

REPRODUCTIVE LOCKDOWN

**An Examination of Montana Detention
Centers and the Treatment of Pregnant
Prisoners**

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Executive Summary

The percentage of incarcerated women in Montana is twice the national average. In 2011, over 4,000 women were booked into county jails in Montana. The majority of Montana's female prisoners are non-violent offenders of reproductive age. Despite an increasing number of pregnant prisoners staying for longer periods of time in county jails, many jails in Montana provide inadequate medical treatment to pregnant prisoners, and continue to engage in universally rejected practices such as shackling female prisoners during labor and delivery. Jails in Montana need to adopt and implement policies providing adequate medical care to pregnant prisoners in order to appropriately meet their reproductive health needs.

Incarceration rates in the United States are rapidly increasing, triggering an unprecedented influx of female prisoners.¹ Women are the fastest growing prisoner population, with “the number of women serving sentences of more than a year [growing] by 757 percent between 1977 and 2004—nearly twice the 388 percent increase in the male prison population.”² Notably, Montana's female incarceration figures outrank national statistics. In 2011, 12.7 percent of the total U.S. jail population was female, compared to 24 percent of Montana's county jail population.³ Montana's female prisoner population remains one of the largest in the country, achieving the fastest growth rate in the nation since 1977 and boasting a female imprisonment rate (102 per 100,000) ranked fourth nationwide.⁴ Research indicates that a vast majority of female prisoners are impoverished, uneducated, of a minority racial and ethnic background, and predominantly incarcerated for nonviolent crimes.⁵

“...the vast majority of incarcerated individuals will eventually return to their home communities. Their health issues and those of their children are irrefutably our health issues. Therefore, it is unsafe from a public health standpoint to exclude this population from the full range of community health services and social supports or from health policy deliberations.”

Leslie Acoca, “Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America,” *Crime and Delinquency*, 1998.

¹ Patricia O'Brien & Diane S. Young, “Challenges for Formerly Incarcerated Women: A Holistic Approach to Assessment,” *Practitioner Assessment and Intervention* 87, no.3 (2006): 359.

² Judith Greene, Kevin Pranis, & Natasha Frost, “HARD HIT: The Growth in the Imprisonment of Women, 1977-2004,” *Institute on Women and Criminal Justice* (2006): 9

³ Montana Board of Crime Control, “Detention Data Information System Report,” *Montana Board of Crime Control Statistical Analysis Center* (2010-2011): 10.

⁴ Judith Greene et al., “HARD HIT: The Growth in the Imprisonment of Women, 1977-2004,” 17.

⁵ Kristine Siefert & Sheryl Pimlott, “Improving Pregnancy Outcome during Imprisonment: A Model Residential Care Program,” *Social Work* 2, no.46 (2001): 125-126.

Approximately 6 percent of women are pregnant when they enter detention and prison facilities. With growing numbers of female prisoners comes an increased responsibility to address their medical and reproductive health care needs. Traditionally detention and correctional facilities were designed to care for males, and, thus, are often unequipped to address the growing number of female prisoners and their medical needs regarding reproductive health. Detention facilities have a unique ability to provide medically necessary treatment and care to typically underserved populations. Counties have a duty to rethink the role of their detention centers as a place to identify marginalized women who are pregnant, and ensure that they are treated in a manner that best serves their individual medical needs, the needs of their child, and public health and safety.

Montana has experienced firsthand the complications that arise when detention facilities are not prepared to care for women in their child-bearing years. The ACLU of Montana receives numerous complaints regarding the medical treatment of female prisoners in county detention centers. After confirming multiple stories of inadequate treatment of pregnant prisoners, we decided to take a closer look at county detention center policies regarding reproductive health and pregnancy in Montana. We sought public records regarding reproductive health policies from counties across Montana, and analyzed responses from 31 county detention centers.

This report analyzes county detention center policies and procedures that relate to women's health and access to reproductive services. Our findings consist of analysis of existing policies based on established legal standards and medical recommendations. Lastly, this report concludes with general policy recommendations to county detention center administrators in order to improve the reproductive care provided to women in Montana county detention centers.

Findings and discussion

Prenatal care: According to national statistics, roughly 6 percent of women are pregnant when they enter jail. Additionally, many women are at risk of becoming pregnant while detained as a result of sexual assault or consensual sexual relations. Only 11 detention centers in Montana (35 percent) provided policies specifically pertaining to prenatal care for pregnant prisoners at the detention center. An additional nine detention centers (29 percent) responded that informal practices existed in order to provide prenatal care and other services to pregnant prisoners. Medical research shows that lack of prenatal care during pregnancy can result in poor birth outcomes.

We asked for information about the frequency of prenatal visits and the availability of special nutritional support for pregnant prisoners. Just three detention centers (10 percent) forwarded us policies that clearly defined the frequency of medical visits for pregnant prisoners. Only eight detention centers (26 percent) provided

copies of policies that expressly discuss the availability of special nutritional support for pregnant prisoners.

Postpartum care: We requested information on what post-delivery services are provided and where the services are provided. Only nine detention centers (29 percent) provided policies that relate to the provision of postpartum care to prisoners. However, most of the policies we received did not clearly define what post-delivery services were provided or the location they were provided.

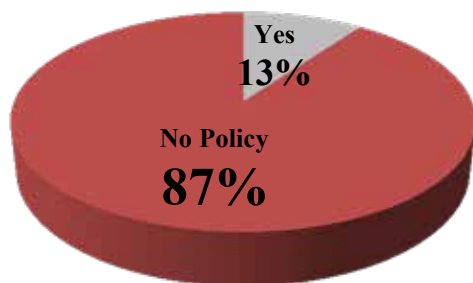
Restraints: While several states have passed legislation restricting or prohibiting the use of restraints on pregnant prisoners, Montana law has no such provisions. Medical research has shown that restraining prisoners during labor and delivery can result in a higher propensity for injury and poor birth outcomes. The majority of detention centers do not have explicit guidelines in restraint policies that apply specifically to pregnant prisoners.

Labor and delivery: Specific policies regarding labor and delivery can help prevent unintended births in facilities that are ill-equipped to handle delivery procedures. While nearly all of the facilities that responded to our inquiries housed women, 65 percent did not provide policies guiding detention center administrators or staff in recognizing the necessity of prenatal care, including medical attention for labor and delivery. The policies provided generally did not outline detailed instructions or procedures.

A number of detention centers responded that they have unwritten delivery procedures. However, a mere three (10 percent) responded with policies that identify a precise location for delivery, and only 1 detention center (3 percent) provided a written policy that pregnant prisoners may be furloughed for delivery. A few detention centers advised they have unwritten practices regarding requests for furloughs or other placement options for pregnant prisoners.

Mental health care following birth, miscarriage, and abortion: Pregnancy-specific outcomes require specialized health responses. Only nine detention centers (29 percent) provided policies that provide information on postpartum services to women.

Does the jail have policies regarding abortion services?



Abortion: The Supreme Court has consistently upheld a woman's right to obtain an abortion. Of the detention centers that responded to our requests for information, 27 (87 percent) had no specific policies to facilitate access to abortion services.

Paying for abortion: County detention centers are responsible for pregnant prisoners' medical

costs unless a judge has made a finding that she has the ability to pay. Despite this, the majority of detention centers do not have policies that specifically address payment for abortions.

Pregnancy tracking and pregnancy outcome reporting: National detention standards require facilities to report the number of pregnant prisoners housed in their facilities and their pregnancy outcomes. In spite of this, the majority of Montana county detention administrators could not produce exact figures for the number of pregnant prisoners they housed annually. This lack of data collection and reporting reduces accountability to create, refine and implement effective policies.

