



September 2024

Re: Correctional facilities must provide incarcerated people with reproductive health care, including abortion care

Dear County Correctional Facility Professionals, Jail Physicians and Healthcare Staff,

Correctional facilities are constitutionally required to provide medical care to individuals in their custody. This requirement includes providing reproductive health care, including abortion care.

From complaints and inquiries that our Office has been receiving, it appears some correctional facilities may be unaware of this obligation. In addition, we understand that the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* may have created confusion about the scope of protections for abortion care in New York, as well as about how those protections apply in a correctional setting.

We are writing to remind you that abortion remains lawful and a protected right in New York. Under New York law, correctional facilities must continue to provide access to abortion, along with other necessary health care services.

New York law also gives incarcerated persons additional rights and gives correctional facilities additional obligations related to providing reproductive, pre- and postnatal, and gender-affirming health care. These laws apply to both convicted individuals and pretrial detainees.

To help you understand the details of your facility's obligations, we have compiled the following list of common questions and answers, followed by a list of best practices informed by current medical guidelines. We hope this letter will help you understand how these laws, many of which have recently been passed, relate to your work in a correctional setting.

I urge you to familiarize yourself with these requirements and guidelines, share them with your correctional and medical staff, and develop practices to ensure that your departments comply with the law. Please reach out to our Office if you have questions.

Respectfully,


Letitia James

New York State reproductive health care law in correctional settings:

Frequently asked questions for law enforcement, correctional professionals, and county-appointed health care providers

What type of abortion care is lawful in New York?

- New York guarantees individuals, including those in state and local custody, the right to choose or refuse **contraception, abortion, or sterilization**; to **carry a pregnancy to term**; and to **give birth**. N.Y. Pub. Health Law § 2599-bb.
- New York guarantees the unqualified right to abortion up to 24 weeks after the beginning of pregnancy. N.Y. Pub. Health Law § 2599-bb.
- After 24 weeks from the beginning of pregnancy, abortion is permitted if the fetus is not viable or if the pregnant person's life or health (including mental health) is at risk. N.Y. Pub. Health Law § 2599-bb.
- Assessments about gestational age of pregnancy, viability, and risk to life and health are up to qualified medical providers, based on their good-faith professional judgment. N.Y. Pub. Health Law § 2599-bb.
- Abortion should not be designated or treated as an “elective” procedure and must be provided without delay if requested by the incarcerated individual.
- In New York, pregnant minors (people under the age of 18) have the right to access reproductive health services, including pregnancy-related care and abortion, without parental notification or consent. N.Y. Pub. Health Law § 2504(3).

What reproductive health care services are correctional facilities in New York obligated to provide?

- Correctional facilities are obligated to provide necessary medical care to incarcerated individuals. The requirement to provide necessary medical care includes the requirement to provide reproductive health care (including abortion, regular prenatal screenings and obstetrical care, postnatal care, and lactation care) consistent with accepted professional standards and sound professional judgment and practice. A jail clinician owes an independent duty of exercising reasonable care in providing medical treatment to an incarcerated individual to the same degree as that owed the patient of a private clinician. See “Guidelines and Best Practices” and “Resources,” below.
- County jails and penitentiaries are required to perform prompt “initial screening and risk assessment” of all incarcerated persons. N.Y. Comp. Codes R. & Regs. tit. 9, §§ 7013.3(a)(2), 7013.7(b)-(c); see *id.* §§ 7002.6, 7010.1(b). This initial health intake screening should be conducted by qualified medical staff according to medical guidelines. See “Best Practices” and “Resources,” below.
- Facilities must provide menstrual supplies, at no cost, to individuals confined in correctional and law enforcement facilities. N.Y. Correct. Law § 625. Individuals who menstruate or who are postpartum must have access to sufficient and adequate supplies, regardless of their gender identity.

