pays are not required for emergencies, follow-up visits, long-term care, prenatal care, infirmary care in a Department facility, hospitalization outside a Department facility, or medical referrals ordered by a health care professional employed by the Department or its contractors, as well as some other types of care.

With respect to jails, Pennsylvania law mentions nothing about specific medical services that must be made available for female inmates in county jails, whether pregnant or not, nor does it provide any insight into the payment system for medical care at county jails.

Paying for Abortion Care

With little information about paying for general medical services in county correctional facilities available, understanding how services such as abortion are paid for can be extremely difficult. Numerous prison policies reflect a seemingly circular standard: an inmate may be required to pay for certain medical services, but an inmate will not be refused medical services if she is unable to pay. In some situations, if an inmate cannot afford a particular service up front, her prison account may be charged when funds are available. And, when that medical service is abortion the question of who must assume the responsibility to pay for the procedure becomes even more contentious.

Furthermore, some facilities erroneously make a distinction in their policies between paying for an “elective” abortion and a “medically necessary” abortion. Pennsylvania prisons and jails must comply with controlling case law from the U.S. Court of Appeals for the Third Circuit, where the Monmouth decision governs the issue of who must

²⁵ 61 Pa. CS § 3303.

assume the costs of abortion for pregnant women incarcerated in Pennsylvania's state and local correctional facilities. Under Monmouth, if an inmate cannot afford to pay for her abortion—as well as the transportation to the off-site clinic—she cannot be denied the service. Inmates must be able to have an abortion—even if that means the county must pay its cost when the inmate cannot afford to pay it herself.

Use of Restraints

In July 2010, Pennsylvania became the tenth state to pass legislation limiting the use of restraints on pregnant inmates, joining California, Colorado, Illinois, Vermont, New Mexico, New York, Texas, Washington, and West Virginia.²⁶ Under Act 45, The Healthy Birth for Incarcerated Women Act, correctional staff cannot apply restraints to pregnant inmates during any stage of labor, pregnancy-related distress, or postpartum period; during transport to a medical facility after the first trimester of pregnancy; or during transport to a medical facility as a result of labor or pregnancy-related distress.

Restraint is defined as “any physical hold or mechanical device used to control the movement of a prisoner’s or detainee’s body and limbs, including, but not limited to, shackles, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain or a convex shield.”²⁷ The only exceptions to this law are if the inmate is a substantial flight risk or if there is some other extraordinary medical or security circumstance that requires the use of restraints. Even with these narrow exceptions, correctional staff must use the least restrictive restraints possible, must be present at all times in case restraints must be removed, and must remove all restraints at the request of any health care professional. Leg and waist restraints cannot be used on an inmate who is in labor under any circumstances.

If a pregnant inmate is restrained, whether at a jail or in a DOC prison, the incident must be reported to the DOC. Information about the use of restraints on pregnant inmates and the extraordinary circumstances or reasons for suspecting an inmate is a substantial flight risk must be included in the report. This information must also be made available to the public.

²⁶ Since 2010, another four states, Hawaii, Idaho, Nevada and Rhode Island, have also passed such laws.

²⁷ Act 45, Healthy Birth for Incarcerated Women Act [Pennsylvania].

findings

The following section summarizes the findings of the ACLU of PA's survey of policies regarding the provision of reproductive health care in Pennsylvania's county correctional facilities and assesses the public health implications of various policies. The implications of the absence of written policies are also examined. These findings are summarized in Table 1 (page 24).

General Medical Care

County correctional facilities in Pennsylvania provide health care to inmates in several ways: on-site through private medical contractors, off-site through community providers, and, in one county, on-site by medical providers employed by the county jail. The majority of county jails that house women in Pennsylvania obtain their medical services through private contractors that provide some health care on-site. The remaining counties have contracts with community providers who either come into the jail to provide services or provide care to inmates off-site. Only one correctional facility has health care services that are provided on-site through the county.

County jails that use private medical contractors tend to be in more populated areas of the state, while correctional facilities in rural areas are more likely to use off-site community providers more frequently. Health care policies vary widely across the board. Whether medical care is made available through private contractors or community providers does not appear to be a major factor in determining how comprehensive those policies are. The medical contractor that serves 24 county jails has some of the most comprehensive policies in the state, and these policies were almost uniform in each facility. The policies of other contractors were missing critical information and protocols. Similarly, more populous counties using community providers had fairly thorough policies, while county facilities that serve very few women often have no written policies on reproductive health care or report that they handle situations like pregnancy and abortion on a case-by-case basis and lack written policies.

We found that regardless of which entity provides the services, many facilities' policies fail to consider the unique health care needs of women. While this analysis does not support the use of any one way, or entity, to provide health care in a correctional setting, it does recommend that policies must clearly, and comprehensively, address women's reproductive health needs

Training for Correctional Personnel

Pennsylvania law outlines minimum standards of training for correctional personnel at county jails. Training must include information about general responsibilities of staff, the use of force, the prison's code of conduct and ethics, and prohibited behaviors such as exchanging favors with the inmate population. The personnel manual must contain additional information related to sexual harassment and sexual misconduct, the grievance and appeals process, the staff disciplinary process, and other administrative information. Additionally, full-time corrections personnel must receive training approved by the Department of Corrections within 12 months of their start date and annual training also must be provided.²⁸

Of the 19 jails from which we received training policies, four counties did not provide information about the training provided to correctional officers and other relevant personnel, and two additional counties did not provide policies about annual training requirements.²⁹ In addition to the basic requirements set by state law, several facilities had additional training requirements related to health care. Thirteen out of the 19 county jails sampled require their correctional officers to receive first aid training and/or be certified in CPR.³⁰ Several facilities require correctional officers to receive training enabling them to recognize life threatening illness, infectious diseases, mental illness, substance abuse, and suicide risk.³¹

Correctional officers are the individuals with whom inmates have the most contact. Though the training policies for only 19 jails were analyzed, basic health care training should be required of all correctional personnel. During medical emergencies correctional officers are often the first to respond and assess a situation before calling the medical provider for assistance. Without adequate medical training, correctional facilities are putting the health, and in some cases the lives, of inmates at risk.

²⁸ PA Statute 95.221 Personnel.

²⁹ Allegheny, Clinton, Lackawanna, and Luzerne counties did not provide information about training for correctional personnel. Carbon and Washington counties did provide information about annual training for personnel.

³⁰ Berks, Butler, Carbon, Clarion, Indiana, Lebanon, Lycoming, Mercer, Mifflin, Montgomery, Philadelphia, Tioga, and Washington counties require first aid training and/or CPR certification of correctional personnel.

³¹ Berks, Butler, Carbon, Clarion, Erie, Indiana, Lebanon, Mercer, Mifflin, Montgomery, Philadelphia, and Tioga counties provide training about the recognition of life threatening illness. Berks, Butler, Carbon, Erie, Lebanon, Mercer, Mifflin, Montgomery, Philadelphia, and Tioga counties offer training on infectious diseases. Berks, Butler, Carbon, Indiana, Mercer, Mifflin, Montgomery, and Tioga counties provide training on mental illness. Berks, Butler, Carbon, Greene, Indiana, Mercer, Mifflin, Montgomery, and Tioga counties provide training on substance abuse. Berks, Butler, Carbon, Clarion, Greene, Indiana, Lebanon, Mercer, Mifflin, Montgomery, Philadelphia, and Tioga counties provide training about suicide prevention.

Reproductive Health Care

Pennsylvania law outlines minimum standards of training for correctional personnel at county jails. Training must include information about general responsibilities of staff, the use of force, the prison's code of conduct and ethics, and prohibited behaviors such as exchanging favors with the inmate population. The personnel manual must contain additional information related to sexual harassment and sexual misconduct, the grievance and appeals process, the staff disciplinary process, and other administrative information.