Conclusion

Overall, we found that the majority of Montana's county detention policies do not adequately address the medical and reproductive health care needs of female prisoners. As the population of women in detention centers and prisons continues to increase, the need to provide constitutionally required adequate medical treatment to address prisoners' reproductive health care needs becomes more critically important.

Montana Stories

Labor pains: No place for a baby

In February 2012, Brooklyn Rose Marie Reyna greeted the world for the first time from a dirty booking room floor at the Yellowstone County Detention Facility. Her mother, 27-year-old Angela Robinson, grimaced as her newborn daughter was swaddled in dirty towels typically “...used for cleaning the floor and human excrement.”⁶ Robinson held her baby while surrounded by “...walls stained with bodily fluids and rotten food...” only overshadowed by the “...polluted sewer grate and drain in the middle of the floor. The cell [gave] off a rotten stench.”⁷ According to the Yellowstone County Sheriff’s Captain, this was the first live birth the jail had seen in 20 years.⁸

Robinson’s delivery should have come to no surprise to jail staff and medical attendees. A fellow prisoner observed the frequency with which the pregnancy was brought to the attention of guards and medical professionals, from the moment a six-month pregnant Robinson informed the booking guards of her “high-risk” classification, to the three follow-up checkups with medical staff, to the on-site recommendations jail staff received at the community hospital.⁹ Despite these warnings, in the early morning hours leading up to the birth, Robinson was locked down in her cell, fighting hard labor without medical assistance.

Rather than being given the comfort and security that every woman expects while in labor, Robinson was subject to neglect and humiliation. For hours she and fellow prisoners counted contractions and unsuccessfully sought jail staff assistance.¹⁰ Despite Robinson’s pleas for assistance, she was frequently told to “sit down” and that she, already a mother of two, was faking labor.¹¹ After hours of tearful agony and indifference on the part of the night nurse, Robinson delivered her daughter with the help of two medically untrained female guards on a recently sanitized pad on the booking room floor.¹² The nurse arrived shortly after to call an ambulance for transport, and Robinson was soon forced to separate from her newborn daughter.

⁶ Angela Robinson, letter to the American Civil Liberties Union of Montana, February 22, 2012.

⁷ Shannon Grime, letter to the American Civil Liberties Union of Montana, February 18, 2012.

⁸ Ed Kemmick, “Woman has baby at county jail,” *Billings Gazette*, Feb, 17, 2012, at C1.

⁹ Tanya Nava, letter to the American Civil Liberties Union of Montana, February 18, 2012, and Angela Robinson, letter to the American Civil Liberties Union of Montana, February 22, 2012.

¹⁰ Sarah Johnson, letter to the American Civil Liberties Union of Montana, February 20, 2012.

¹¹ Angela Robinson, letter to the American Civil Liberties Union of Montana, February 22, 2012.

¹² Morgan Anderson, letter to the American Civil Liberties Union of Montana, February 20, 2012.

Abortion delayed is justice denied

In May 2012, Jane Doe¹³ was booked into a Montana county detention center for a probation violation. Upon arrival, Jane informed the facility's medical staff that she was approximately eight weeks pregnant and wished to terminate her pregnancy as soon as possible. The detention center administrator agreed to schedule an appointment for Jane with an obstetrician, but when she finally arrived at the appointment, Jane was told that the doctor did not perform abortions, and he suggested that she speak to Planned Parenthood. After returning to the detention center, Jane renewed her request to terminate her pregnancy, but before a new appointment could be made she was transferred to another county facility.

Upon reaching the new facility, this time in a much smaller community, Jane made yet another request to terminate her pregnancy, and was told the staff would find her a doctor to perform the procedure. By this time, Jane was 10 weeks pregnant and becoming quite nervous about the prospect of obtaining an abortion. A month went by, and still Jane had not seen a doctor. Desperate and anxious, Jane reached out through her public defender to the ACLU of Montana.

By this time, Jane was 15 weeks pregnant, and what could have been a simple procedure had now become much more difficult. Jane faced a dwindling time frame in which to legally complete the procedure. Montana has only one abortion clinic that provides abortions after the first trimester. Seven weeks after her initial requests, and only after involvement from Planned Parenthood and American Civil Liberties Union of Montana advocates, Jane was finally transported to the only facility in the state that would terminate a pregnancy now past the first trimester.

Jane experienced significant delays that interfered with her constitutionally protected right to terminate her pregnancy. These delays represent significant constitutional issues, and jeopardized Jane's right to receive medical services in a timely fashion.

Shackling during labor – unnecessary and degrading

In October 2008, Jane Doe¹⁴ delivered her son under circumstances that no woman should be forced to endure. The degrading and inhumane experience began after her water broke while she was incarcerated, and as she was transferred from a detention center in Western Montana to the local hospital. Jane Doe was admitted to the hospital without any problems. However, once she was settled into her labor and delivery room two detention officers unexpectedly entered her room with two

¹³ This prisoner preferred to remain anonymous.

¹⁴ This prisoner preferred to remain anonymous.

leg irons. The detention officers proceeded to unnecessarily chain her left foot to her hospital bed.

Even though Jane Doe received an epidural, which paralyzed her from the waist-down, and a nurse questioned the detention officers about the need for restraints, the officers left Jane Doe shackled throughout her entire delivery because the officers stated they were following procedure. Jane Doe lacked the ability to even stand up to use the restroom, let alone walk out of her hospital room. Jane Doe delivered her son alone, with no family allowed in her room, and shackled to her hospital bed.

Once in her recovery room, Jane Doe was allowed to have the restraints removed long enough to be transferred to another bed. She stayed at the hospital shackled to her bed for three days. Her first night back at the detention center without her baby, she cried herself to sleep.

Background

Demographics of Montana's female prisoners

Women represent a rapidly growing prisoner population in Montana's county detention centers.¹⁵ In 2010 and 2011, women represented 24 percent of Montana's prisoner population in the majority of detention centers.¹⁶ This percentage is significantly higher than the national 12 percent average. Of the women incarcerated in Montana, the vast majority are of reproductive age.¹⁷

This is in keeping with the national trend that "given the rapidly increasing numbers of incarcerated women and the fact that most are young and in their childbearing years, pregnant prisoners are an increasingly common phenomenon."¹⁸ These numbers highlight how essential adequate reproductive health care is for the large and increasing number of female prisoners in Montana jails.

In Montana, most female prisoners are held in county detention centers as pre-trial detainees prior to trial and sentencing. As pre-trial detainees, these women retain a presumption of innocence. While the majority of female prisoners are detained in county jails for short periods of time, many women are spending an

"Incarceration is an opportunity to provide reproductive health services to a large population of high-risk women who might not otherwise seek health services."

Jennifer Clarke, et.al, "Reproductive Health Care and Family Planning Needs Among Incarcerated Women," *American Journal of Public Health*, 2006.

increasing amount of time in detention centers. The average time prisoners who cannot post bond are held pending trial and sentencing varies between 3 and 9 months (leaving those pregnant at real risk of delivering while incarcerated).¹⁹ Despite this, in Montana and throughout the U.S., women are housed in detention facilities that lack appropriate resources to address their medical needs.²⁰

¹⁵ Montana Board of Crime Control, "Detention Data Information System Report," *Montana Board of Crime Control Statistical Analysis Center* (2010-2011): 15. Note: Data was gathered from 24 facilities in the following counties: Beaverhead, Big Horn, Broadwater, Custer, Deer Lodge, Fallon, Fergus, Flathead, Gallatin, Jefferson, Lake, Lewis and Clark, Lincoln, Missoula, Musselshell, Park, Livingston, Phillips, Ravalli, Colstrip, Sanders, Butte-Silver Bow, Valley, and Yellowstone.

¹⁶ *Id.*

¹⁷ See e.g., Montana Board of Crime Control, "Detention Data Information System Report," 20.

