Introduction

Although imprisonment restricts many individual freedoms, it does not completely deny individuals their constitutional rights. The right and ability of a woman to make decisions about her body and pregnancy has no correlation to criminal activity. Yet, the increasing number of incarcerated women in the United States face unique barriers to receiving reproductive and pregnancy-related healthcare behind bars.

Approximately six to 10 percent of women are already pregnant when they enter a prison or jail and women can become pregnant while incarcerated during private visits with their partners, home visits, while in work release programs, or as a result of sexual assault by staff. Studies also show that approximately 14 percent of girls are pregnant when they arrive at juvenile detention. An incarcerated pregnant woman still has the right to decide whether to have an abortion or continue her pregnancy. Understanding access to reproductive healthcare can ensure that policies advance reproductive health and rights and develop and maintain healthful motherhood and parenting. This brief provides an overview of issues surrounding access to abortion for incarcerated women and highlights recommendations and best practices.

Background on Incarcerated Women in the U.S.

In the United States, more than 200,000 women are currently behind bars in federal prison, state prison, or local jails. These women are more likely to be women of color, poor, unemployed, and undereducated. Nearly two-thirds of women in prison are mothers and 77 percent report providing most of the daily care for their child(ren) before incarceration.

Women often differ from their male counterparts as to why they are incarcerated. Poverty and addiction are frequent motivations to commit drug and property offenses; rarely do women commit violent crimes. Due to the nature of their crimes and because local jails operate as holding places for short sentences or as a detention place before and during a trial, there are usually more women in local jails than in state or federal prisons. The approximately 3,600 jails in the U.S. lack many of the programs available at state and federal prisons including education, work training, and health services.

Women prisoners are also more likely than male prisoners to struggle with substance abuse and mental illness and are likely to have histories of physical and sexual abuse. A reported 85 to 90 percent of female inmates have experienced domestic and sexual abuse and 73 percent have shown symptoms of mental health problems compared to 55 percent of male inmates. Furthermore, 59 percent of incarcerated women have chronic or communicable medical problems (including HIV, Hepatitis C, and other STIs) compared to 43 percent of men.
According to the Department of Justice in 2006, only 44 percent of pregnant women received a medical examination at jail intake and only 35 percent of those women received any type of pregnancy care including prenatal exercise, nutrition counseling, and appropriate medications and testing.\textsuperscript{12}

**Overview of Barriers to Abortion Access**

Incarcerated women have the same right to terminate a pregnancy as all women under *Roe v. Wade* and the decision lies with the incarcerated woman in consultation with a physician. However, according to the Guttmacher Institute, obtaining an abortion while incarcerated presents many challenges, such as facilities’ ad hoc responses to abortion requests and the logistics and challenges of organizing transportation and paying for the procedure.\textsuperscript{13}

In a nationwide survey conducted between October 2006 and March 2007, 3 percent of prison healthcare officials reported that their state specifically restricts women from obtaining an abortion.\textsuperscript{14} Sixty-eight percent of respondents said that inmates in their facilities could obtain “elective” abortions and 88 percent of this group indicated that their facility provides transportation, but only 54 percent said they help arrange appointments.\textsuperscript{15} These varying answers do not reflect state laws, but internal decision-making.

For example, the Missouri Department of Corrections specifically prohibits the transportation of inmates off state prison grounds to obtain elective abortions.\textsuperscript{16} Nationwide, many facilities still do not permit inmates to obtain an abortion until she receives a court order authorizing either a temporary release (called a “furlough”) or transport to and from the facility.\textsuperscript{17}

Paying for the procedure presents another barrier for incarcerated women. The 1976 Hyde Amendment restricts funding abortions for women in federal prisons, and many state prisons and local jails also refuse to fund abortions.\textsuperscript{18} When a federal inmate’s pregnancy is deemed “life-threatening” or results from rape, the Federal Bureau of Prisons pays for transportation, the appointment, and security outside a federal facility. At the same time, the Bureau also has a “conscience clause”, which allows for staff to opt out of participating in abortion-related tasks.\textsuperscript{19}