Routine Care

Women and men have different health care needs. The great majority of inmates have always been men, so it follows that correctional health care policies were created with the needs of male inmates in mind. However, the number of incarcerated women is quickly growing, and women make up a larger portion of the incarcerated population than they ever have.³²

Under Pennsylvania law, all inmates must receive a health care screening within 24 hours of admission, as well as a full medical history and physical within 14 days of admission.³³ Despite this legal requirement, the policies provided by eight (out of 57) county jails do not address the taking of medical histories and performing physicals on female inmates,³⁴ and one has a vague policy stating that inmates must be “medically cleared.”³⁵

“Pregnant women, who are imprisoned, like other women, need high quality health care. Failure to comport with nationally recognized standards for prenatal care results in poor health outcomes for children born to women who are imprisoned.”

March of Dimes, Prenatal Care

“The health care needs of female prisoners in general, and pregnant prisoners in particular, challenge the traditional models of health care provided within prisons.”

Barkauskas, V., et al., Health outcomes of incarcerated pregnant women and their infants in a community-based program, 2002

³² Sufirin, C.B., Creinin, M.D., & Chang, J.C. (2009). Incarcerated women and abortion provision: A survey of correctional health providers. *Perspectives on Sexual and Reproductive Health*. 41, 6-11.

³³ PA Statute 95.232 Medical and health services

³⁴ See policies for Beaver, Bradford, Clearfield, Columbia, McKean, Pike, Venango, and Warren counties.

³⁵ See Cambria County policy.

All other counties had policies regarding histories and physicals, though only some had written policies describing general OB/GYN care and gender-specific screenings for female inmates.

While the policies of some correctional facilities mention providing routine care for women, which we define as an intake physical, medical history, and gynecological care, most focus on only the most basic level of care. Most facilities (86%) have policies reflecting state law and perform physicals and take medical histories of inmates within 14 days of commitment for all inmates, but only 12 (24% of those that perform physicals) provide any gender-specific screenings. In the jails that do provide gynecological services for women, women's opportunities for care vary greatly:

- Five facilities ask about gynecological problems and provide follow up screenings and tests as indicated.³⁶
- Three include pelvic exams and other gender-specific health screenings for female inmates.³⁷
- Three provide OB/GYN referrals to women on an as-needed basis.³⁸
- One facility has a community agency offer OB/GYN services every two weeks; inmates can request appointments.³⁹

The availability of routine care is vital for incarcerated women. Women involved with the criminal justice system experience higher rates of domestic and sexual violence, substance abuse, and mental illness—all factors that can lead to risky sexual behaviors that increase the risk of getting an STD.⁴⁰

³⁶ Allegheny and Montgomery counties screen inmates for gynecological problems. Elk County screens for infectious diseases, including STDs. Mercer County provides “special screening and testing” at intake. Westmoreland County performs additional tests and exams as needed.

³⁷ Clinton and York counties provide breast exams for all female inmates and perform pelvic exams as needed. Philadelphia County performs pelvic exams, pap smears, and gonorrhea and Chlamydia screenings for female inmates.

³⁸ Dauphin County makes OB/GYN referrals when medically necessary. Inmates in Washington County can only see an OB/GYN if they have a referral from a physician at the correctional facility. Bucks County provides OB/GYN referrals if an inmate is pregnant, having gynecological problems, or if it has been over one year since an inmate's last appointment.

³⁹ Luzerne County has a community provider come every two weeks to provide OB/GYN services; women can request appointments.

⁴⁰ Clarke, J.G., Rosengard, C., Rose, J.S., Hebert, M.R., Peipert, J., and Stein, M.D. (2006). Improving birth control service utilization by offering services prerelease vs. postincarceration. *American Journal of Public Health*. 96, 840-845.

Receiving annual care can be even more difficult than receiving routine care at commitment. Only three correctional facilities have a written policy about providing annual physicals, and one states that women receive annual appointments if needed.⁴¹ The absence of policies about annual check-ups does not necessarily mean routine care is not available to inmates. Inmates can receive health care, whether they are sick or want routine care, by submitting a sick call request. However, many inmates come to jail with poor health and are from communities where primary care services are scarce. Many are not aware of what routine care they need and when they need it, so it is unlikely they would seek routine health care through the sick call system on their own.

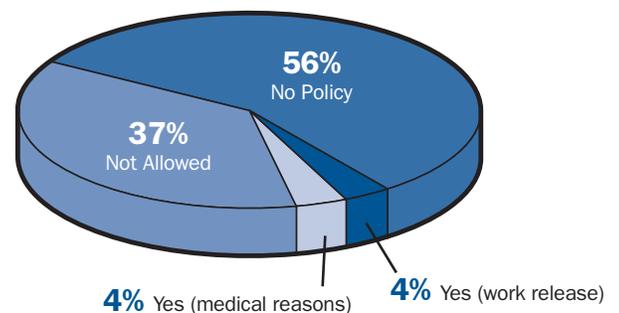
In addition, co-pays act as a barrier to accessing health care for the incarcerated women. The added financial burden on women, who often have very little to start with and earn practically nothing during their incarceration, often leads them to avoid routine care. For instance, an incarcerated woman who earns 8 cents an hour in jail will need to work for seven days to pay for one \$5 co-pay.⁴²

As the population of women in correctional facilities continues to grow, county jail facilities should develop health care policies that comply with medical standards for routine care and that consider the unique health care needs of women.

Contraception

Women use hormonal contraceptives for a variety of reasons, though pregnancy prevention is often the primary reason for the use of contraceptives. Interrupting the use of hormonal contraceptives when a woman enters jail can have profound consequences for her reproductive health.

Does the jail have a policy allowing contraception?



⁴¹ Erie and Tioga counties provide annual physicals for inmates as needed. Bucks County provides annual care specifically for women; their policy states they make annual OB/GYN appointments for long-term inmates.

⁴² Fisher, A. A. & Hatton, D. C. A study of women prisoners' use of co-payments for health care. *Women's Health Issues*, 20, 185-192.

In Pennsylvania, not one county jail allows women to use contraceptives for the purpose of pregnancy prevention during incarceration. Over half of the jails have no written policy about contraception, and those that do only allow hormonal contraceptives for a medical reason other than pregnancy prevention. Two facilities allow women participating in a work release program to use contraceptives at their own expense.⁴³

Irregular use of hormonal contraception can greatly increase the risk of pregnancy. One might assume there is little risk of pregnancy for incarcerated women. However, women in county jails are often incarcerated for short periods of time, whether they are being held on a temporary basis (before posting bail or awaiting trial) or are repeatedly in and out of county jails for short periods of time. The average length of stay in most jails is just under two weeks.⁴⁴ For women who were sexually active just before entering jail and for those who are sexually active soon after leaving jail, lack of hormonal contraceptives can easily result in an unintended pregnancy or disruption of the menstrual cycle.⁴⁵ For this reason, not allowing the use of hormonal contraceptives during periods of incarceration can be harmful to women. Reducing unintended pregnancies is a major public health concern across the country.⁴⁶ Correctional facilities could play a significant role in providing education and meeting the contraceptive needs among this underserved population.

Pregnant Women

Women need health care at every stage of pregnancy. The following analysis will focus on the range of services pregnant women have access to during their incarceration, including pregnancy testing, prenatal care, the use of restraints, labor and delivery, and mental health care following the pregnancy. This analysis reflects the policy of each correctional facility; how this care is provided in practice may be different.

⁴³ Bucks and Washington counties allow women in the work release program to use hormonal contraceptives.

⁴⁴ Life after lockup: Improving reentry from the jail to the community (2008). <http://www.ncjrs.gov/pdffiles1/bja/220095.pdf>

⁴⁵ Population Information Program, Center for Communication Programs, The Johns Hopkins School of Public Health (2000). Helping women use the pill 28(2) (Series A, Number 10, Oral Contraceptives). <http://info.k4health.org/pr/a10edsum.shtml>

⁴⁶ "Unintended Pregnancy Prevention: Home." <http://www.cdc.gov/reproductivehealth/UnintendedPregnancy/>. Department of Health and Human Services: Centers for Disease Control and Prevention, n.d. Web. 22 August 2011.

