



REPRODUCTIVE HEALTH AND EQUITY Issue Brief


State Laws Regulating Access to Abortion Care in Carceral Facilities

In the United States, each year a person spends incarcerated reduces their life expectancy by two years.¹ This is due, in part, to the grossly inhumane conditions in prisons. American prisons are understaffed and overpopulated, which results in people who are incarcerated experiencing neglect and violence at alarming rates.² Additionally, people who are incarcerated are denied adequate access to fresh air, healthy food, natural light, and health care.³ In state-run facilities, more than 20% of people who are incarcerated with a persistent medical condition do not receive necessary care.⁴ People who are incarcerated are more likely to suffer from chronic health problems, including diabetes, high blood pressure, HIV, and substance abuse and mental health disorders.⁵ This combination of increased rates of people who are incarcerated living with chronic health issues and the lack of adequate care in carceral facilities is deadly.⁶

About 190,000 women⁷ are incarcerated on any given day in the United States.⁸ The Prison Policy Initiative estimates that about 58,000 pregnant women are incarcerated in jails and prisons each year.⁹ Pregnancy, giving birth, and being postpartum while incarcerated are linked to negative health impacts as people who are incarcerated are not provided adequate prenatal and postpartum care, and experience trauma from the experience.¹⁰ For example, studies show that pregnant incarcerated women have higher rates of miscarriages, preterm infants, and infants who are small for their gestational age.¹¹ The experience of pregnancy exacerbates the existing abysmal conditions of incarceration as pregnant incarcerated women navigate the compounded discomforts of poor bedding, improperly fitting clothing, and lack of privacy.¹²

One policy that supports the health of pregnant people who are incarcerated is mandating access to safe and effective abortion care for those who do not want to be pregnant or give birth while incarcerated. For pregnant people who are incarcerated, the choice of abortion is likely a safer option and providing access preserves the dignity of bodily autonomy despite the incarceration. Restrictive abortion laws or policies in any setting—carceral or otherwise—generally implicate short- and long-term negative health impacts, including psychological, social, and economic harms for pregnant individuals and their families.¹³ These harms are worse for people who are incarcerated and because women of color are incarcerated at higher rates, incarcerated pregnant women of color experience disproportionate health harms when states restrict abortion.¹⁴

Many states acknowledge the importance of protecting access to abortion generally. Following the overturning of *Roe v. Wade*,¹⁵ many states seeking to protect abortion access either amended their state constitutions or



passed legislation. Additionally, some states relied on laws, constitutional amendments, and court interpretations that existed before the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*¹⁶ as the basis for protecting access to abortion in their states. These policies provide widespread state-level abortion access protections, but for pregnant women who are incarcerated, abortion access can be further protected or restricted through state prison laws. Of the twenty-six states and the District of Columbia where abortion is generally available by law,¹⁷ nine states have some sort of prison policy that specifically controls abortion access for people who are incarcerated.¹⁸ This issue brief examines current state laws regarding access to abortion in carceral facilities in the states where abortion is generally available by law.

Statewide Substantive Provisions Versus Deference to Administrative Facilities

Of the states that have protective abortion access laws, five have clear written policies that at least in some respect require abortion access for people who are incarcerated. Four states: California,¹⁹ New York,²⁰ Illinois,²¹ and Colorado²² have passed legislation regarding access to abortion for people who are incarcerated; New Jersey²³ has promulgated regulations establishing parameters for access.


Three states with carceral abortion laws or policies delegate abortion access to the state department of corrections or to each carceral facility either through specific statutory language or by default for lack of any greater direction.²⁴ For example, Oregon law defers to county sheriffs to set procedures for delivering all medical care in Oregon jails.²⁵ Though the Oregon State Sheriffs' Association sets best practices and guidelines for the operation of jails throughout Oregon, these best practices and guidelines are voluntary and are inconsistently implemented, resulting in severe abortion restriction in certain jails.²⁶

A Maryland statute directs the State Commissioner of Correction to "ensure that standards are developed to address...abortion," leaving the Commissioner broad discretion on when or whether people who are incarcerated may access abortion care.²⁷ Further, each correctional facility in Maryland must "have a written policy in place regarding the medical care of pregnant incarcerated individuals" that addresses access to abortion care including information about abortion providers and transportation.²⁸ This diffuse approach can lead to different policies in different facilities confusing correctional staff and people who are incarcerated. Massachusetts Department of Corrections policy, alternatively, merely requires that pregnant inmates who request to terminate a pregnancy be referred to "appropriate counselling services."²⁹

Consistency with State Abortion Protections for Non-Incarcerated Residents

Six states have prison policies consistent with state abortion access protections and three states have prison policies that are not consistent with state law.³⁰

