

An Act Relative to Safe Pregnancies and Related Health Care for Female Inmates

Lead Sponsor: Representative Kay Khan, H2234

Summary

Although more than 8,000 women are now incarcerated each year in the Commonwealth,¹ the criminal justice system has historically overlooked many of their health care needs, including the treatment a pregnant woman should receive. The practice of shackling during childbirth is perhaps the most shocking example, but female inmates also report inadequate nutrition, prenatal care, or services to manage high-risk pregnancies. Mental health care is often lacking, even for those at risk for postpartum depression. Women may be unable to make adequate arrangements for their children, even though an estimated two-thirds of female inmates are mothers—and typically single parents. This bill would establish minimum standards for the treatment and medical care of female inmates to promote safe, healthy pregnancy outcomes, prohibit shackling during childbirth, and ensure that release planning includes child custody and basic family planning information and services.

About Women in Prison

Since 1997, the number of women incarcerated nationwide has increased at a rate that is about double that of their male counterparts.² However, women are much more likely to be imprisoned for nonviolent offenses and, as of January 1, 2010, nearly two-thirds (63%) of women in prison in the Commonwealth had been found guilty of nonviolent crimes such as drug and property offenses.³ As a result, criminally-sentenced women in Massachusetts have an average length of stay of slightly less than 1 year (as compared with 4.75 years for men).⁴

Despite their nonviolent crimes and relatively short sentences, women's incarceration takes a disproportionate toll on families and communities. Nearly two-thirds of women in prison are mothers, and 77% of incarcerated mothers report providing most of the daily care for their child(ren) before incarceration.⁵ Further, according to the Bureau of Justice in 2007, 5% of women who enter into state prisons are pregnant, and 6% of women in jails are pregnant.⁶ Given the short sentences that women serve, the care and treatment they receive while incarcerated—including during pregnancy and childbirth—can have a significant impact on their physical and mental health, the well-being of their children and their families, and their sense of self-worth and purpose when they are released.

Massachusetts has the lowest rate of female imprisonment in the nation (at 13 per 100,000 women), but the female prison population is still significant.⁷ On January 3, 2011, there were 765 female inmates in D.O.C. facilities and 510 in county houses of correction.⁸ When the higher prison turnover rate for women is taken into account, the annual count of women incarcerated in the Commonwealth annually is estimated to be more than 8,000.⁹ Although we do not know the exact number of pregnant inmates in Massachusetts, the national average indicates that 400 or more women are pregnant each year during their imprisonment in the Massachusetts correctional system.

Massachusetts Prisons and Jails

Women may be held in Department of Correction (“D.O.C.”) facilities, county houses of correction, or local jails. MCI-Framingham is the main D.O.C. facility that houses women who have been criminally committed, civilly committed, or who are awaiting trial. South Middlesex Correctional Center and the Women & Children’s Program are D.O.C. minimum-security, pre-release facilities that also house women. Local houses of correction with female inmates include: Barnstable, Berkshire, Bristol – Dartmouth, Bristol – Women’s Center, Essex – W.I.T., Franklin, Hampden – WMCAC, Hampden – Women’s Center, Hampshire, and Suffolk – South Bay.

What Does This Legislation Do?

The prison health care system was originally established to serve a predominately male prison population,¹⁰ and few changes have been made to reflect the increasing numbers of women being incarcerated today. This is an especially important issue because female inmates have different health needs, including those related to pregnancy. This legislation addresses three distinct issues related to the overall health of female inmates:

(1) Pregnancy-Related Care and Other Essential Health Services

The Rebecca Project for Human Rights and the National Women’s Law Center’s 2010 *Mothers Behind Bars* report just gave the Massachusetts prison system a “C” for its prenatal care standards because it lacks prenatal nutrition counseling or appropriate nutrition, fails to make preexisting arrangements for deliveries, and has insufficient pregnancy-related policies.¹¹ Women in prison are more likely to have high-risk pregnancies, as they are less likely to have access to regular health care prior to entering prison.¹² In addition, they are more likely to have undiagnosed or untreated chronic conditions, such as depression, diabetes, hypertension, and asthma, and they are more likely to suffer from drug addiction, hepatitis, and STDs.¹³ This bill provides standards for a variety of female health-related issues, including medical screening; access to health-related information and counseling; dietary needs; prenatal, postpartum, and mental health care.