Table 1 – Pennsylvania County Jails with Female Inmates*: Reproductive Health Policies

(Number = 57 Counties)

County	Pregnancy Testing			Contraception ¹		Abortion	
	Policy	Required at intake	Based on medical history	Offered on request	For work release		Other medical reasons
Adams	Y	Y	N	Y	N	No Policy	Y
Allegheny	Y	N	Y	N	No Policy	No Policy	Y
Armstrong	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Beaver	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	Y
Bedford	Y	Y	N	Y	N	No Policy	Y
Berks	Y	Y	N	N	N	No Policy	Y
Blair	Y	Y	N	Y	N	No Policy	Y
Bradford	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Bucks	Y	Y	N	N	Y	N	Y
Butler	Y	N	Y	N	No Policy	No Policy	No Policy
Cambria	Y	Y	N	No Policy	No Policy	No Policy	No Policy
Carbon	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Centre	Y	Y	N	Y	N	No Policy	Y
Chester	Y	Y	N	N	N	No Policy	Y
Clarion	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Clearfield	Y	N	Y	N	N	Y	Y
Clinton	Y	N	Y	N	No Policy	No Policy	Y
Columbia	Y	N	Y	N	No Policy	No Policy	Y
Crawford	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Cumberland	Y	Y	N	N	N	No Policy	Y
Dauphin	Y	Y	N	N	No Policy	No Policy	Y
Delaware	Y	Y ²	Y	N	No Policy	No Policy	Y
Elk	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Erie	Y	N	Y	Y	N	No Policy	Y
Fayette	Y	Y	N	N	N	No Policy	Y
Franklin	Y	Y	N	N	N	No Policy	Y

*Among Pennsylvania's 67 counties, four counties have no correctional facilities: Cameron, Forest, Fulton, and Sullivan and six do not house women: Huntingdon, Juniata, Montour, Perry, Potter, and Union, leaving a final sample of 57 counties. Note that Greene County does not house pregnant inmates.

¹ No jails have a policy allowing contraceptives among the general population for birth control purposes. Policies in two counties allow contraceptives for women on work release and two for other medical reasons. The majority of counties (32) have no policies addressing contraception.

² For women of childbearing age.

³ Facility tries to arrange furlough or early release. Mifflin County provided detailed information about their practices in a letter, but does not have a written policy.

STD Testing								
Policy	Required at intake	Based on medical history	Offered on request	STD Treatment	Prenatal Care	Supplemental Nutrition	Bottom Bunk Status	Labor & Delivery
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	Y
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	No Policy	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	Y	Y	Y	Y	Y	Y	N	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	No Policy
Y	N	Y	Y	Y	Y	Y	N	No Policy
Y	N	Y	N	Y	Y	Y	No Policy	Y
Y	N	Y	Y	Y	Y	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	N	Y	Y	Y	Y	No Policy	No Policy
Y	N	Y	Y	Y	No Policy	No Policy	No Policy	No Policy
Y	N	Y	Y	Y	Y	Y	Y	Y
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy

Table 1 – Pennsylvania County Jails with Female Inmates*: Reproductive Health Policies (continued)

County	Pregnancy Testing			Contraception ¹		Abortion	
	Policy	Required at intake	Based on medical history	Offered on request	For work release		Other medical reasons
Greene	Y	N	Y	N	No Policy	No Policy	No Policy
Indiana	Y	Y	N	Y	N	No Policy	Y
Jefferson	Y	Y	N	Y	N	No Policy	Y
Lackawanna	Y	N	Y	Y	No Policy	No Policy	Y
Lancaster	Y	Y	N	N	N	No Policy	Y
Lawrence	Y	Y	N	N	N	No Policy	Y
Lebanon	Y	N	Y	Y	No Policy	No Policy	No Policy
Lehigh	Y	Y	N	N	N	No Policy	Y
Luzerne	Y	Y	N	N	No Policy	No Policy	Y
Lycoming	Y	N	Y	Y	No Policy	No Policy	No Policy
McKean	Y	N	Y	Y	No Policy	No Policy	No Policy
Mercer	Y	Y	N	N	No Policy	No Policy	No Policy
Mifflin	Y	N	Y	Y	No Policy	No Policy	Y
Monroe	Y	Y	N	Y	N	No Policy	Y
Montgomery	Y	N	Y	Y	No Policy	No Policy	Y
Northampton	Y	Y	N	Y	N	No Policy	Y
Northumberland	Y	Y	N	No Policy	No Policy	No Policy	Y
Philadelphia	Y	Y	N	N	N	Y	Y
Pike	Y	Y	N	No Policy	No Policy	No Policy	No Policy
Schuylkill	Y	Y	Y	Y	N	No Policy	Y
Snyder	Y	Y	N	Y	N	No Policy	Y
Somerset	Y	Y	N	Y	N	No Policy	Y
Susquehanna	Y	N	Y	N	No Policy	No Policy	No Policy
Tioga	Y	N	Y	N	No Policy	No Policy	No Policy
Venango	Y	N	Y	Y	No Policy	No Policy	No Policy
Warren	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Washington	Y	N	N	N	Y	No Policy	No Policy
Wayne	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	Y
Westmoreland	Y	N	Y	N	No Policy	No Policy	Y
Wyoming	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
York	Y	Y	N	N	N	N	Y

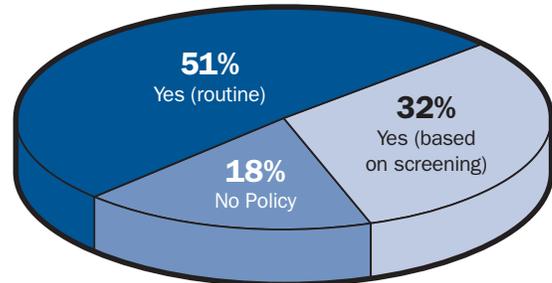
STD Testing								
Policy	Required at intake	Based on medical history	Offered on request	STD Treatment	Prenatal Care	Supplemental Nutrition	Bottom Bunk Status	Labor & Delivery
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	No Policy	Y	Y	No Policy	Y
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	Y	Y ³
Y	N	N	Y	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	No Policy	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	N	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	Y	Y ³
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	Y	Y	No Policy
Y	Y	Y	Y	Y	Y	Y	N	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	Y	No Policy	No Policy	Y
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	N	Y	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy
No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy	No Policy
Y	N	Y	N	Y	Y	Y	Y	No Policy

Pregnancy Testing

An estimated 6% of female inmates are pregnant upon admission to jail.⁴⁷ Pregnancy testing is performed at intake for at least some inmates at the majority of county jails (82.5%); only ten jails lack policies about pregnancy testing.⁴⁸ One-third of the county facilities provide pregnancy testing for women based on their medical history and initial health screening, while one half (50.9%) of facilities test all female commitments for pregnancy.⁴⁹ Additionally, one-third of the county jails that serve women have policies stating pregnancy tests are available at the inmate's request.⁵⁰

Many women learn they are pregnant as a result of the health screenings conducted when they are admitted to jail. In facilities where pregnancy testing is not a routine part of the intake procedure, pregnancies can go undetected and result in a delay in necessary medical care for the inmate and the fetus. Without a prompt diagnosis and early access to prenatal care, there is an increased risk that the woman or the fetus could be harmed.⁵¹

Does the jail have a policy about pregnancy testing at intake?



“Not every jail requires routine pregnancy testing. I don’t understand this. For jails, it’s a security risk, and a liability risk.”

Incarcerated women’s medical provider (name withheld)

⁴⁷ Bureau of Justice Statistics, 2008.

⁴⁸ Armstrong, Beaver, Bradford, Carbon, Clarion, Crawford, Elk, Warren, Washington, and Wyoming counties do not have policies about pregnancy testing.