- Facilities should make reproductive health care available upon request to all incarcerated women and transgender men, regardless of housing placement or gender identity. Under no circumstances should incarcerated persons be subjected to search or physical examination to determine their genital status or be forced to submit to gynecological examination without their consent.
- Correctional facilities must not unreasonably withhold or delay diagnoses, medication, or treatment related to necessary reproductive health care or gender identity. See U.S. Const., amends. V, VIII, XIV; N.Y. Const., art. I, § 1; id. art. VI, § ; N.Y. Pub. Health Law § 2599-aa(3) ; 28 C.F.R. 35.130. Because such care (including abortion care, labor and delivery, and other pre- and postnatal care) is often time-sensitive, transport and logistics should be arranged so as to not delay timeliness or frequency of ordered care.
- Correctional facilities must maintain adequate health care service and medical records, including documentation of reasons for any delay, denial, or cancellation of care. N.Y. Comp. Codes R. & Regs. tit. 9, § 7010.2(j).
- State and federal laws prohibit correctional facilities, as well as health care institutions, from harassing or discriminating against individuals in custody based on protected characteristics, including sex (pregnancy, gender identity or expression, disability, or sexual orientation, or for retaliating against individuals for reporting discrimination, harassment or abuse. N.Y. Civ. Rights Law § 40-c; N.Y. Comp. Codes R. & Regs. tit. 9, § 7030.1 ; 28 C.F.R. 35.130.

Who pays the costs of reproductive care for incarcerated persons?

- Reproductive health care shall be available free of charge to incarcerated individuals and medical care cannot be denied for inability to pay.
- The cost of reproductive health care, including abortion procedures, pre- and postnatal care, labor and delivery, and any necessary pre- and post-operative care (including transportation), should be paid by the county at the time of service. The county can request reimbursement by any applicable third-party insurer. N.Y. Correct. Law §§ 500-h, 611(1)(c).

Can custodial restraints or segregated confinement be used for incarcerated persons who are pregnant?

- No. Absent extraordinary circumstances, no custodial restraints of any kind can be used when the person is pregnant, in labor, admitted to a medical facility for delivery, or recovering after giving birth. N.Y. Correct. Law § 611(1)(a).
 - A determination of extraordinary circumstances can only be made by either the (i) superintendent or sheriff or his or her designee in consultation with the medical professional responsible for the institution or (ii) the correctional personnel directly responsible for the transport of such person, where they determine that an emergency has arisen in which restraints are necessary because such person poses an immediate risk of serious injury to themselves or medical or correctional personnel or others and cannot reasonably be restrained by other means. N.Y. Correct. Law § 611(1)(a).
 - If a determination of extraordinary circumstances has been made, any such restraints should be limited to wrist restraints in front of the body. N.Y. Correct. Law § 611(1)(b).
 - Any finding of extraordinary circumstances and the application of restraints should be promptly documented. N.Y. Correct. Law § 611(1)(b).

- An incarcerated individual who is pregnant, in the first eight weeks of the postpartum recovery period after giving birth or caring for a child in a correctional institution, cannot be put into segregated confinement (any cell confinement of more than 17 hours per day). N.Y. Correct. Law §§ 2(33), 137(6)(h).

What rights do pregnant persons have relating to options counseling, prenatal care, labor, delivery, and recovery?

- When a person is known to be pregnant at admission, or when the facility learns that a person is pregnant, the chief medical officer of that facility must immediately inform the person of the option to participate in pregnancy counseling services and the right to abortion services. N.Y. Correct. Law § 611(4).
- If a person becomes pregnant during their incarceration, they must receive timely and comprehensive information about, and timely access to, all pregnancy-related medical services, at no cost. They must receive this information regardless of whether they participate in any investigation of any abuse leading to the pregnancy. 28 C.F.R. § 115.83.
- No correctional staff is allowed in the delivery room during the birth of a baby unless their presence is requested by the medical staff supervising the delivery or by the person giving birth. N.Y. Correct. Law § 611(1)(c).
- A pregnant person must be allowed to have at least one support person of their choice and a doula or midwife (if available) to accompany them in the delivery room, during labor, and during recovery after giving birth, N.Y. Correct. Law § 611(1)(c):
 - A support person is not required to have previously visited the pregnant person at the correctional facility. The support person cannot be denied eligibility to be a support person solely because of a past criminal conviction or current probation, conditional release, parole, or post-release supervision.
 - If a facility denies a request for a specific support person, the facility must specify the reasons for this denial in writing within five days of the request and provide this information promptly to the person making the request.
 - The facility's staff must notify a support person immediately after an incarcerated person goes into labor, or immediately after a caesarean section or termination is scheduled.
 - The correctional facility must provide notice of these rights in writing to an incarcerated individual, in plain and understandable language, both when the person is admitted to the facility and again when they are known to be pregnant.
 - The facility must publish notice of these requirements in prominent locations where medical care is provided. All correctional facilities must provide annual training on the provisions of New York Correction Law section 611 to all correctional personnel involved in the transportation, supervision, or medical care of those incarcerated in women's facilities. N.Y. Correct. Law § 611(1)(d).

Does someone who gives birth while incarcerated have a right to be with their newborn after they give birth?