¹⁸ Leslie Acoca, "Defusing the Time Bomb: Understanding and Meeting the Growing Health Care Needs of Incarcerated Women in America," *Crime & Delinquency* 44, no.1 (1998): 55.

¹⁹ This time period is the estimate provided by a number of jail administrators state wide during interviews in 2013.

²⁰ Amnesty International, "Not Part of my Sentence": Violations of the Human Rights of Women in Custody," *United States of America: Rights for All* (March 1999): 5-6.

Methodology

Counties in Montana.....	56
Counties with a jail.....	36
Jails that house women.....	36

Montana has 56 counties, but 20 counties either do not have a detention center or have only a 72 hour or less hold facility. Of the 36 counties with operational jails, all house female prisoners. Our report examines the 31 county jails that house women and responded to our requests for information.

We obtained information about Montana’s county detention policies by sending requests to facility operators under Montana’s Right to Know Law. Recently closed and temporary-hold facilities were excluded from these initial requests. These initial requests sought information about various aspects of reproductive health care

policies and practices, and are included as Table 1. Overall, we received policies from 31 facilities, giving us a final response rate of 86 percent.

Policy vs. practice

This report analyzes county detention policies relating to reproductive health care services. Although these policies establish guidelines and minimum health care standards, each policy is subjected to the interpretation of administrators, medical personnel, and detention staff. As such, while official policy may mandate prenatal care or abortion access, those rights may be routinely denied because of one person’s decision. Additionally, many of these policies are vague, and allow for discretionary evaluation and actions. Since prisoners rely on the decisions of detention and medical staff to determine appropriate medical attention, women can be denied abortions, their pregnancies can go undetected, and they may be left without appropriate counseling to address the separation from their child following a live birth, miscarriage, or abortion. As the stories above indicate, county detention centers in Montana have denied female prisoners the medical care to which they are constitutionally entitled. These stories are not isolated incidents and are guaranteed to continue if appropriate policies are not put in place in Montana’s county jails.

Legal Standards

The right to medical care – pregnancy is a serious medical need

“An inmate in labor has a serious medical need.” *Webb v. Jessamine County Fiscal*, 802 F.Supp.2d 870, 878 (E.D. Kentucky 2011). As such, pregnant prisoners can expect to receive the same level of medical care one can reasonably expect in the community. “Wherever a woman labors and ultimately delivers a baby, be it in a hospital, a birth center, her home, a jail cell, or anywhere else, most people expect and anticipate observation, monitoring, and care of the laboring woman and her

“Any lay person would recognize the obvious need a woman in labor has for a doctor’s attention.”

Clifton v. Eubank, 2006 WL 3746694 (D. Colo., Dec. 18, 2006)

baby in some capacity by an individual trained to assist during a birth.” *Id.* Adequate medical treatment of a pregnant prisoner includes the availability of pregnancy testing, routine and high-risk prenatal care, special medical treatment for chemically addicted pregnant prisoners, supplemental nutrition and vitamins, and postpartum care.

Both national and Montana detention standards require detention centers to provide adequate medical treatment to pregnant prisoners. For example, Montana Detention Standard 11.22 states:

If female inmates are housed, access to obstetrical services by a qualified provider, [sic] Provisions of pregnancy management include the following:

- Pregnancy testing
- Routine and high risk prenatal care
- Management of chemically addicted pregnant inmates
- Appropriate nutrition
- Postpartum follow up

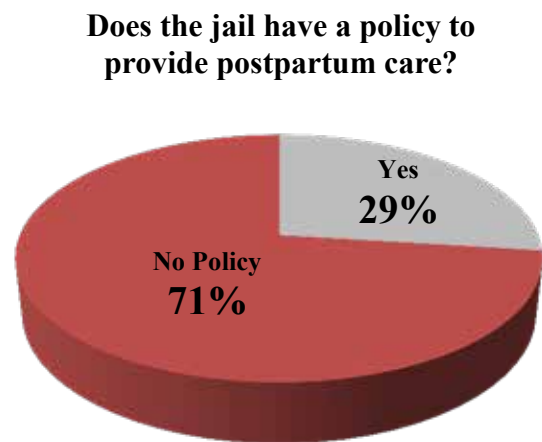
The American Correctional Association’s Core Jail Standards also require “prenatal, peripartum, and postpartum care” by a qualified provider.

In addition, the National Commission on Correctional Health Care’s 2008 Standards for Services in Jails require “[p]regnant inmates receive timely and appropriate prenatal care, specialized obstetrical services when indicated, and postpartum care.” These standards explain:

1. Prenatal care includes:
 - a. Medical examinations,
 - b. Laboratory and diagnostic tests (including offering HIV testing and prophylaxis when indicated), and

- c. Advice on all appropriate levels of activity, safety precautions, and nutritional guidance and counseling.
2. A list of specialized obstetrical services is maintained.
3. There is a written agreement with a community facility for delivery.
4. There is documentation of appropriate postpartum care.
5. A list is kept of all pregnancies and their outcomes.
6. All aspects of the standard are addressed by written policy and defined procedures.

Prenatal care is essential during pregnancy to help ensure that the health of mother and baby are maintained. Female prisoners tend to represent the most disadvantaged demographic, likely facing higher incidence of drug and alcohol abuse, domestic violence, and previous lack of consistent medical attention due to poverty.²¹ Women who are not given access to routine prenatal care are more likely to experience poor birth outcomes including low birth weight, pregnancy complications, and maternal or infant death.²² Routine prenatal care includes frequent diagnostic testing, nutritional guidance and supplemental nutrition, regular gynecological check-ups, health education, and physical activity recommendations for pregnant women.²³ Without prenatal care, county detention centers effectively deny women the ability to carry their pregnancies safely to term.



Postnatal care is also crucial. Many women have significant physical or psychological needs following pregnancy and require additional support.²⁴ The psychological and physical stress placed on pregnant prisoners is greater than that placed on women outside jail as incarcerated women have heightened stressors regarding separation from their child, custody rights, and a limitation on familial and community support.²⁵

²¹ Brenda J. Van Den Bergh, et. al., "Imprisonment and Women's Health: Concerns about Gender Sensitivity, Human Rights and Public Health," *World Health Organization*, 2011.

²² U.S. Department of Health and Human Services, "Maternal and Child Health Bureau" (<http://mchb.hrsa.gov/programs/womeninfants/prenatal.html>).

²³ March of Dimes, Pregnancy (<http://www.marchofdimes.com/pregnancy/pregnancy.html>).

²⁴ March of Dimes, "Postpartum Feelings," 2013, <http://www.marchofdimes.com/pregnancy/emotional-changes-after-delivery.aspx>.

²⁵ K.C. Hutchingson, Moore, G.A., Propper, C.B., & Mariaskin, A. "Incarcerated Women's Psychological Functioning During Pregnancy" *Psychology of Women Quarterly*, 32 (2008) 440-53.

Prisoners' constitutional right to access abortion

Access to abortion service can prove to be difficult for pregnant prisoners. The Supreme Court has held that women have a constitutional right to abortion. *Roe v. Wade*, 410 U.S. 113 (1977). Women retain this right when incarcerated.

As a practical reality, incarcerated women's ability to exercise this established right is contingent on detention staff recognizing it and facilitating access to abortion services. For this reason, counties are legally obligated to provide timely and medically adequate abortion services for prisoners who desire to terminate their pregnancies, and to pay for the abortion. As explained by a U.S. Court of Appeals, a female prisoner's ability to exercise the constitutional right to abortion access requires medical care, which counties incarcerating her are obligated to provide, regardless of the prisoner's ability to pay. *See Monmouth County Correctional Institution Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987).