⁴⁹ Allegheny, Butler, Clearfield, Greene, Lackawanna, Lebanon, McKean, Mifflin, Susquehanna, Venango, Clinton, Columbia, Erie, Lycoming, Montgomery, Tioga, and Westmoreland counties provide pregnancy testing based on the inmates medical history and intake screening. Luzerne, Mercer, Adams, Bedford, Centre, Berks, Blair, Bucks, Cambria, Chester, Cumberland, Dauphin, Fayette, Indiana, Jefferson, Franklin, Lancaster, Lehigh, Lawrence, Monroe, Northampton, Northumberland, Pike, Philadelphia, Snyder, Somerset, and York counties have policies stating they provide pregnancy tests to all female inmates. Delaware County provides pregnancy testing for all women of childbearing age at intake, and performs tests based on medical history and health screenings for all other female inmates. Schuylkill County policies state pregnancy tests are required of all female inmates at intake and are provided based on medical history and intake health screening.

⁵⁰ Blair, Lackawanna, Lebanon, McKean, Mifflin, Venango, Adams, Bedford, Centre, Erie, Indiana, Jefferson, Lycoming, Monroe, Montgomery, Northampton, Schuylkill, Snyder, and Somerset counties have policies which state pregnancy tests are also provided to female inmates on request.

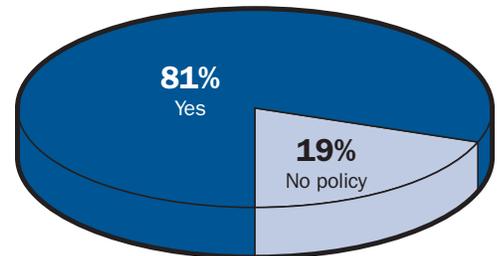
⁵¹ Ayoola, A.B., Nettleman, M.D., Stommel, M., & Canady, R.B. (2010). Time of pregnancy recognition and prenatal care use: A population-based study in the United States. *Birth* 37, 37-43.

Prenatal Care

Pennsylvania requires all correctional facilities to provide prenatal care free of charge, though minimum standards for care are not set.⁵² Despite this requirement, 11 jails did not have a policy for providing prenatal care.⁵³

Prenatal care is a critical health care service that improves maternal and infant health. Women who do not receive prenatal care during their pregnancies are more likely to have poor birth outcomes, such as low birth weight, pregnancy complications, and maternal or infant death.^{54, 55} Pregnant inmates are at a higher risk for poor pregnancy outcomes because of their disadvantaged backgrounds.⁵⁶ Adequate prenatal care should include routine diagnostic testing, nutritional guidance, regular OB/GYN visits, health education, orders for supplemental nutrition, and recommended levels of activity for pregnant women.⁵⁷

Does the jail have a policy about prenatal care?



⁵² Pennsylvania law does not provide details on what must be provided in the way of prenatal care. DOC policy (DC-ADM 820, Co-Payment for Medical Services Procedures, Section 1- Co-Pay Fees) states that prenatal care is among the services for which the inmate will not be charged. Department of Corrections policy states that pregnant women will receive prenatal care (including prenatal vitamins and instruction on prenatal nutrition and health habits), OB/GYN care, and undergo necessary lab tests.

⁵³ Armstrong, Bradford, Cambria, Carbon, Clarion, Elk, Greene, Pike, Susquehanna, Warren, and Wyoming do not have policies about providing prenatal care.

⁵⁴ U.S. Dept. Health and Human Services, Maternal and Child Health Bureau (<http://mchb.hrsa.gov/programs/womeninfants/prenatal.htm>).

⁵⁵ Taylor, C.R., Alexander, G.R., & Hepworth, J.T. (2005). Clustering of U.S. women receiving no prenatal care: Differences in pregnancy outcomes and implications for targeting interventions. *Maternal and Child Health Journal*, 9, 125-133.

⁵⁶ Nicholas Freudenberg, Adverse Effects of U.S. Jail and Prison Policies on the Health and Well-Being of Women of Color. *Am. J. of Public Health*, 92, 1895-6 (2002).

⁵⁷ March of Dimes: Pregnancy (<http://www.marchofdimes.com/pregnancy/pregnancy.html>)

In Pennsylvania, 80% of county correctional facilities have policies that address access to prenatal care. Although the specific care outlined in the policies varies, prenatal care policies are more comprehensive than any of the other reproductive health policies discussed in this report. Out of the 46 counties that have prenatal care policies,⁵⁸ 44 have prenatal nutrition guidelines,⁵⁹ 41 outline the frequency of prenatal visits,⁶⁰ 39 discuss what diagnostic testing should be performed,⁶¹ and 31 require pregnant women to use the bottom bunk in their cells.⁶²

The vast majority of counties with prenatal care policies have designated prenatal care providers for both normal and high-risk pregnancies.⁶³

These providers serve all pregnant inmates in these facilities. Five county jails allow women who have begun receiving prenatal care prior to their incarceration to continue to use their same prenatal care provider while they are in jail, as long as the provider can continue to see the patient and the provider's office is not located too far from the jail.⁶⁴ These fairly comprehensive prenatal care policies ensure women are receiving appropriate care throughout the duration of their pregnancy while incarcerated.

“Proper nutrition is known to reduce the incidence of certain birth defects, premature birth and low birth weight.”

March of Dimes, Nutrition Today Matters Tomorrow

⁵⁸ Allegheny, Beaver, Blair, Butler, Clearfield, Lackawanna, Lebanon, Luzerne, McKean, Mercer, Mifflin, Northumberland, Venango, Adams, Bedford, Berks, Bucks, Centre, Chester, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Lycoming, Monroe, Montgomery, Northampton, Philadelphia, Schuylkill, Snyder, Somerset, Tioga, Washington, Wayne, Westmoreland, York counties have policies about prenatal care.

⁵⁹ Allegheny, Beaver, Blair, Butler, Clearfield, Lackawanna, Lebanon, Luzerne, McKean, Mercer, Mifflin, Northumberland, Adams, Bedford, Berks, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Lycoming, Monroe, Montgomery, Northampton, Philadelphia, Schuylkill, Snyder, Somerset, Tioga, Washington, Wayne, Westmoreland, and York counties have prenatal nutrition policies.

⁶⁰ Adams, Allegheny, Beaver, Bedford, Berks, Blair, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Somerset, Washington, Wayne, Westmoreland, and York counties have policies which outline the frequency of prenatal visits.

⁶¹ Adams, Allegheny, Beaver, Bedford, Berks, Blair, Bucks, Centre, Chester, Clearfield, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, McKean, Mifflin, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Somerset, Washington, Wayne, Westmoreland, and York counties have policies which discuss what prenatal diagnostic tests will be performed.

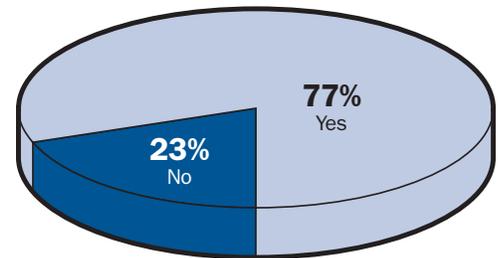
⁶² Adams, Bedford, Berks, Blair, Centre, Chester, Cumberland, Dauphin, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Northampton, Northumberland, Schuylkill, Snyder, Somerset, Tioga, Washington, Wayne, Westmoreland, and York counties require pregnant inmates to use the bottom bunk.

⁶³ Thirty-four counties have designated prenatal care providers named in their policies. These counties are: Adams, Allegheny, Bedford, Blair, Bucks, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, McKean, Mercer, Monroe, Montgomery, Northampton, Schuylkill, Snyder, Somerset, Tioga, Venango, Washington, York.

⁶⁴ Berks, Clearfield, Crawford, Lycoming, and Mifflin counties allow pregnant inmates to continue to see their community providers. Women without a prenatal care provider are sent to a provider designated by the jail.

One area where nearly all county correctional facilities fall short in working with pregnant inmates to ensure they continue to receive prenatal care if they are released before giving birth. Only one county jail has a policy stating that they provide information about how inmates can obtain prenatal care once they are released.⁶⁵ While providing the contact information of community providers may seem helpful, most women need more assistance with maintaining a continuity of medical care once they are released. It would be advisable for jails to work with a community provider to set up a post-release prenatal appointment for the inmate and transfer the inmate's medical records to the provider.

Does the jail have a policy about supplemental nutrition?