- Under certain circumstances, New York law allows for a newborn child to accompany, or to be returned to, its incarcerated birthing parent at a correctional institution until the child is one year old, or until the child is eighteen months old. N.Y. Correct. Law § 611(2)-(3).
- An incarcerated person who is pregnant or who has a child younger than eighteen months must be informed that they can apply to any nursery program run by the state Department of Corrections and Community Supervision or by the locality. N.Y. Correct. Law § 611(2).
- Correctional facilities must provide the individual with notice in writing, in a language and manner they understand, about this requirement when they are admitted to the facility and again when they are known to be pregnant. The superintendent or sheriff must publish notice of these requirements in prominent locations where medical care is provided. N.Y. Correct. Law § 611(2).

What obligations do facilities have to incarcerated persons who have experienced sexual abuse?

- The Prison Rape Elimination Act (PREA) sets standards for correctional facilities' response to sexual abuse. These requirements are detailed in federal regulations. 34 U.S.C. §§ 30301-30309; 28 C.F.R. pt. 115. While a full discussion of these requirements is beyond the scope of this guidance, below are some key highlights relating to provision of medical care:
 - PREA requires all correctional facilities to have a coordinated response plan that includes providing medical and mental health care to survivors of abuse free of charge, training for all employees, and specialized training for medical and mental health staff.
 - Facilities are required to provide initial medical and mental health screenings for history of sexual abuse and provision of medical and mental health follow-up care if requested when past abuse is reported.
 - Individuals who have experienced sexual abuse while incarcerated have the right to emergency medical treatment and crisis intervention services without delay.
 - All incarcerated persons who experience sexual abuse must be given timely information about and access to emergency contraception, pregnancy testing, and prophylactic treatment for sexually transmitted infections, and must be provided ongoing medical and mental health services until their release.
 - The nature and scope of the services to be provided to survivors of sexual abuse must be determined by qualified medical or mental health provider. If no qualified medical or mental health clinician is immediately available at the time abuse is reported, security staff or first responders must take immediate preliminary steps to protect the victim and immediately notify the appropriate medical and mental health practitioners.
 - Facilities must offer forensic medical examinations to all survivors of sexual abuse, without cost, where evidentiarily or medically appropriate, consistent with the National Protocol for Sexual Assault Medical Forensic Examinations. Sexual Assault Nurse Examiners or Sexual Assault Forensic Examiners should be used whenever possible, and a victim advocate must be made available.
 - Correctional and health care facilities must not retaliate anyone who reports sexual abuse, including any incarcerated individuals, staff or PREA coordinators or managers.

Guidelines and best practices for provision of reproductive health services in correctional settings

Facilities should provide access to routine reproductive health care services in accordance with national guidelines. Policies should be reviewed regularly and revised as needed to ensure continued compliance with evolving standards.

Such reproductive health services include:

- Routine gynecological screenings;
- Testing and treatment for sexually transmitted infections, including HIV;
- Screening for breast and ovarian cancer;
- Access to reversible forms of FDA-approved contraception;
- Access to abortion;
- Pre- and postnatal care, including lactation support.

Reproductive health services should be optional, with any opt-out made in writing and documented in the medical record.

Screenings relating to reproductive health care:

- On pregnancy-capable individuals, including women and transgender men under 55 years of age, screening should be conducted by trained, medical personnel, and should include verbal screening for:
 - Pregnancy and gynecological history, including birth within the past 12 months, lactation, and post-partum depression;
 - Current pregnancy: Pregnancy-capable individuals should be offered pregnancy urine testing on-site at the health intake and provided subsequently upon request;
 - Recent unprotected heterosexual intercourse or experience of sexual assault, with emergency contraception provided on-site for those screening positive;
 - Sexually transmitted infections, including HIV, with testing offered upon obtaining written informed consent;
 - Intimate partner violence; and
 - Substance use disorder, with treatment provided by trained clinicians.

Any questions staff ask patients related to reproductive health care should be appropriate to the service being sought, and not invasive, inappropriate, or unrelated to the medical need.

Contraception/family planning:

- Facilities should provide trauma-informed and culturally appropriate counseling and treatment, including counseling on contraception, abortion, and pregnancy planning, without judging or encouraging or discouraging specific actions.
- Incarcerated persons should be provided non-directive counseling regarding family planning options, including the risks and benefits of continuing hormonal contraception. Individuals who are currently using a contraceptive method should be permitted to continue using the same contraceptive method or a therapeutic equivalent (such as generic version of the same method) without interruption. Discharge planning should take continuity of contraceptive care into account.
- Facilities may not retaliate against incarcerated persons based on their reproductive decisions.