Women also have the right to counseling and assistance regarding their available options. The National Commission on Correctional Health Care requires that "[p]regnant inmates are given comprehensive counseling and assistance in accordance with their express desires regarding their pregnancy, whether they elect to keep the child, use adoption services, or have an abortion." The Commission explains "[t]his standard intends that pregnant inmates receive services as they would in the community." *Id.*

"It is evident that a woman exercising her fundamental right to choose to terminate her pregnancy requires medical care to effectuate that choice. Denial of the required care will likely result in tangible harm to the inmate who wishes to terminate her pregnancy."

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

Shackling pregnant prisoners during transport and labor and delivery is cruel and unusual

Shackling pregnant women is abhorred nationally and internationally. Despite this, several states shackle pregnant prisoners during transport to and from the hospital and during doctor visits and labor and delivery. This increases a woman's risk of falling and being unable to protect herself or her baby by breaking the fall, as well as increasing the risk of blood clots, and impeding a physician's ability to act quickly.²⁶

²⁶ American Congress of Obstetricians and Gynecologists, Letter to state senators regarding California legislation prohibiting shackling, June 20, 2013, available at <http://www.acog.org/~media/Departments/Government%20Relations%20and%20Outreach/20130620ShacklingLtr.pdf?dmc=1&ts=20131213T1328038419>

Female prisoners are commonly shackled to the hospital bed before, during and after labor and delivery. Often female prisoners are shackled despite receiving an epidural anesthetic, which renders them unable to move from the waist down for several hours. Even without an epidural, the pain of labor renders women unable to move, let alone flee.²⁷ Shackling in such cases is not only degrading and humiliating, but wholly unnecessary.

Medical organizations, including the American College of Obstetricians and Gynecologists, the American Public Health Association and the American Medical Association have publicly decried the use of shackling as potentially dangerous, demeaning and unnecessary.²⁸ International organizations, including the United Nations Human Rights Committee, the U.N. Special Rapporteur on Violence Against Women, and Amnesty International, have expressed concern about shackling women during child birth.²⁹

“The use of shackles to restrain a pregnant woman during the birthing process is a barbaric practice that needlessly inflicts excruciating pain and humiliation.”

Dana Sussman, 2009.

Federal agencies, including the Federal Bureau of Prisons, the U.S. Marshals and the Immigration and Customs Enforcement Agency have banned the use of restraints during labor, delivery or post-delivery without reasonable grounds to suspect immediate and serious harm to the prisoner or others or an established risk of flight.³⁰ Sixteen states have restricted the use of restraints as well.³¹

²⁷ See American College of Obstetricians and Gynecologists, Letter in Opposition to Shackling (June 12, 2007), available at <http://www.acog.org/departments/underserved/20070612saarLTD.pdf>.

²⁸ See note 22; American Public Health Association, Task Force on Correctional Health Care Standards, Standards for Health Services in Correctional Institutions 108 (2003); American Medical Association Resolution 203 Shackling of Pregnant Women in Labor, available at www.ama-assn.org/assets/meeting/2010a/a10-ref-comm-b.pdf.

²⁹ See Concluding Observations of the Human Rights Committee: United States of America, 87th Sess., ¶33, U.N. Doc. DDPR/C/USA/CO/3/Rev. 1; Report of the Mission to the United States of America on the Issue of Violence Against Women in State and Federal Prisons, the Fifty-fifth session, Item 12(a) of the provisional agenda, E/CN.4/1999/Add.2, Jan. 4, 1999, ¶¶53-54; Amnesty International, United States of America, AMR 51/061/2006.

³⁰ See Federal Bureau of Prisons, Program Statement 5538.05 (Oct. 6, 2008) (“An inmate who is in labor, delivering her baby, or is in post-delivery recuperation, or who is being transported or housed in an outside medical facility for the purpose of treating labor symptoms, delivering her baby, or post-delivery recuperation, should not be placed in restraints unless there are reasonable grounds to believe the inmate presents an immediate, serious threat of hurting herself, staff or others, or there are reasonable grounds to believe the inmate presents an immediate and credible risk of escape that cannot be reasonably contained through other methods”); United States Marshal Service, Policy 9.1 (Restraining Devices), §D(3) (“Restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, delivering her baby, or is in immediate post-delivery recuperation”); Performance-Based Nat’l Detention Standards, 4.4 (“restraints are never permitted on women who are in active labor or delivery”).

Courts have held that pregnant prisoners cannot be shackled leading up to, during, or subsequent to labor and delivery unless she possesses an established flight risk, and found that shackling during labor and delivery violate the Eighth Amendment's prohibition on cruel and unusual punishment.³² The Sixth Circuit succinctly held “shackling of pregnant detainees while in labor offends contemporary standards of human decency such that the practice violates the Eighth Amendment’s prohibition against the ‘unnecessary and wanton infliction of pain’ – i.e., it poses a risk of serious harm.” *Villegas v. Metropolitan Government of Nashville*, 709 F.3d 563 (6th Cir. 2013). The Court pointed out that “[t]he universal consensus from the courts to have addressed this issue as well as the chorus of prominent organizations condemning the practice demonstrates that, without any extenuating circumstances, shackling women during labor runs afoul of the protections of the Eighth Amendment.” *Id.*

³¹ See Arizona (2012 Ariz. Legis. Serv. Ch. 43 (S.B. 1184)), California (Cal. Penal Code § 3423), Colorado (Colo. Rev. Stat. § 17-1-113.7), Florida (2012 Fla. Sess. Law Serv. Ch. 2012-41 (S.B. 524)), Hawaii (Haw. Rev. Stat. § 353-122), Idaho (Idaho Code § 20-902), Illinois (55 Ill. Comp. Stat. 5/3-15003.6), Louisiana (2012 La. Sess. Law Serv. Act 761 (S.B. 256)), Nevada (Nev. Rev. Stat. § 209.376), New Mexico (N.M. Stat. § 33-1-4.2), New York (N.Y. Correct. Law § 611), Pennsylvania (61 Pa. Const. Stat. § 5905), Rhode Island (R.I. Gen. Laws. § 42-56.3-3), Texas (Tex. Gov’t Code. Ann. § 501.066), Vermont (Vt. Stat. tit. 28, § 801a), Washington (Wash. Rev. Code § 72.09.651), and West Virginia (W. Va. Code § 31-20-30a). By Policy: Delaware, District of Columbia, Minnesota, New Hampshire, North Carolina, North Dakota, Oregon, and South Dakota, compiled at <https://www.aclu.org/maps/state-standards-pregnancy-related-health-care-and-abortion-women-prison-map#18>.

³² See *Nelson v. Correctional Medical Serv.*, 583 F.3d 522 (8th Cir. 2009); *Women Prisoners of District of Columbia Dept of Corrections v. District of Columbia*, 93 F.3d 910 (1996); *Brawley v. Washington*, 712 F.Supp.2d 1208 (W.D. Wa. 2010).

Montana Findings

This section sets forth the ACLU of Montana’s analysis of county detention center policies regarding female reproductive health care. Our findings from these 32 detention centers are summarized in Table 1.

Reproductive health care policies generally

Montana county detention centers provide health care to prisoners in a variety of ways from private medical contractors and community providers, including private physicians and local medical centers. Nine of the responding detention centers provided contracts with medical providers.³³ Eighteen of the other facilities had formal and informal arrangements made with community health centers or with licensed physicians, but did not provide a copy of a contract. Some of these facilities exclusively provide off-site care to their prisoners.³⁴

In nearly all cases, a lack of clear and comprehensive policies regarding reproductive health exists. Large contractors often did not formally address the provision of prenatal care or abortion services. Additionally, many county administrators indicated that their local community providers did not maintain obstetrical units and/or did not provide abortion services. Many cover letters indicated that these complications are addressed on a case-by-case basis.