Neglecting the prenatal care needs of pregnant inmates can result in substandard care, which in turn can lead to poor birth outcomes for women and their infants.⁶⁶ County correctional facilities should have more than general policies ensuring prenatal care is available to pregnant inmates. Policies should be explicit so that inmates are more likely to have access to the full range of prenatal services available in the community and to those recommended by medical societies.

Restraints

Restraints are commonly used in correctional facilities to restrict movement of inmates and to prevent escape. However, using restraints on pregnant women can cause harm to the woman and her fetus. The use of belly chains can put pressure on the woman's body and handcuffing her behind her back can negatively affect her balance, putting her at risk for falls. The use of shackles and other leg restraints can limit a woman's ability to maneuver during labor and move her legs into the correct position for examinations.⁶⁷ For these reasons, the use of restraints on pregnant inmates should be prohibited.

⁶⁵ Blair County provides information about options counseling, abortion services, and community prenatal care providers as part of the pregnancy counseling information given to all pregnant inmates.

⁶⁶ Taylor, C.R., Alexander, G.R., & Hepworth, J.T. (2005) Clustering of U.S. women receiving no prenatal care: Differences in pregnancy outcomes and implications for targeting interventions. *Maternal and Child Health Journal* 9, 125-133.

⁶⁷ Amnesty International. (2000). Pregnant and imprisoned in the United States. *Birth: Issues in Perinatal Care*. 27, 266-271.

In July 2010, Pennsylvania enacted a law severely limiting the use of restraints on pregnant women. Prior to the passage of this law, 42 facilities had no policy about the use of restraints during labor and delivery; eight facilities stated they did not use restraints on pregnant inmates during labor and delivery. Seven facilities did have policies that outlined when restraints were used on pregnant women as well as what types of restraints were used. Although the policies we collected show only a small portion of facilities had specific policies which allow the use of restraints on pregnant inmates, reports from service providers and former inmates suggest this practice is more widespread than is indicated by correctional policy.

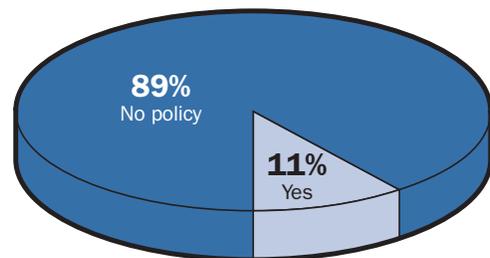
The passage of Act 45 was an important first step for improving health care for incarcerated women in Pennsylvania. However, women must still rely on staff at correctional facilities to implement the law effectively. A commitment to the health and safety of inmates from correctional staff and administrators is necessary for such changes to be successful.

Labor and Delivery

County correctional facilities are not equipped to handle labor and delivery for pregnant inmates, so inmates are generally transferred to a nearby hospital to deliver their babies. There is no state law dictating when a pregnant inmate should be taken to the hospital to deliver. The development of policies regarding labor and delivery presents a special challenge to correctional facilities. Each pregnancy is different, so there is no reliable way to determine when a woman will begin labor or how long she will be in labor before delivering her baby. If inmates are transferred to hospitals before their due dates, they may spend unnecessary time in the hospital awaiting delivery; if jails wait until the inmate goes into labor, they risk the baby being born in the correctional facility or en route to the hospital.

Only seven jails stated they have a policy that specifies when a pregnant woman should be taken to the hospital when she is in labor. None of these policies state what medical care a woman should receive if she miscarries or has other obstetric issues. Only one jail has a policy that outlines what level of medical care a woman should receive based on the duration, spacing, and intensity of her contractions (see Table 1, page 24).

Does the jail have a policy about labor and delivery?



On giving birth while incarcerated:

“It affects women in so many different ways – having no control, experiencing a deep level of hopelessness. How are you going to prepare for this mentally? Knowing you are having a child that you will be separated from in 24 to 48 hours, that you will depend on other people to care for your newborn, and having no idea day to day how your baby is doing. This would all be unimaginable to most women.”

Incarcerated women’s medical provider (name withheld)

The policies of the seven Pennsylvania county jails that have protocols for labor and delivery vary drastically. Two counties try to arrange furloughs or early release for pregnant inmates.⁶⁸ While this policy allows women to be in the community when they give birth, surrounded by family or friends and free of monitoring from correctional officers during their hospital stay, it can also be difficult for correctional facilities to make such arrangements when the timing of labor and delivery is unknown. Four counties rely on medical staff to make the determination about when a woman should be taken to the hospital.⁶⁹ Most counties wait until the woman reports experiencing symptoms of labor to contact medical staff for monitoring; one county begins monitoring pregnant inmates once they have reached the seventh month of pregnancy.⁷⁰

Lackawanna County is the only county correctional facility that has a policy clearly outlining when a woman should be taken to the hospital for delivery. This policy was developed in response to an incident in which a pregnant woman incarcerated in the Lackawanna County Prison gave birth in a cell after reporting her labor symptoms to correctional officers and medical staff.⁷¹ The current policy was developed by the jail medical staff based on recommendations from OB/GYNs and literature from the American College of Obstetrics and Gynecology.⁷² Inmates who are 21 weeks gestation or greater are sent to the hospital if they experience uterine contractions which occur continuously for at least 60 minutes or at any time occur less than five minutes apart. Inmates experiencing those same symptoms at less than 21 weeks gestation are placed on bed rest and provided with increased fluids.

No other county correctional facility in Pennsylvania has a policy that explicitly states when a pregnant inmate should be taken to the hospital. Some medical providers indicated their policy is to immediately transport an inmate to the hospital anytime an inmate reports symptoms of labor, though this was not part of any jail’s formal written policy.

⁶⁸ Luzerne and Mifflin counties try to arrange for furloughs or early release of pregnant inmates based on their due dates; both jails have plans for where pregnant inmates deliver if prior arrangements cannot be made. (Note: Mifflin stated they do not have a policy but their medical staff described their practice in a letter.)

⁶⁹ Allegheny, Columbia, Erie, and Venango counties rely on medical staff to determine when an inmate should be taken to the hospital to deliver. Allegheny, Columbia, and Erie counties use on-site medical staff; Venango County gets recommendations from OB/GYNs at the contracted community provider as well as from on-site medical staff.

⁷⁰ When possible, Columbia County moves pregnant inmates to the medical unit after 7 months and places them on 15 minute watch to monitor for labor or any other pregnancy-related distress.

⁷¹ *Staten v. Lackawanna County*, 2008 U.S. Dist. LEXIS 6539 (M.D.P.D. 2008).

⁷² See Lackawanna County health services agreement.

Postpartum Care

Sixty-five percent of jails have some policy outlining the availability of postpartum mental health services for inmates. However, only two correctional facilities make postpartum care available for women regardless of the outcome of their pregnancy (miscarriage, abortion, or live birth).⁷³ The other 35 facilities have policies that only focus on postpartum services for women who carry their pregnancies to term.⁷⁴

Mental Health Care Following Delivery, Miscarriage, and Termination

Pregnancy can be difficult for many women, but it is especially difficult for incarcerated women. Incarcerated women who are pregnant have more stressors than other inmates, including concerns about separating from their baby, custody issues, and lack of social support.⁷⁵ Limited visitation and geographic distance often limit the social and familial support women are able to receive throughout their pregnancy. These restrictions can have a significant psychological impact on incarcerated women who are pregnant.

Women generally have access to mental health care while in jail, but specific services available following delivery, miscarriage, or termination vary greatly among correctional facilities. Thirty-seven county jails have policies stating postpartum care is available for female inmates. In most of these facilities, women are evaluated by medical staff (either by their community provider or on-site at the jail) and provided supportive services as needed following delivery. Only two county correctional facilities make postpartum care available to women with other pregnancy outcomes. Montgomery County provides referrals for postpartum evaluation following a live birth or abortion.⁷⁶ Lackawanna County's policy states women are offered supportive counseling following separation from their babies after birth or following a miscarriage or termination. Lackawanna County Prison is the only county correctional facility with explicit policies about how to support inmates following a miscarriage; the policy outlines how miscarriages before 20 weeks gestation and after 20 weeks gestation will be handled, including consulting with the woman about how to dispose of the fetus in a way that is sensitive to her cultural and religious beliefs.⁷⁷

⁷³ Lackawanna and Montgomery counties provide postpartum care for female inmates regardless of the outcome of their pregnancies.