(2) Anti-Shackling Policy

There is no uniform anti-shackling policy governing Massachusetts correctional facilities today. Shackling, even when limited to one wrist during labor, is a dangerous practice that can cause harm to a mother and child and can make it difficult for doctors to provide medical services.¹⁴ Ten states, including California, Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas, Vermont, Washington, and West Virginia, have passed anti-shackling laws, and the Federal Bureau of Prisons ended the shackling of pregnant inmates as a matter of routine in all federal correctional facilities in Sept. 2008.¹⁵ This bill would prohibit shackling as a matter of routine during transportation after the first trimester and during labor and childbirth.

(3) Pre-Release Planning

Currently, female inmates are not given access to contraception prior to their release. Although contraception may be unnecessary during incarceration, many popular forms of contraception—including the birth control pill—must be taken for a period of time before they become effective. Many women are unaware of this fact, which can leave a population already at high risk for unintended pregnancy at even greater risk. This legislation ensures that female inmates receive counseling and written information regarding contraception and sexually transmitted diseases, and that they are provided with the contraceptive method of their choice prior to release, if necessary for it to be effective upon release, along with a twelve-month prescription to refill the medication after release. In addition, this legislation provides for custody planning, as well as counseling and discharge planning, in order to ensure the continuity of pregnancy-related care and to improve the prospects for a woman to be reunited with her child(ren).

Why Is This Legislation Necessary?

In June 1992, a consent decree was issued in *McDonald v. Fair* (Civil Action No. 80352), resulting in the dismissal of claims related to prison conditions for pregnant women housed in D.O.C. facilities. This consent decree establishes minimum standards of care for pregnant inmates, including required consultation with a dietician, medical entrance screening, and regular prenatal and postpartum medical examinations and treatment as medically indicated. In addition, it eliminates the practice of using waist chains on pregnant inmates during the third trimester (although ankle restraints and handcuffs are still permitted), and it limits shackling to one wrist cuff while a woman is in labor.

While establishing these minimum standards for D.O.C. facilities was an important step toward improving how pregnant inmates are treated, the consent decree fails to adequately protect the health and well-being of pregnant and postpartum women—much less addressing the basic standards of care and treatment for incarcerated women generally.

First, the policy is lacking in detail and substance. For instance, it allows the practice of using ankle restraints and handcuffs during all stages of pregnancy, and even allows for the use of waist restraints in the first and second trimesters, as well as during the postpartum recovery period. (Despite the consent decree, the Rebecca Project gave Massachusetts an “F” for its shackling policies.¹⁶ This grade was based on a variety of factors, including the lack of a state statute prohibiting shackling, the fact that medical staff input is not considered when applying restraints, and that D.O.C. does not require each incident of use of restraints to be reported and reviewed by an independent body.¹⁷) And, while shackling is referenced in the consent decree, other issues are not even discussed, such as custody planning and pre-release counseling to ensure continuity of care. Second, the consent decree only applies to D.O.C. facilities, which means that these minimum standards of care do not extend to local houses of correction or jails, where many female inmates are held. Lastly, the consent decree is D.O.C. policy and not law—meaning that there is no right of action for a female inmate to pursue if the policy is not followed. This legislation would ensure that all female inmates, regardless of the correctional facility in which they are held, receive appropriate care and treatment.

Notes

¹ Erika Kates, *Promising Gender-Responsive, Community-Based Programs for Women Offenders in Massachusetts: A Resource for Policymakers* 3 (2010), available at http://www.wcwonline.org/pdf/ekates_July2010WIPRCfinal.pdf.

² Women’s Prison Association, *Quick Facts: Women & Criminal Justice 2009*, available at <http://www.wpaonline.org/pdf/Quick%20Facts%20Women%20and%20CJ%202009.pdf>.

³ Massachusetts Department of Correction, *Prison Population Trends 2009*, p. 16, available at http://www.mass.gov/Eeops/docs/doc/research_reports/pop_trends/Prison_Pop_Trends_2009.pdf.

⁴ *Id.*

⁵ Women’s Prison Association, *supra* note 2.

⁶ The Rebecca Project for Human Rights & National Women’s Law Center, *Mothers Behind Bars* 11 (2010), available at <http://www.rebeccaproject.org/images/stories/files/mothersbehindbarsreport-2010.pdf>.

⁷ Women’s Prison Association, *supra* note 2.

⁸ Massachusetts Department of Correction, *Weekly Count Sheet* (1/3/2011), available at http://www.mass.gov/Eeops/docs/doc/research_reports/wkly_countsheet/2011/2011_wc01_03.pdf.

⁹ Kates, *supra* note 1, at 3.

¹⁰ The Rebecca Project, *supra* note 3, at 11.

¹¹ *Id.* at 15–16.

¹² *Id.* at 11.

¹³ *Id.*

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ *Id.* at 15.

¹⁷ *Id.*