Medical care for pregnant women in Montana detention centers

All Montana county detention center surveyed house female prisoners.³⁵ Additionally, four facility administrators stated that they did not house pregnant prisoners for an extended period of time, although there were no policies specifically prohibiting or restricting their stays.³⁶ Of those facilities that housed pregnant women, only 11 provided policies covering prenatal services.

³³ Cascade, Flathead, Gallatin, Hill, Jefferson, Lewis and Clark, Missoula, Rosebud and Yellowstone Counties all provided contracts.

³⁴ Beaverhead, Broadwater, Butte-Silver Bow, Deer Lodge, Fergus, Glacier, Lake, Lincoln, Meagher, Mineral, Musselshell, Pondera, Powell, Ravalli, Sanders, , Toole, Valley and Wheatland counties.

³⁵ Meagher County approved a policy following our request for information that specifically prohibited the housing of pregnant prisoners.

³⁶ Granite, Musselshell, and Rosebud County Administrators stated in their letters that they do not house prisoners with special medical needs, that they transfer pregnant prisoners to another detention center, or that they do not have obstetrician services available at the community clinic, respectively. Powell County’s Administrator stated that his facility appeals to judges for early

Pregnancy screening and testing

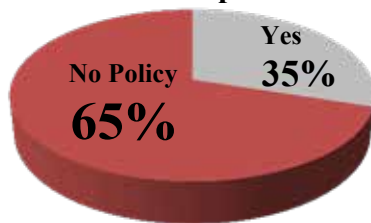
An estimated 6 percent of female prisoners are pregnant upon admission to a county detention center.³⁷ Many women who enter detention facilities are unaware that they are pregnant. As a result, routine screening for pregnancy becomes vitally important in identifying potentially pregnant prisoners, and ensuring that these women have access to proper reproductive services. Without routine procedures many pregnancies will go undetected, resulting in delayed medical care for mother and fetus. The importance of early detection and medical attention are recognized by several authorities, including the ACA Core Jail Standards, Montana Detention Standards and the National Commission on Correctional Health Care Jail standards, discussed above.

Prenatal care

Only 11 county detention centers and/or their medical contractors specifically include prenatal care in their health care policies.³⁸ These references to prenatal care are generally vague and fail to clearly delineate what level of prenatal services will be provided. Many responses referenced providing prenatal vitamins and

regular gynecological check-ups in their cover letters, but written policy did not confirm that these services would be provided.

Does the jail have pregnancy-specific health care policies?



Although 11 Montana county jail facilities had policies that specified access to prenatal evaluations and routine check-ups, almost all were vague concerning the minimum standard of care available. Of

the prenatal policies examined in this report, eight outlined prenatal nutrition guidelines,³⁹ and two discussed specific diagnostic testing.⁴⁰ The majority of facilities either did not provide or did not have policies relating to these areas or had policies that were not specific to prenatal care.

release for pregnant prisoners, although his facility policie pregnant prisoners.

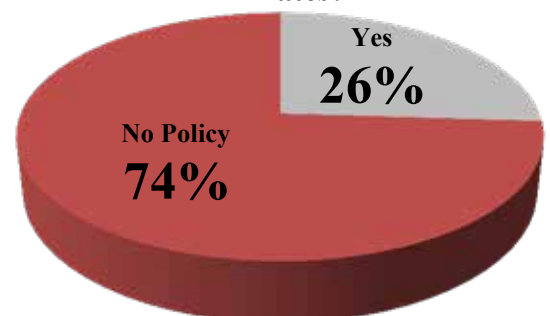
³⁷ Bureau of Justice Statistics, 2008.

³⁸ Beaverhead, Butte-Silver Bow, Gallatin, Glacier, Lake, I all had policies that required routine check-ups and evalu

³⁹ Beaverhead, Butte-Silver Bow, Deer Lodge, Glacier, Hill specific nutritional policies for pregnant prisoners.

⁴⁰ Cascade and Gallatin Counties both have policies regarc specific to pregnancy.

Does the jail have a policy regarding supplemental nutrition for pregnant inmates?



Only three detention centers have policies relating to the provision of prenatal vitamins while four facility administrators specified that the facility would provide prenatal vitamins in their cover letters.⁴¹ No facilities had policies relating to the accomodation of physician-recommended activity levels for pregnant prisoners.

The majority of detention centers that provided prenatal care guaranteed both routine and high-risk attention.⁴² Because incarcerated women are more likely to have high-risk pregnancies, ensuring access to appropriate prenatal attention is vital to ensuring the continued health of pregnant women and their children.

An essential component of prenatal care for female prisoners is access to dependency rehabilitation programs while in jail. Of the facilities that provided prenatal care to prisoners, seven had policies related to chemical addiction rehabilitation.⁴³ Lake County's Opiate Dependency Program was the most extensive in managing addiction during and following pregnancy. Of those facilities that did not provide pregnancy-specific chemical management, some did include resources for prisoners managing dependency.⁴⁴

Of all the responding facilities, none included in-depth policies about managing prenatal care if a pregnant prisoner is released before delivery. Several facility administrators indicated that they would appeal to judges for early release or do not house prisoners with special medical needs, but provided no policies to assist those women in finding obstetrician services once released into the general community.⁴⁵

Restraints and labor and delivery

Overwhelming evidence establishes that shackling pregnant prisoners contributes to injuries from falls, severe bruising, the inability of medical professionals to practice sound medicine, and difficulties during a mother's bonding experience with

⁴¹ Butte-Silver Bow, Gallatin and Lewis and Clark Counties have policies relating to prenatal vitamins while Hill, Jefferson, Rosebud, and Sanders County Administrators simply stated that these would be made available to pregnant prisoners.

⁴² Beaverhead, Butte-Silver Bow, Glacier, Lincoln, Missoula, Powell, and Richland Counties all work with providers that guarantee both routine and high-risk prenatal care. Gallatin and Lake Counties do not specify such provision, but they do indicate that they will seek routine and appropriate care for pregnant prisoners.

⁴³ Beaverhead, Glacier, Lake, Lincoln, Missoula, Powell, and Richland Counties all had specific provisions to manage chemical addiction in pregnant prisoners.

⁴⁴ Cascade and Fergus Counties both delineated alcohol and chemical dependency classes for all prisoners barring certain limitations.

⁴⁵ Fallon, Granite, Hill, Jefferson, Lewis and Clark, Meagher, Musselshell, Powell, and Rosebud County administrators stated in their letters that they do not house prisoners with special medical needs, that they transfer pregnant prisoners to another detention center, that they do not have obstetrician services available at the community clinic, or that the facility appeals to judges for early release of pregnant prisoners.

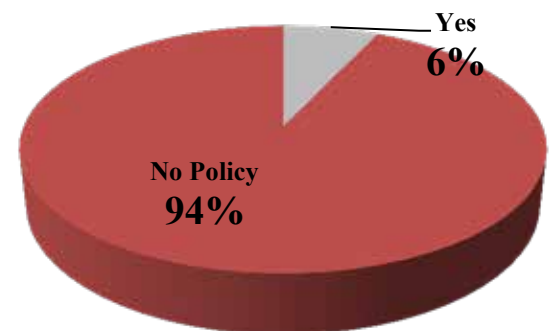
her newborn. Almost no county detention center policies include language addressing the use of restraints on pregnant prisoners during the transport and delivery stages. Many counties restrain and/or shackle prisoners during transport, including pregnant prisoners. Some detention centers responded that removal of restraints would be allowed if a physician requested it, removal would be on a case-by-case basis or removal of restraints would be used as a last resort.

County detention centers transport pregnant prisoners to local hospitals and community health centers for delivery. However very few counties have specific contracts for delivery services with community hospitals or policies outlining the procedures for labor and delivery. This results in stories such as the one described above in which a prisoner gave birth on the booking room floor aided by detention officers using dirty towels.