⁷⁴ Adams, Allegheny, Beaver, Bedford, Berks, Blair, Bucks, Centre, Chester, Clearfield, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Luzerne, Mercer, Mifflin, Monroe, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Somerset, Washington, Westmoreland, and York counties have policies regarding postpartum care for women following birth, not miscarriage or abortion.

⁷⁵ Hutchison, K.C., Moore, G.A., Propper, C.B., & Mariaskin, A. (2008). Incarcerated women's psychological functioning during pregnancy. *Psychology of Women Quarterly*, 32, 440-53.

⁷⁶ See Montgomery County policy and procedures.

⁷⁷ See Lackawanna County policy and procedures.

Correctional health care policies should consider the mental health needs of all pregnant inmates, not just those whose pregnancies result in a live birth. Pregnant women in prison have been found to have higher rates of depression and anxiety during their pregnancy and postpartum period, which makes the availability of this type of care even more essential.⁷⁸ Although general mental health care is made available, specific postpartum services should be explicitly offered to female inmates, regardless of the outcome of their pregnancies.

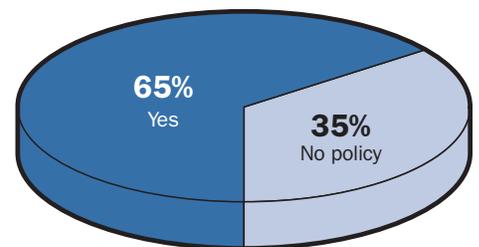
Abortion Services

Incarcerated women's access to abortion poses complicated legal questions. Though incarcerated persons are guaranteed medical care for serious medical needs under the 8th Amendment and women are guaranteed the right to an abortion under the 14th Amendment, many correctional facilities have difficulty reconciling these rights with institutional policy and procedure. Overall, the written policies of most jails in Pennsylvania are insufficient to meet constitutional requirements.

Access to Services

In Pennsylvania, 20 county jails have no policy about female inmates' access to abortion.⁷⁹ The remaining 37 jails classify abortion as an elective procedure, and do not specify how to request an abortion or the timeline for processing requests.⁸⁰ Ten facilities do not specify who is responsible for payment,⁸¹ while the remaining facilities have policies stating the medical provider, correctional facility, and/or county is not financially responsible for "elective" abortions.⁸²

Does the jail have a policy about abortion?



⁷⁸ Safyer, S.M. & Richmond, L. (1995). Pregnancy behind bars. *Seminars in Perinatology*, 19, 314-322.

⁷⁹ Armstrong, Bradford, Butler, Cambria, Carbon, Clarion, Crawford, Elk, Greene, Lebanon, Lycoming, McKean, Mercer, Pike, Susquehanna, Tioga, Venango, Warren, Washington, and Wyoming counties do not have policies on abortion.

⁸⁰ Adams, Allegheny, Beaver, Bedford, Berks, Blair, Bucks, Centre, Chester, Clearfield, Clinton, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lehigh, Luzerne, Mifflin, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuylkill, Snyder, Somerset, Wayne, Westmoreland, and York counties have policies about providing abortions to inmates.

⁸¹ Allegheny, Bucks, Clearfield, Clinton, Lackawanna, Luzerne, Mifflin, Philadelphia, Wayne, and Westmoreland counties do not specify how abortions are paid.

⁸² Adams, Beaver, Bedford, Berks, Blair, Centre, Chester, Columbia, Cumberland, Dauphin, Delaware, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Monroe, Montgomery, Northampton, Northumberland, Schuylkill, Snyder, Somerset, and York counties have policies stating the medical provider, correctional facility, or county do not pay for elective abortions.

Without a clear written policy about abortion, corrections or medical personnel could violate the inmate’s constitutional rights by denying them the right to choose. Uncertainty about the meaning of “elective” could also lead correctional administrators to require women to pay for all costs associated with an abortion, including security and transportation, which could make the cost of receiving abortion care while incarcerated prohibitive, again a constitutional violation in Pennsylvania.⁸³

Policies that require jails to consult with legal counsel when an inmate requests an abortion could also cause delays as it could take several weeks to obtain a legal opinion. This policy was found unconstitutional.⁸⁴ Many of the abortion policies in Pennsylvania correctional facilities are vague at best, and the delays or denials that can result from ambiguous policies could violate women’s rights to abortion as a medically necessary procedure under the 8th and 14th Amendments.^{85,86,87} All abortions—whether elective or indicated to protect a woman’s health or life are medically necessary abortions to which incarcerated women in Pennsylvania are entitled (see the earlier discussion at Legal Standards).

Counseling Requirements

Of the 37 county jails that have policies about abortion, three do not have a policy about counseling requirements for women prior to scheduling an appointment for the procedure.⁸⁸ The majority of facilities (22) make counseling available through jail staff or community agencies; which jail staff provides such counseling is generally not specified.⁸⁹ Seven facilities rely on the medical provider, whether it is on-site medical staff, an OB/GYN, prenatal care provider, or other medical professional.⁹⁰ Other facilities refer women to the local Department of Human Services for counseling options,⁹¹

⁸³ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

⁸⁴ *Ptaschnik v. Luzerne County Prison Board* (No. 3:CV-98-1887, M.D.PA 1998).

⁸⁵ *Estelle v. Gamble* 429 U.S. 97 (1976).

⁸⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

⁸⁷ *Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

⁸⁸ Mifflin, Northumberland, and Wayne counties do not have policies about counseling requirements for inmates who request an abortion.

⁸⁹ Adams, Bedford, Berks, Blair, Centre, Chester, Cumberland, Dauphin, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Monroe, Northampton, Schuylkill, Snyder, Somerset, and Westmoreland counties have policies stating counseling and assistance such as would be offered in the community are available to pregnant inmates; these policies do not specify who provides the counseling. Some policies further specify that if the correctional facility does not provide counseling and sexual health services, inmates should be referred to a community agency.

⁹⁰ Allegheny, Bucks, Clinton, Columbia, Delaware, Montgomery, and York counties state counseling is available through a physician, on-site medical staff, OB-GYN, prenatal care provider, or other designated provider, such as a social worker or case manager.

⁹¹ Beaver County provides information about counseling through a local prenatal clinic and refers inmates requesting an abortion to DHS.

while some simply state counseling is available.⁹² Finally, one county jail offers all pregnant women the option to meet with a physician, mental health staff, and a member of the clergy before working with the treatment coordinator to obtain an abortion.⁹³

Policies that require correctional facilities to provide counseling to women who request abortions can pose a barrier to necessary care, particularly because Pennsylvania law already has stringent requirements for women receiving abortion services. Informed consent must be obtained from a pregnant woman before she can receive an abortion, in addition to required counseling and a mandatory 24-hour delay between counseling and the actual procedure.⁹⁴ Informed consent, which includes discussing the benefits and risks of the procedure, is standard medical practice and is the responsibility of the abortion provider. Comprehensive counseling is also routinely provided by the abortion provider and includes a discussion with the woman about her feelings and concerns about the pregnancy and her decision to terminate the pregnancy.

Any counseling offered by the correctional facility should be readily available, performed by a trained professional, and incarcerated women should have the option to decline counseling. Counseling by medical staff, an OB/GYN, or a community agency that provides objective counseling to women about abortion procedures would be appropriate. Counseling by jail personnel who are not trained to perform this duty may be biased, either for or against abortion. Furthermore, only individuals who are qualified to provide this service should counsel inmates. Counseling provided by someone opposed to abortion might cause undue delays, or this person may attempt to deny or delay access to care. Counseling should not be a requirement for a woman to obtain abortion services. Facilities with policies that require such counseling expose themselves to legal liability if a court were to find they cause undue delay or are not reasonably related to correctional interests.