---

**SEXUAL HEALTH CARE IN PRISONS**

Women require a full range of healthcare when incarcerated, which they do not always receive. Several legal and healthcare bodies released national standards for sexual and pregnancy-related care in prison, which include:

- Prenatal medical exams
- HIV testing
- Managing high-risk pregnancies
- Advice on safe pregnancies
- Counseling and assistance appropriate to intentions, whether a woman wants to continue to term and then keep her child, place the baby for adoption, or have an abortion.
- Dietary supplements for pregnant and breastfeeding inmates
- Delivery and abortion services conducted in a licensed hospital
- Provision of postpartum contraceptive methods while incarcerated
- Training of healthcare staff in jails and prisons for labor and delivery in case of emergency
- Arrangements that allow mother and infant to spend time together after birth
- Contact and access to newborns after delivery

*Sources: American Civil Liberties Union, American Congress of Obstetricians and Gynecologists, American Public Health Association*
Only Wisconsin and Minnesota have written policies on paying for abortions that result from rape. However, women may be hesitant to report sexual assault that leads to pregnancy, because if prison personnel believe a woman consented to sex while incarcerated, she may face further punishment.

For non-life threatening abortions, although women still have the right to obtain the procedure, facilities may force women to pay for the costs of transportation and the guards’ time to take them to the clinic. Without government funding, women must rely on their own resources and donations. To put it into perspective, an average prison wage is between 12 cents and $1.15 an hour and abortions cost between $300 and $1000 depending on gestation and method.

Later abortions may require more than one appointment away from the correctional facility. This financial burden is often impossible, especially when facilities are located in rural areas or if the nearest hospital is religiously affiliated.

**BEST PRACTICE FOR ABORTION PROVIDERS**

- Never ask a patient about her crime(s)
- Never assume that a patient has had pregnancy options explained to her at intake; confirm her plan for an abortion
- Be prepared to hear about reproductive injustices and provide referrals to appropriate agencies and authorities
- Discuss discharge instructions and signs for emergency care with the accompanying officials (Source: The Abortion Care Network)

**Policy Reforms**

Even though incarcerated women have the right to obtain an abortion, policies and practices differ depending on the correctional facility, the authorities in charge, and the resources of pregnant women in their custody.

In the 1976 case *Estelle v. Gamble*, the Supreme Court determined that correctional authorities must treat inmates’ “serious medical needs.” To not do so would violate the Eighth Amendment prohibition on “cruel and unusual punishment.” The second Supreme Court case to influence incarcerated women’s access to abortion, *Turner v. Safley*, ruled in 1987 that facilities can restrict fundamental constitutional rights only if the regulation is “reasonably related to penological interests”, such as deterring crime and maintaining institutional security. The federal district court decision *Monmouth County Correctional Institution Inmates v. Lanzaro* applied the finding in *Estelle v. Gamble* and decided that incarcerated women face “cruel and unusual” bureaucratic barriers to abortion that no other prisoners face when seeking medical care. Before this 1987 ruling, correctional...
facilities considered all abortion requests while incarcerated an “elective” procedure. Regardless of circumstance, women had to apply for and receive a court order to be temporarily released to a healthcare facility, often delaying the procedure to the point where an abortion was no longer an affordable or medical option. The Monmouth County decision also set the precedent that abortions, like all pregnancy related care, are a serious medical need and if a woman has no money and cannot raise it from relatives, grassroots organizations, or access federal abortion funds then the facility should subsidize her request.26 Although this ruling only affects Delaware, New Jersey, Pennsylvania, and the Virgin Islands, federal courts in other states have cited it as a precedent.

In 2005, a Missouri state prison inmate requested an abortion at approximately nine weeks’ gestation, but because the Missouri DOC did not provide transportation for an “elective” abortion, her request was denied. After two months of appeals and an emergency order, the DOC allowed the procedure at the prisoner’s 18th week of pregnancy, resulting in a more costly and time-consuming procedure. The inmate’s class-action lawsuit, Roe vs. Crawford, proceeded on behalf of all incarcerated women in Missouri seeking abortions. The 2008 circuit court ruling found the Missouri policy banning transport to abortion facilities unconstitutional.27

As these rulings iterate, improving women’s overall healthcare in correctional settings should include increasing access to abortion services when requested. Without written, codified policies in place at the state and federal level, abortion access for incarcerated women remains arbitrary and difficult to coordinate. Health systems within correctional institutions should strive to consistently provide quality abortion access and care that adhere to policy and best practice (see sidebars).28

Policies Affecting Incarcerated Pregnant Women in Illinois

Illinois has particular policies and programs relating to pregnancy and abortion for incarcerated women worth mentioning and emulating.