Prenatal and postnatal care, pregnancy-related care:

- Pregnant individuals should be seen by a qualified medical provider within 48-72 hours or sooner as medically indicated by the health intake screening (e.g. if urgent maternal warning signs are present, or if they have opioid use disorder).
- Pre- and postnatal care visits, immunizations, and diagnostic screenings should be provided in accordance with applicable clinical guidelines, and without unnecessary delay. Transport and logistics must be arranged so as to not delay timeliness or frequency of ordered care (such as abortion care or other prenatal, postnatal, or pregnancy-related care).
- Pregnant individuals should be provided with adequate nutrition and prenatal vitamins during pregnancy in accordance with recommended national guidelines.
- Pregnant individuals should be permitted to continue any medications, including psychiatric medications, unless a qualified medical professional determines they are contraindicated for use in pregnancy (although even in such cases, continued use may be appropriate in certain cases based on the individual's circumstances).
- Pregnant individuals screening positive for opioid use disorder should be referred for immediate medical care by a qualified medical professional and provided with appropriate treatment with methadone or buprenorphine. Incarcerated persons who were receiving such medication treatment for opioid use disorder should be permitted to continue that treatment without delay. Withdrawal, including from opioids, benzodiazepines, and alcohol, is unsafe in pregnancy and requires management in a hospital setting.
- Correctional officers should be provided guidance and/or training regarding urgent maternal warning signs to pay attention to when a person known to be pregnant or who has given birth within the last 12 months is complaining of symptoms such as contractions, leakage of fluid, and vaginal bleeding.

Lactation support:

- Lactation is a medical condition that may require medical care and treatment. Any incarcerated individuals who are lactating and separated from their babies and wish to provide breast milk to their infants should be permitted to express breast milk, provided with a breast pump, and provided the opportunity to pump breast milk as frequently as needed (usually every 2-3 hours if they have a newborn). Even if the infant's caregiver cannot get the milk from the incarcerated parent, pumping ensures the milk supply is maintained when someone leaves custody.
- All birthing individuals should be provided with information about breastfeeding and lactation support. Those who do not wish to or are unable to continue breastfeeding should be provided appropriate medical management for cessation of lactation.
- In addition to providing a clean, private location, time, and necessary equipment to enable incarcerated individuals who are lactating to pump milk, facilities should allow post-partum individuals to breastfeed or chestfeed their babies directly wherever possible.
- Facilities are encouraged to develop systems for appropriate handling, storage, and transfer of human milk to facility staff or family members caring for newborns.

Notice:

- Facilities should provide the guidance in this letter to any health care provider who is currently under contract in the jurisdiction or who is seeking to provide such services to the facility.
- As part of the request-for-proposal or bid process, facilities should inquire about third-party providers' policies, practices, and training regarding provision of reproductive health care to incarcerated individuals and review them to ensure they comply with the law and accepted clinical guidelines.
- Facilities should provide incarcerated persons with information regarding these rights in an accessible format, including in their primary language, and post information in prominent locations in facilities.
- Facilities should provide access to complaint forms to incarcerated persons if they believe their rights have been violated.

Resources

The following resources are intended to be of use to county correctional facility administrators and staff, jail clinicians, and healthcare staff relating to providing reproductive healthcare to incarcerated individuals.

General reproductive healthcare guidelines:

- National Commission on Correctional Health Care, Position Statement (May 2020), <https://www.ncchc.org/position-statements/womens-health-care-in-correctional-settings-2020>
- Am. College of Obstetricians and Gynecologists (ACOG), Committee Opinion: Guidelines for Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals (July 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>

Abortion, pregnancy counseling, and adoption:

- Reproductive Health Access Project, Options Counseling (August 2023), <https://www.reproductiveaccess.org/resource/options-counseling/>
- AbortionFinder.org, <https://www.abortionfinder.org>
- New York State Office of Children and Family Services, Adoption Services: Authorized Voluntary Adoption Agencies, <https://ocfs.ny.gov/programs/adoption/agencies/voluntary.php>

General guidelines for healthcare during and after pregnancy:

- Safebirth, Alliance for Innovation on Maternal Health, Urgent Maternal Warning Signs, <https://saferbirth.org/aim-resources/aim-cornerstones/urgent-maternal-warning-signs-2>
- Am. Acad. Of Pediatrics/Am. College of Obstetricians and Gynecologists (ACOG), Guidelines for Perinatal Care, Eighth Edition (Sept. 2017), <https://www.acog.org/clinical-information/physician-faqs/-/media/3a22e-153b67446a6b31fb051e469187c.ashx>