⁹² Clearfield, Lackawanna, and Philadelphia counties have policies stating counseling is available. Clearfield County provides counseling at the jail, but does not specify who provides it. Lackawanna County states “qualified counselors” provide services on-site. Philadelphia County does not specify who provides counseling or if it is provided on- or off-site.

⁹³ See Luzerne County policy.

⁹⁴ Abortion Control Act, 18 Pa. Cons. Stat. § 3201 *et seq.*

Costs Associated with Abortion

Despite the Monmouth decision discussed above, there are no statutes or regulations requiring Pennsylvania correctional facilities to implement constitutionally sound policies and practices. Many county correctional facilities appear to be unaware of, or disregard, their obligations under Monmouth's interpretation of federal constitutional law.

Because there are no state laws or regulations expressly requiring correctional facilities, correctional medical providers, or counties to pay for an indigent inmate's abortion, this fosters the erroneous assumption among many counties that an incarcerated woman who is unable to pay for an abortion out-of-pocket can be denied care.

The payment procedures at correctional facilities that do have policies about abortion vary significantly. Ten county jails have no policy about who pays for an inmate's abortion. Twenty facilities state the correctional medical provider does not pay for elective abortions; these facilities will try to help inmates secure outside funding, but absent such funding the cost must be covered by the inmate.⁹⁵ Three facilities explicitly state that the medical provider, jail, and county are not required to pay for abortion.⁹⁶ The final four facilities have policies that are not clear about who must cover the costs of an abortion; one part of the policy states the correctional medical provider is not required to pay for an abortion, but later the policy states the county jail requires the correctional medical provider to cover such costs.⁹⁷

Based on conversations with county corrections directors and abortion providers, the way some county jails in Pennsylvania handle abortion care can vary significantly from what is outlined in correctional policy. One county pays for all abortions requested by inmates to avoid delays and denials of medical care. Another county will try to arrange an early release for inmates requesting an abortion; then it is up to the woman to obtain an abortion once she returns to the community. However, arranging for an early release can take several weeks and cause significant delays in medical care, increasing health risks and possibly violating a woman's 8th and 14th Amendment rights.

⁹⁵ Adams, Beaver, Berks, Blair, Chester, Columbia, Cumberland, Dauphin, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lehigh, Monroe, Montgomery, Northampton, Schuylkill, Snyder, and York counties state the medical provider does not pay for abortion, but will provide women with information about how to obtain an abortion. Some counties also state that they will assist women with securing outside funding for their abortion; otherwise the woman must assume the cost of the abortion.

⁹⁶ Delaware, Erie, and Northampton counties state that the facility, county, and/or medical provider is not financially responsible for abortions.

⁹⁷ Bedford, Centre, Lawrence, and Somerset counties have conflicting policies regarding who pays for the cost of an abortion.

The absence of clear policies related to all areas of abortion care leave far too much to the discretion of correctional administrators and medical providers. A lack of comprehensive policies about non-emergency abortions, how to request an abortion, timelines for processing requests, counseling and informed consent, and payment can lead to unnecessary delays and a possible denial of care. This leaves women vulnerable to inconsistent policies and opens correctional facilities to avoidable lawsuits.

“A pregnant woman who chooses to be tested for HIV and test positive can begin treatment to allow her a longer and healthier life.”

Sylla, M. HIV Treatment in U.S. Jails and Prisons, 2008

Testing and Treatment of Sexually Transmitted Diseases (STDs) and HIV

STDs, including HIV, disproportionately affect incarcerated women.⁹⁸ Women are often not aware they have an STD until they are incarcerated and are tested during an intake health screening, since they often have difficulty accessing routine health care services in the

community. Across the country, routine testing in correctional facilities is not common,⁹⁹ and most inmates are only tested if they report engaging in high risk sexual behaviors, are symptomatic, or request testing.

In Pennsylvania, 19 jails that serve women have no policy about testing inmates for STDs or HIV. Of the 38 jails that do have STD testing policies, 36 provide testing based on the inmate’s medical history, initial health screening, or at the request of the inmate.¹⁰⁰ Thirty-five jails have policies that outline treatment options for those who test positive for STDs; three of the jails that test for STDs do not have a policy regarding treatment.¹⁰¹ Two correctional facilities require STD testing for all inmates at intake.¹⁰²

⁹⁸ ACOG Special Populations 2004.

⁹⁹ Parece, M.S., Herrera, G.A., Voigt, R.F., Middlekauff, S.L. and Irwin, K.L. “STD Testing Policies and Practices in U.S. City and County Jails.” *Sexually Transmitted Diseases* 26.8 (1999): 431-437. Online.

¹⁰⁰ Adams, Bedford, Berks, Blair, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Franklin, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lehigh, Lycoming, Monroe, Montgomery, Northampton, Philadelphia, Schuylkill, Snyder, Somerset, Tioga, Washington, Wayne, Westmoreland, and York provide STD testing for inmates.

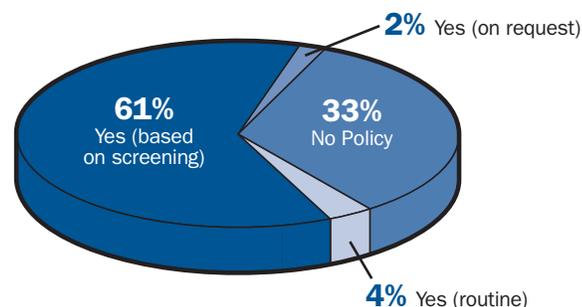
¹⁰¹ Adams, Bedford, Berks, Bucks, Carbon, Centre, Chester, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Franklin, Indiana, Jefferson, Lancaster, Lawrence, Lehigh, Lycoming, Monroe, Montgomery, Northampton, Philadelphia, Schuylkill, Snyder, Somerset, Tioga, Washington, Wayne, Westmoreland, and York counties outline treatment guidelines for STDs in their policies. Blair, Lackawanna, and Susquehanna counties have policies for STD testing, but do not have policies for STD treatment.

¹⁰² Philadelphia and Bucks counties provide STD testing for all inmates at intake.

According to state law, treatment must be provided to inmates who test positive for any STDs or HIV. However, only 35 county jails have treatment procedures outlined in their medical policies. It is absolutely necessary for every jail to have a policy regarding treatment for STDs and HIV to ensure inmates are provided the treatment services required by state law.

There is ample guidance on testing and treatment of STDs and HIV in the correctional setting. Unlike many of the other reproductive health issues discussed in this report, under Pennsylvania statutes, testing and treatment for STDs and HIV must be available for every inmate, male and female. Both the American Public Health Association and National Commission on Correctional Health Care recommend routine STD screenings for inmates.¹⁰³ Additionally, the Centers for Disease Control has comprehensive treatment guidelines correctional facilities can use to develop comprehensive treatment policies, including new testing procedures that are simpler and faster than older tests.¹⁰⁴ Implementing testing and treatment guidelines from these agencies will help ensure incarcerated women have access to high quality care that meets their medical needs and promotes positive health outcomes.

Does the jail have a policy about STD testing at intake?



¹⁰³ NCCCHC, supra note 40, at 63; APHA, supra note 39, at 75-76; see also Public Health Manual, supra note 10, at 53.

¹⁰⁴ Centers for Disease Control, (2006). Sexually Transmitted Diseases Treatment Guidelines, 2006 55 (RR-11) Morbidity & Mortality Wkly. Rpt.

conclusions

Access to reproductive health care varies extensively among counties in Pennsylvania. With no statutes or regulations to ensure uniformity among all facets of county correctional health care policies, jail administrators must take the initiative to develop comprehensive guidelines in areas where the law is absent or unclear. As a result, the quality of health care women receive depends largely on the facility in which they are incarcerated.

Every county correctional facility that serves women in Pennsylvania has some deficiency in their reproductive health care policies. Overall, the vast majority of county jails have comprehensive policies that focus on prenatal care, but neglect other areas of reproductive health. Insufficient guidelines were most common with respect to providing gender-specific health screenings, processing abortion requests and providing access to abortion services, and responding to inmates who report symptoms of labor. In all of these instances a lack of clear written policies and procedures puts county correctional staff at risk for responding inappropriately to health care requests and delaying access to necessary care.