More than 16,000 women go to jail annually in Cook County alone. Eighty-two percent of these inmates are mothers and 80 percent are non-violent offenders.29

Initial & Outgoing Care
Illinois laws state that within seven working days after admission, all incarcerated women must have a physical exam by a physician or nurse and be immunized. At this time, all prisoners also must be offered testing and counseling for HIV and again prior to release, discharge, or parole.30

Shackling Banned
Many jails and prisons use restraints (leg irons, waist chains, handcuffs) on sick and pregnant women, regardless of her history of violence or escape, when traveling to medical appointments, court appearances, and during delivery.31 Restraints make it difficult for doctors to adequately assess the condition of the mother and fetus and to conduct prompt medical care when necessary. Restraints also make labor and delivery more painful. In 2008, the Federal Bureau of Prisons ended the standardized practice of shackling pregnant inmates in federal correctional facilities, but state facilities vary their shackling standards and practices.32 Illinois is one state that prohibits the shackling of inmates who are pregnant, during delivery, and during postpartum recovery.33

Prison Nurseries
If an incarcerated woman chooses to continue her pregnancy to term, most babies are removed within 24 hours of birth.34 Newborns are usually given to grandmothers or other family, or placed in state care if no suitable family member is found. Some state prisons and local jails, including the Cook County Jail, have pilot programs that allow for certain women who enter prison pregnant to care for their newborns in a prison nursery. The Illinois program allows 15 qualified inmates to keep their babies for up to 24 months.35

These programs boast benefits for both mothers and their children, including lower recidivism rates, a centralized support system, and the chance for women to breastfeed and connect to a baby.36
Chicago Legal Aid for Incarcerated Mothers (CLAIM) Illinois advocates for creating additional policies to help incarcerated mothers support and care for their children after release. CLAIM proposes that with strong community networks and social services, reunited families can better access education, healthcare, and violence prevention. Along with a fair allocation of resources, the recidivism rate declines.37

Abortion
According to the Illinois Department of Corrections (DOC), women incarcerated in state facilities have the right to terminate a pregnancy.38 Illinois encourages early dialogue between the offender and counseling staff in order for the facility to work in a timely manner and allow for flexible transport, appropriate guarding, and a safe procedure.

Furthermore, the DOC policy states that:

1. “Offenders contemplating an abortion shall be provided with information and counseling concerning the nature of, the consequences of, and any risks associated with the procedure and available alternatives.
2. Offenders shall be granted a furlough for the purpose of obtaining an abortion. Offenders shall be permitted to accept funds for an abortion from local community charities or other sources.”39

As per the state Medicaid program, Illinois provides funding for abortions only to save an incarcerated woman’s life. Furthermore, state prisoners who are classified as medium or maximum-security must be eligible for release on furlough. Essentially, in order to go off-site for an abortion procedure, she must be considered a minimum-security prisoner trusted to return after her appointment.40

Conclusions
Policies at both the state and federal level need reform in order to address the gendered needs of women in prison and current protections must be better enforced. Women in prison require the same level of sexual health care and reproductive freedom as civilians. Meeting their needs so they can have healthy and safe pregnancies, abortions, and future families is the key to ensuring their human rights during incarceration.

The Section of Family Planning & Contraceptive Research thanks The Irving Harris Foundation for generously supporting our policy program. Special thanks to Sara Newton, the author of this brief.

References
17 Kasdan, 2009.
18 Law Students for Reproductive Justice, 2011.
22 Law Students for Reproductive Justice, 2011.
23 The Guttmacher Institute, 2009.
27 Sufrin et al., 2009.
31 Law Students for Reproductive Justice, 2011.
37 CLAIM, 2014.
40 Roth, 2004.