Of the 31 county facilities that responded to our inquiries, only two had policies regarding labor and delivery procedures for pregnant prisoners.⁴⁶ Both policies were vague. While both designated particular hospitals where delivery would take place, neither indicated how staff transport prisoners or determine the necessity for transport. Of the two facilities, only one detailed a policy to furlough pregnant prisoners, although the details of that furlough were non-descriptive.⁴⁷

Of those facilities with policies regarding labor and delivery, none had provisions for transport, none had provisions instructing staff on how to monitor labor symptoms, and none had a policy on when laboring prisoners should be taken to the hospital. Although the majority of facilities did not have policies relating to labor and delivery for pregnant prisoners, four mentioned procedural practices in their cover letters.⁴⁸

Does the jail have a policy regarding labor and delivery?



⁴⁶ Lincoln and Missoula County provided policies designating hospital facilities to be utilized during delivery.

⁴⁷ Lincoln County has a policy to furlough pregnant prisoners when possible. The procedure for doing so is vague and still could present difficulties regarding when the furlough is approved in conjunction with due dates.

⁴⁸ Hill, Jefferson, Musselshell, and Yellowstone County Administrators all spoke to labor and delivery practices in their cover letters. Hill and Jefferson include intended hospitals for delivery and suggested attempts to arrange for furlough. Musselshell County stated intentions to transfer pregnant prisoners to another facility equipped to handle delivery needs, and Yellowstone County indicated that their "...preference is for pregnant prisoners who wish to carry to term to have their delivery at a hospital."

Postpartum care

Only nine facilities had policies regarding postpartum care for pregnant prisoners.⁴⁹ Of those facilities that did guarantee access to postpartum care, seven provided no specific information regarding the services provided or whether these services would be offered to women with varying pregnancy outcomes, such as labor and delivery, miscarriage or abortion.⁵⁰ Only two facilities indicated that they provide physician-directed aftercare for prisoners who terminated their pregnancies, and even this provision was not specific regarding the range of services provided.⁵¹ The vast majority (71 percent) of Montana detention facilities did not provide any policies regarding postpartum treatment.

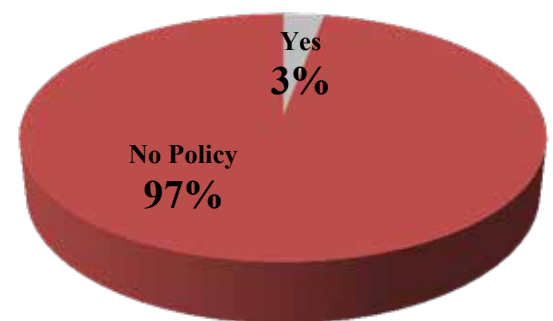
Abortion services

After examining information from 31 facilities, we determined that most Montana jail policies are insufficient to meet constitutional requirements for abortion access.

Access to abortion services

All but four of the detention centers included in the study lacked policies regarding abortion access for pregnant prisoners.⁵² Of these facilities, five administrators indicated in their cover letters that if a prisoner requested an abortion, the jail would make arrangements to obtain the procedure.⁵³ The remaining four facilities have vague policies indicating that arrangements will be made when a prisoner requests an abortion.⁵⁴ Only one facility specifies how to request an abortion, and none of the facilities that have abortion policies establish a timeline for responding to a prisoner's request for an

Does the jail have a policy regarding access to abortions?



⁴⁹ Beaverhead, Butte-Silver Bow, Gallatin, Glacier, Lewis and Clark, Lincoln, Missoula, Powell, and Richland had policies guaranteeing pregnant prisoners access to postpartum care.

⁵⁰ Beaverhead, Butte-Silver Bow, Glacier, Lincoln, Missoula, Powell, and Richland Counties have a general postpartum care provision with no specific services provided.

⁵¹ Lewis and Clark and Gallatin Counties adhere to physician recommendations following the termination of a pregnancy.

⁵² Beaverhead, Broadwater, Cascade, Deer Lodge, Fallon, Fergus, Flathead, Glacier, Granite, Hill, Jefferson, Lake, Meagher, Mineral, Missoula, Musselshell, Pondera, Powder, Powell, Ravalli, Richland, Rosebud, Sanders, Toole, Valley, Wheatland, and Yellowstone County have no policies regarding access to abortion services.

⁵³ Hill, Jefferson, Missoula, Wheatland, and Yellowstone County Administrators all indicated they would accommodate abortion requests on a case-by-case basis without providing specific policies.

⁵⁴ Butte-Silver Bow, Gallatin, Lewis and Clark and Lincoln Counties all have policies regarding abortion services.

abortion or ensuring access is provided in a timely manner.⁵⁵ Only one policy indicates the facility at which the procedure will take place, while one facility provides additional resources outside of community health centers.⁵⁶

Lack of clear policies regarding abortion access and payment for services places female prisoner's constitutional rights in jeopardy. Leaving abortion access to the discretion of detention administrators and staff could prevent women from receiving the procedure in a timely and safe manner.

Counseling

Of the 31 facility policies examined, none had policies related to counseling pregnant prisoners about all their options, including keeping their child, adoption and abortion. The lack of a policy regarding counseling for pregnant prisoners falls in discord with existing standards.

Costs of abortion

Of the four facilities that have policies regarding abortion access, only one specified that financial difficulties would not prohibit the provision of abortion care.⁵⁷ Even with this specification, the policy in question did not detail which entity would ultimately be responsible for the costs associated with the abortion. Policies that allude to elective or non-emergency procedures could be used to hinder women's access to abortions if they are determined to not be medically necessary. Additionally, policies that require prior approval before treatment could allow detention administrators to prohibit access to termination services on the basis of personal bias.

Under Montana law, a prisoner is only obligated to pay medical expenses -- even those based on a pre-existing condition -- if the court has made a finding of ability to pay. Mont. Code Ann. §7-32-2245. As such, county detention centers are responsible for pregnant prisoners' medical costs unless a judge has made a finding that she has the ability to pay.

Tracking pregnant prisoners and pregnancy outcomes

⁵⁵ Silver Bow County establishes that prisoners can request an abortion during the initial health screening and assessment.

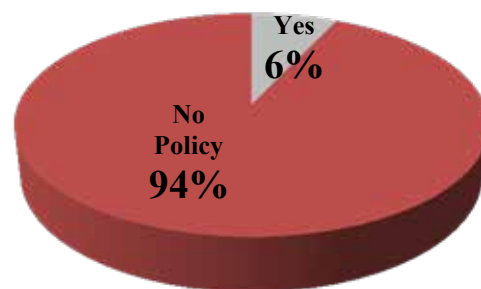
⁵⁶ Gallatin County establishes that abortion requests will be conveyed to the community physician, and Butte-Silver Bow County provides the Montana Women's Prison and Planned Parenthood as additional resources.

⁵⁷ Butte-Silver Bow specified that financial and transportation difficulties will not delay or prevent a pregnant prisoner from obtaining abortion services.

Many of the responding detention centers were unable to identify the number of pregnant prisoners they had housed in their facilities over the past five years. Much of this can be attributed to ineffective or inconsistent reporting methods that do not account for pregnancy outcomes. The National Commission on Correctional Health Care mandates that “a list is kept of all pregnancies and their outcomes.” *See Ex. C.*

Of the 31 responding detention centers, only two had clearly defined reporting systems that tracked pregnancies and pregnancy outcomes.⁵⁸ Of the remaining facilities, 21 reported approximate accounts of the number of pregnant prisoners housed in their facilities over the last five years.⁵⁹ The remaining eight facilities did not provide any account of pregnancies at their facilities.