ACOG Committee Opinions:

- Reproductive Health Care for Incarcerated Pregnant and Non-Pregnant Individuals (Jul. 2021), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals>
- Maternal Immunization (Oct. 2022), <https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2022/10/maternal-immunization>
- Optimizing Post-partum care (May 2018): <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/05/optimizing-postpartum-care>
- Sterilization of Women: Ethical Issues and Considerations (Apr. 2017), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/04/sterilization-of-women-ethical-issues-and-considerations>

- ACOG, Clinical Practice Guideline: Treatment and Management of Mental Health Conditions During Pregnancy and Postpartum (Jun. 2023), <https://www.acog.org/clinical/clinical-guidance/clinical-practice-guideline/articles/2023/06/treatment-and-management-of-mental-health-conditions-during-pregnancy-and-postpartum>
- ACOG, Treatment and Management of Mental Health Conditions During Pregnancy and Postpartum (Jun. 2023), <https://www.acog.org/clinical/clinical-guidance/clinical-practice-guideline/articles/2023/06/treatment-and-management-of-mental-health-conditions-during-pregnancy-and-postpartum>
- Carolyn Sufrin, MD, PhD, Pregnancy and Postpartum Care in Correctional Settings (March 2018), <https://www.ncchc.org/pregnancy-and-postpartum-care-2018>

Opioid use disorder in pregnancy:

- ACOG, Committee Opinion- Opioid Use and Opioid Use Disorder in Pregnancy (Aug. 2017) <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2017/08/opioid-use-and-opioid-use-disorder-in-pregnancy>
- Substance Abuse and Mental Health Services Admin. (SAMHSA), Clinical Guidance for Treating Pregnant and Parenting Women With Opioid Use Disorder and Their Infants (Jan. 2018), <https://store.samhsa.gov/product/Clinical-Guidance-for-Treating-Pregnant-and-Parenting-Women-With-Opioid-Use-Disorder-and-Their-Infants/SMA18-5054>

Nutrition during pregnancy:

- American Dietetic Association, Position: Nutrition and Lifestyle for a Healthy Pregnancy Outcome (2002), <https://www.jandonline.org/action/showPdf?pii=S0002-8223%2802%2990327-5> (pp. 1482-1484).
- ACOG, Nutrition During Pregnancy (2023), <https://www.acog.org/store/products/patient-education/pamphlets/pregnancy/nutrition-during-pregnancy>
- Rebecca J. Shlafer et al., Best Practices for Nutrition Care of Pregnant Women in Prison (Jul. 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6671683/pdf/nihms-1043640.pdf>

Use of restraints:

- National Commission on Correctional Health Care (NCCHC), Position Statement: Nonuse of Restraints for Pregnant and Postpartum Incarcerated Individuals (2020): <https://www.ncchc.org/position-statements/nonuse-of-restraints-for-pregnant-and-postpartum-incarcerated-individuals-2020/>

Breastfeeding support:

- NCCHC, Breastfeeding in Correctional Settings (2023), <https://www.ncchc.org/position-statements/breastfeeding-in-correctional-settings-2023/>
- California Breastfeeding Coalition and ACLU of Southern California, Supporting Lactation in Jails, <https://californiabreastfeeding.org/wp-content/uploads/2023/06/cbc-supporting-lactation-in-jails-DRAFT-5.pdf>

Testing and treatment for STIs:

- Centers for Disease Control and Prevention, STI Treatment Guidelines 2021: Persons in Correctional Facilities (July 2021), <https://www.cdc.gov/std/treatment-guidelines/STI-Guidelines-2021.pdf>

Cervical Cancer Screening (Pap smears):

- U.S. Preventive Services Task Force, Cervical Cancer: Screening (Aug. 2018), <https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/cervical-cancer-screening#fullrecommendationstart>

Sexual Assault and the Prison Rape Elimination Act

- Department of Corrections and Community Supervision, Prison Rape Elimination Act website: <https://doccs.ny.gov/prea>
- National PREA Resource Center website: https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards_0.pdf
- New York State Coalition against Sexual Assault, Prison Sexual Assault, <https://nycasa.org/get-help/prea>
- New York State Sexual and Domestic Violence Hotline:
 - <https://opdv.ny.gov/survivors-victims>
 - Phone: 800.942.6906
 - Text: 844.997.2121