Fortunately, there are national guidelines (which are followed by some county jails), as well as exemplary policies developed by counties throughout the state that jail administrators can use to guide the development of comprehensive reproductive health policies. County correctional facilities can meet the reproductive health needs of incarcerated women and provide sufficient preventive care by implementing more uniform policies, and by providing thorough training to staff responsible for responding to requests for care. In addition to discussions regarding policy improvements earlier in this report, additional recommendations are included. The ACLU of Pennsylvania encourages state and county correctional officials to work with advocates to incorporate these recommendations into a uniform set of guidelines for county correctional facilities to ensure incarcerated women throughout the state have equal access to the full range of reproductive health services.

recommendations

The rising rate of incarceration among women contributes to the skyrocketing costs to local communities. Alternatives have proven to be less expensive and more effective than incarceration. We urge policy-makers to explore “smart on crime” alternatives such as community treatment centers, increased use of probation and parole, and changes to traditional bail arrangements. As the majority of women are non-violent, first-time offenders, these alternatives could benefit women, their families, and our communities.

As outlined below, we are calling on county commissioners, wardens, and medical professionals to make improvements to the medical services provided to incarcerated women.

- **County commissioners** and **county prison boards** have the power to determine the medical services women receive through the contracts they make with medical providers and through their oversight of local jails.
- **Wardens** have a significant influence over all operations of their facilities and could be effective advocates in improving reproductive health care services.
- **Medical professionals** can provide guidance and expertise to wardens and commissioners.
- **Advocates** can press for changes based on our findings and their own experience with incarcerated women.

Routine Reproductive Health Care

- Women should receive pelvic exams, age-appropriate breast exams and mammography, instruction on breast self-exams, screening for STDs, and Pap smears as part of routine intake examinations.
- These services should be available annually for women with sentences over one year.
- Women should be screened for history of domestic violence, sexual assault, mental health problems, and substance abuse.

Access to Contraception

A variety of contraceptive methods should be available to women during their incarceration; they should be able to continue to take any hormonal contraception they were using before their admission to a correctional facility. Interrupting hormonal contraceptives can disrupt women's menstrual cycles as well as significantly increase the risk of pregnancy for women who were sexually active just before being admitted to jail and/or who plan to be sexually active soon after their release. Incarcerated women, once released into the community, are at particularly high levels of risk for unintended pregnancies.

- Educating women about contraceptives and family planning while in jail is an important point of contact since they are most likely receiving health care, mental health services, and are substance-free or becoming substance-free. When women are released from prison, they have many competing needs for food, shelter, and safety—conditions that often result in neglect of reproductive health care.
- Many women do not receive family planning services or have access to contraceptives in their communities, so these services should be available during their incarceration.
- Assessing each woman's need and desire for contraceptives as well as providing information about different contraceptive methods should be included in the reproductive health services available to women.

Emergency Contraception

Although emergency contraception (EC), which is sometimes referred to as “the morning after pill,” was not discussed in this study, its importance as a medical service needed by incarcerated women is clear. A study done in the San Francisco County Jail found that nearly a third of newly arrested women had recently had unprotected intercourse.¹⁰⁵ Having EC available at the jail could prevent many unintended pregnancies.

- EC should be available when needed for any incarcerated woman who has been sexually assaulted, or had unprotected sex, and wants to prevent pregnancy.

¹⁰⁵ Sufrin, C. B., Tulsy, J. P., Goldenson, J., Winter, K. S., & Cohan, D. L. (2009). Emergency contraception for newly arrested women: Evidence for an unrecognized public health opportunity. *Journal of Urban Health*. 87(2), 244-253.

Pregnancy Testing

- Health care staff at correctional facilities should screen all female inmates for pregnancy during intake.
- Women should be assessed for the likelihood of pregnancy and pregnancy tests should be provided to all women who may be pregnant based on their medical history.
- Pregnancy tests should also be available on request at any time for women during their incarceration.
- At the time of the pregnancy test, women should be advised by health care staff of the options available to them during their incarceration. This should include prenatal care, assistance for those who choose to carry their pregnancies to term, assistance with adoption, and access to abortion.

Drug Withdrawal

Women who enter jail pregnant and addicted to various drugs need special medical attention. While this study did not assess the policies in Pennsylvania jails regarding withdrawal from drugs or alcohol, it is crucial to address these unique needs. These policies should specifically address the provision of opiate replacement therapy because of the serious risk opiate withdrawal poses to a woman's pregnancy. Abrupt withdrawal from opiates, such as heroin, can cause miscarriage or early labor, endangering the health of the pregnant woman and her fetus.

- Counties should have policies establishing that appropriate services will be provided for the treatment of pregnant inmates with addictions.

Prenatal Care

Pennsylvania state law requires all correctional facilities to provide prenatal care to pregnant inmates. All correctional facilities should have policies and procedures in accordance with this law.

- These policies should include protocols for transporting women to prenatal appointments, specify the prenatal care provider, the frequency of prenatal visits, available diagnostic testing, special nutrition guidelines, recommended activity levels, special housing assignments, and safety concerns.
- Screen for high risk pregnancies and provide appropriate services.
- Women should be able to continue to see their community prenatal care provider, if possible.
- If an inmate is to be released before giving birth, the facility should make every effort to ensure the woman has access to prenatal care when she returns to the community, including transferring health records and assisting in enrollment in public assistance programs. These policies can provide a strong continuity in prenatal care for women.

Mental Health Care Following Miscarriage, Abortion, and Birth

Women who give birth, miscarry, or have an abortion may experience depression and adequate treatment should be provided.

- A mental health assessment should be provided to all women following a pregnancy, regardless of the outcome of the pregnancy.

Use of Restraints

Pennsylvania state law clearly prohibits the use of restraints on women during labor, delivery, and transport to the hospital or medical facility after the first trimester, and during periods of pregnancy-related distress. Any use of restraints due to security risks or other extraordinary circumstances must be reported annually to the public. All state prisons and county jails must comply with this law.

- County and state correctional facilities should amend their policies to reflect this recent change in the law.
- For inmates in the earlier stages of pregnancy, restraints should be avoided to the fullest extent possible, but if necessary, correctional officials must use the least restrictive means possible and restrain a woman's hands in front of her body, not behind her back.
- Medical professionals who serve incarcerated women either on-site or off-site should also be aware of the current law on the use of restraints.
- Restraints should be removed at the request of medical professionals during any type of medical appointments, unless there is a significant security risk.
- If medical professionals encounter violations of the law, we encourage them to report such incidents to the ACLU of PA.

Timely Transport for Labor and Delivery

In order to avoid endangering pregnant inmates and their fetuses and provide timely medical care, jails should consult OB/GYNs and professional medical associations about recommended protocol for treating inmates experiencing labor. These recommendations should be a part of institutional policy and correctional staff should be trained to recognize when a woman is in labor so that medical assistance can be sought immediately.

- Correctional facilities should have written guidelines for correctional staff regarding the transfer of pregnant women to the hospital for labor and delivery.
- Correctional personnel should be trained to recognize the signs of labor and have access to complete guidelines for contacting medical personnel who are trained in obstetrical care and are able to quickly arrange for transportation to a local hospital.

Testing, Treatment, and Prevention of STDs and HIV

Every correctional facility should have a protocol for testing inmates for STDs and HIV and provide immediate treatment for those who test positive.

- Testing should be available to all inmates at intake and at any time during their incarceration.
- Only medical professionals with experience treating STDs and/or HIV should treat inmates who test positive.
- Appropriate counseling should be provided and treatment plans discussed with the inmate.
- Inmates who are HIV positive or are currently treating another STD at the time of intake should be able to continue their current course of treatment and medications.
- All inmates should receive education about STD and HIV prevention.
- Though inmates in county jails are often released on short notice, every effort should be made to ensure women being treated for an STD or HIV have information about how to access treatment services and obtain medication once they are released. This may include assisting inmates to apply for public assistance, setting up appointments with community providers, and transferring inmate medical records.

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