Does the jail have a policy to track pregnancy outcomes?



Routine care

Annual or routine check-ups are essential components of basic health care. Detention facilities most commonly provide such care by requiring initial medical assessments and follow-up evaluations when necessary. Of the 31 facilities that responded to our request for information, 20 included the provision of intake health assessments and necessary follow-up in their medical policies.⁶⁰ Of those facilities that provided policies regarding intake screenings, very few detail any gender-specific screenings or gynecological examinations.

While some detention center policies mandate routine care, most focus solely on a basic level of care. In those facilities that provided policy discussing specific routine care for female prisoners, the results greatly varied:

- Four facilities provided OB/GYN referrals to female prisoners as needed.⁶¹
- Ten facilities provide screenings for gynecological problems including sexually transmitted infections.⁶²

⁵⁸ Beaverhead and Toole Counties provided exact reporting statistics regarding the pregnancy outcomes in their facilities for the past five years.

⁵⁹ Butte-Silver Bow, Cascade, Deer Lodge, Fallon, Flathead, Hill, Jefferson, Lake, Lewis and Clark, Lincoln, Meagher, Missoula, Mineral, Musselshell, Powder, Ravalli, Rosebud, Sanders, Valley, Wheatland and Yellowstone Counties gave approximate accounts of pregnancy outcomes at their facilities based on employee recollection and informal data collection.

⁶⁰ Beaverhead, Broadwater, Butte-Silver Bow, Cascade, Deer Lodge, Fergus, Gallatin, Glacier, Hill, Jefferson, Lake, Lewis and Clark, Lincoln, Mineral, Missoula, Pondera, Powell, Sanders, Toole, and Yellowstone all referenced intake screening in their medical care policies.

⁶¹ Butte-Silver Bow, Gallatin, Lake and Lewis and Clark discuss visits with the gynecologist.

- Only one facility had a policy outlining gender-specific examinations.⁶³

Contraception

Hormonal contraception can be used for a number of medical reasons, although it is most often taken for pregnancy prevention. If hormonal therapy is interrupted when a woman enters a detention facility, this can have many consequences for her reproductive health. In Montana, none of the policies provided included the use of contraceptives for the purpose of pregnancy control or other medical purposes.

⁶² Beaverhead, Butte-Silver Bow, Deer Lodge, Gallatin, Glacier, Lake, Mineral, Missoula, Powell, and Toole Counties all provide screening for STIs and some provide complete treatment for all the diseases resulting from HIV/AIDs.

⁶³ Jefferson County included breast and pelvic examinations, and pap smears for incoming female prisoners.

Conclusions

County detention centers in Montana lack policies regarding prisoners' access to reproductive health services. As a result, no consistency exists across detention centers or even within the same detention center. Montana jails have been slow to adapt to the spike in female prisoners and their unique medical and reproductive health care needs. As the stories earlier in this report highlight, barbaric practices such as shackling during doctor visits and labor and delivery are still utilized in our state. Female prisoners in need of an abortion have no guarantee that they will receive timely access to an abortion. Pregnant prisoners have no guarantee of receiving adequate or timely prenatal care, adequate labor and delivery conditions, or postpartum medical attention.

Given the lack of policies, lack of record keeping regarding pregnant prisoners and their medical outcomes, and anecdotal evidence of existing practices, one would expect pregnant prisoners to be very nervous when incarcerated. Women of low socioeconomic status are the most vulnerable group in need of adequate reproductive health services and the most likely group to spend a significant time in county jail as a pre-trial detainee given their inability to post bond. Thus, those who could benefit the most from appropriate medical policies are those placed the most at risk.

County detention centers are in dire need of adopting and implementing detailed and comprehensive policies governing the medical care provided to pregnant prisoners. Of course, policies must be properly implemented to be effective, which often requires staff training and resources.

Recommendations

With rising incarceration rates among women comes increased costs to community members. Ineffective and vague policy guidelines regarding reproductive health care for female prisoners results in inadequate administration of crucial medical services that impact female prisoners, their children, their families who care for the children, and the community. Montana's county detention centers are in a position to provide rehabilitative and comprehensive reproductive care to the state's most underserved demographic.

We are calling on county commissioners, sheriffs, detention center administrators, and the Montana Association of Counties to make improvements to the medical services provided to women incarcerated in county jails.

Given the policy deficiencies outlined in this report, the ACLU of Montana recommends county detention centers incorporate the following recommendations into comprehensive reproductive health policies for Montana's female prisoners.

Adopt and implement specific and comprehensive policies

- Establish detailed policies regarding all aspects of providing medical care to pregnant prisoners.
- Train staff on policies regarding medical care for pregnant prisoners.
- Regularly update contracts with medical providers for all aspects of medical services for pregnant prisoners with specific and comprehensive procedures.

Provide routine reproductive health care

- All female prisoners should have the option to receive routine pelvic and breast examinations, pap smears, and screenings for pregnancy and STIs by trained medical professionals as part of health assessments during intake.
- Women who are held in detention centers for longer than a year should receive annual reproductive health assessments and check-ups.

- Women should be screened during intake for a history of domestic violence, sexual assault, mental health problems, and substance abuse in order to provide effective and tailored treatment programs.

Provide pregnancy testing

- Health care staff should ensure that all women admitted into Montana's detention facilities have the option to be screened for pregnancy during intake. Facility administrators should adopt policies that mandate what initial screenings and health assessments will include.
- Pregnancy tests should never be mandated but instead be made available to those women who suspect they may be pregnant or whose medical histories indicate a high risk of pregnancy.
- Pregnancy testing should be made available to all women during their stay in detention centers.
- When women submit to or request a pregnancy test, they should be advised of their options regarding carrying a pregnancy to term, adoption assistance, or access to abortion services.

Provide contraceptives

Contraceptives and education about contraceptive options should be available to all women in Montana's detention centers. A variety of methods should be available for birth control and other medical purposes. Because women's stays in detention centers are often short, interrupting hormonal contraceptive use could disrupt menstrual cycles and significantly increase the risk of unintended pregnancies. For those women of reproductive age who are sexually active, hormonal contraceptives are an important component of reproductive health care.

Detention Centers should adopt specific policies that designate contraceptives as permitted medication within the detention facility to ensure that women can access such services.

Treat substance abuse withdrawal

Many female prisoners present with extensive histories of drug and alcohol abuse. County detention centers have a unique opportunity to address the heightened needs of pregnant women with substance abuse issues. Drug withdrawal poses serious risks to pregnant women, and could easily result in miscarriage or

premature delivery. Drug treatment and withdrawal mediation programs could significantly reduce the occurrences of these poor birth outcomes.

While drug withdrawal and rehabilitative treatment programs are important for all chemically addicted prisoners, pregnant women pose a unique health risk. Facility administrators should adopt policies that specifically designate treatment programs and appropriate services for chemically addicted pregnant prisoners.

Provide appropriate prenatal care

Prenatal medical attention is vitally necessary. Detention center administrators should implement comprehensive prenatal policies for pregnant prisoners.

- Prenatal policies should include arrangements to schedule routine prenatal check-ups. If possible, transportation to a prisoner's family physician for such appointments would be preferable.
- Prenatal policies should include provisions mandating access to increased levels of services for high-risk pregnancies.
- Detention center policies should include specific guidelines on the frequency of prenatal check-ups, diagnostic testing, special nutritional guidelines, recommended activity levels, and special housing accommodations as needed.
- If pregnant prisoners are scheduled for release prior to their due date, facility administrators should make reasonable efforts to ensure that they know how to access prenatal care in the general community. Such dedication to continuity of care would result in greater public health benefits and would help mitigate high-risk pregnancies.
- Policies regarding food service should provide specific dietary modifications for pregnant prisoners based on input by a qualified nutritionist.

Provide mental health care following miscarriage, abortion, and birth

Facility administrators should be cognizant of the counseling women may need during and following specific pregnancy outcomes.

Facility administrators should ensure that mental health assessments and counseling are available to all women during and following pregnancy. These services should be provided regardless of whether the pregnancy results in a live birth, miscarriage, or abortion.

Prohibit the use of restraints on pregnant prisoners

Facility administrators should adopt policies significantly restricting 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.

- As a rule, restraints should not be used during transport, medical appointments, ultrasounds or other procedures, or during labor and delivery unless the prisoner is an established flight risk. Developing clear policies regarding what and when restraints should be used will assist detention staff in safely transporting pregnant prisoners.
- Restraints should never be used on pregnant women during labor and delivery, and restraints should always be removed upon medical staff request.

Timely transport for labor and delivery

Detention centers should adopt and implement policies to immediately contact trained medical personnel when a female prisoner states that she is in need of medical attention, believes she may be in labor, or shows signs that she is in need of medical attention or may be in labor. A woman who is in need of medical attention or in labor, even the early stages of labor, should immediately be transported to a pre-established hospital or other medical facility available to pregnant women in the community.

Track and report pregnancy outcomes

Tracking databases ensure that facility administrators are able to accurately assess implementation of policies and the level of medical care provided to pregnant prisoners. County detention centers must adopt tracking systems that track all the pregnancy outcomes at their facilities including:

- The number of prisoners who are pregnant upon intake or who become pregnant while incarcerated.
- The specific instances of all medical appointments they had and all medical professionals with whom they interacted.
- Pregnant prisoners' dietary modifications and vitamin supplements while incarcerated.
- Whether pregnant prisoners are shackled during transport or medical appointments, and if so, why.

- Whether a pregnant prisoner terminated her pregnancy, and if so, at what point in the pregnancy, by which medical provider, and the care she received following the abortion.
- Labor and delivery time, location and outcome.
- All requests for medical attention or other pregnancy-related accommodations made by prisoners.

Such information must be kept in accordance and protected with all federal and state medical privacy standards.

Guidance on Standards

Standards on reproductive health care in jails still have a ways to go in most jurisdictions, but the National Commission on Correctional Health Care's (NCCHC) standard and compliance indicators⁶⁴ provide a good starting point for jail administrators as they craft policies and procedures that incorporate the above recommendations. This standard only provides a starting point for jail administrators, and is not a substitute for appropriate detailed policies and procedures:

NCCHC Standard

Pregnant inmates receive timely and appropriate prenatal care, specialized obstetrical services when indicated, and postpartum care. Pregnant inmates are given comprehensive counseling and assistance in accordance with their expressed desires regarding pregnancy.

NCCHC Compliance Indicators

- Counseling and assistance are provided in accordance with the pregnant inmate's expressed desires regarding her pregnancy, whether she elects to keep the child, use adoptive services, or have an abortion.
- Prenatal care includes:
 - Medical examinations by a clinician qualified to provide prenatal care
 - Appropriate prenatal laboratory and diagnostic tests

⁶⁴ National Commission on Correctional Health Care Jail Standards, 2014, pp 128-130.

- Advice on appropriate levels of activity, safety precautions, and alcohol and drug avoidance
 - Nutritional guidance and counseling
- Restraints not used during active labor and delivery.
- There is documentation of appropriate postpartum care.
- A list is kept of all pregnancies and their outcomes.
- All aspects of the standard are addressed by written policy and defined procedures.

Other guidance

In addition to NCCHC, jail administrators can also find guidance on the creation of reproductive health care policies from the American College of Obstetricians and Gynecologists and from the American Public Health Association. This area of medicine and the law continues to evolve, and reproductive health care policies should be reviewed on at least an annual basis to ensure that the appropriate medical and legal standards are met.

Table 1: Summary of Findings

Table 1 - Montana County Jails with Female Inmates*: Reproductive Health Policies
(Number = 31 Counties)

County	Contract for medical services	Contract for reproductive health services	Policies re: prenatal services	Policies re: nutritional support	Policies re: restraints	Policies re: post-delivery services	Policies re: abortion services
Beaverhead	N	N	Y	Y	N	Y	N
Big Horn	No Response						
Broadwater	N	N	N	N	N	N	N
Cascade	Y	N	N	N	N	N	N
Chouteau	No Response						
Dawson	No Response						
Deer Lodge	N	N	N	Y	N	N	N
Fallon	N	N	N	N	N	N	N
Fergus	N	N	N	N	N	N	N
Flathead	Y	N	N	N	N	N	N
Gallatin	Y	N	Y	N	N	Y	Y
Glacier	N	N	Y	Y	N	Y	N
Granite	N	N	N	N	N	N	N
Hill	Y	N	N	Y	N	N	N
Jefferson	Y	N	N	N	N	N	N
Lake	N	N	Y	N	Y	N	N
Lewis and Clark	Y	N	Y	N	N	Y	Y
Lincoln	N	N	Y	Y	N	Y	Y
Meagher	N	N	Y	N	N	N	N
Mineral	N	N	N	N	N	N	N
Missoula	Y	N	Y	Y	N	Y	N
Musselshell	N	N	N	N	N	N	N
Park	No Response						
Pondera	N	N	N	N	N	N	N
Powder	N	N	N	N	N	N	N

Powell	N	N	Y	Y	N	Y	N
Ravalli	N	N	N	N	N	N	N
Richland	N	N	Y	N	N	Y	N
Roosevelt	No Response						
Rosebud	Y	N	N	N	N	N	N
Sanders	N	N	N	N	N	N	N
Butte-Silver Bow	N	N	Y	Y	N	Y	Y
Toole	N	N	N	N	N	N	N
Valley	N	N	N	N	N	N	N
Wheatland	N	N	N	N	N	N	N
Yellowstone	Y	N	N	N	N	N	N

Table 2: Montana County Detention Centers' Pregnancy Outcomes

(Number = 31)

County	Number of Pregnancies	Number of Live Births	Number of Miscarriages	Number of Abortions
Beaverhead	Less than 4	0	0	0
Big Horn	No Response	No Response	No Response	No Response
Broadwater	Unreported	Unreported	Unreported	Unreported
Butte-Silver Bow	Numerous	1	0	1
Cascade	Approx. 235	2 or 3	2	0
Chouteau	No Response	No Response	No Response	No Response
Dawson	No Response	No Response	No Response	No Response
Deer Lodge	1	0	0	0
Fallon	7	0	0	0
Fergus	Unreported	Unreported	Unreported	Unreported
Flathead	No Record	No Record	No Record	No Record
Gallatin	No Record	No Record	No Record	No record
Glacier	Unreported	Unreported	Unreported	Unreported
Granite	Unreported	Unreported	Unreported	Unreported
Hill	10-15	0	0	0
Jefferson	2	1	0	0
Lake	2	0	0	0

Lewis & Clark	10	0	4 or 5	1
Lincoln	22	0	0	0
Meagher	0	0	0	0
Mineral	1	0	0	0
Missoula	Several	1	0	0
Musselshell	2	0	0	0
Park	No Response	No Response	No Response	No Response
Pondera	Unreported	Unreported	Unreported	Unreported
Powder	0	0	0	0
Powell	Unreported	Unreported	Unreported	Unreported
Ravalli	Approx. 10	Unreported	Unreported	Unreported
Richland	Unreported	Unreported	Unreported	Unreported
Roosevelt	No Response	No Response	No Response	No Response
Rosebud	2	0	0	0
Sanders	2	0	0	0
Toole	12	0	0	0
Valley	1	0	0	0
Wheatland	0	0	0	0
Yellowstone	Unreported	1	Unreported	Unreported

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