Illinois explicitly includes the right to an abortion for people who are incarcerated, recognizing reproductive health, including abortion, as a fundamental right.³¹ The law provides that "the state shall not deny, restrict, interfere with, or discriminate against an individual's exercise of [this right to abortion] including individuals under State custody, control, or supervision."³² In California, the statute addressing the right of a person who is incarcerated to have an abortion explicitly states that no condition or restriction can be imposed that is inconsistent with the California law that establishes the right to abortion for those not incarcerated.³³ Unlike Illinois and California, New York, New Jersey, and Colorado do not specifically state that the protections for incarcerated pregnant people are consistent with state law or policy, nor do these states have provisions to the contrary.³⁴



By contrast, Massachusetts purports judicial and statutory abortion access protections but fails to guarantee such protections for people who are incarcerated. Instead, state prison policy merely requires that “[i]n the event that a pregnant inmate requests to terminate her pregnancy, the inmate shall be referred to appropriate counseling services.”³⁵ The Massachusetts legislature has considered bills to remedy the disconnect between the right to abortion generally and that for people who are incarcerated. For example, last session, the legislature considered but failed to pass a bill that would require prisons to provide reproductive health care to people who are incarcerated; the same bill has since been reintroduced as of February 27, 2025.³⁶

Only Maryland imposes specific and inconsistent gestational limits on access to abortion in carceral facilities. Although the Maryland Constitution guarantees the right to abortion up to viability—generally at 24 to 26 weeks—the legislature defers to the Department of Corrections to regulate access for people who are incarcerated, and those regulations only permit abortion up to 14 weeks gestation.³⁷

Payor Restrictions in Accessing Abortion Care While Incarcerated

Generally, individuals do not have access to private health insurance, Medicaid, and Medicare while incarcerated.³⁸ The government is required to provide medical care to people who are incarcerated, but many states require people who are incarcerated to pay copays.³⁹ Although the copay usually falls between \$2 to \$5, the cost may be prohibitive to many because people who are incarcerated on average make \$0.14 to \$0.63 per hour.⁴⁰ Additionally, individuals who are incarcerated may be fully responsible for medical costs incurred from providers outside of the prison which can result in steep medical debt upon release.⁴¹ For pregnant women who are incarcerated, the costs associated with pregnancy and delivery can reach tens of thousands of dollars.⁴²

State policies vary on whether they contain provisions about payment for abortion care and, if so, whether that care is covered by the government. Five states have adopted carceral abortion policies that do not refer to the costs of abortions for people who are incarcerated, including for transportation and the procedure or medication involved.⁴³ Both Massachusetts and Oregon restrict state payments for carceral abortion. The Massachusetts Department of Corrections may not pay for abortion services unless deemed medically necessary by a physician.⁴⁴ Oregon’s voluntary county jail standards provide that abortion be at the expense of the person who is incarcerated unless medically necessary. Both Illinois and Minnesota, however, have policies addressing the role of the state in the financial responsibility for abortion care for people who are incarcerated. Governor Pritzker announced Illinois would no longer require people who are incarcerated to pay for abortion care.⁴⁵ The Illinois Department of Corrections announced the policy change in 2022 and noted that any person who did pay for the procedure and associated expenses while incarcerated would be reimbursed.⁴⁶ Similarly, the Minnesota Department of Corrections under Governor Tim Walz announced in 2023 that it will now pay to provide people who are incarcerated with abortion care, including the provision of any necessary transportation and even a doula upon request.⁴⁷

Additionally, both New York⁴⁸ and California⁴⁹ cover the cost of abortion for people who are incarcerated. New York ensures that medical care for people who are incarcerated is covered by the state.⁵⁰ The statute does not explicitly mention abortion care, but the New York law mandates abortion be provided on request to people who are incarcerated such that abortion care should be considered included under the umbrella of covered medical care.⁵¹ While Colorado law does not require the state pay for abortion care, it requires that people who are incarcerated receive referrals to community-based organizations that help people pay for abortions.⁵² Other states, including California and New Jersey, have unclear policies and do not explicitly address who is responsible for the expenses associated with abortion for people who are incarcerated.

Conclusion

Pregnant people choose abortion for myriad reasons, often including preservation of their physical and mental well-being. Pregnant people who are incarcerated face significant circumstances that may contribute to their decision to seek abortion care. Yet states that protect access to abortion care generally may not guarantee the same right to abortion care for pregnant women who are incarcerated. Public health professionals and advocates for reproductive justice should coalesce around supporting policies that best protect pregnant people who are incarcerated. Understanding the relevant state laws is the first step in any such effort.

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¹ Emily Widra, *Incarceration Shortens Life Expectancy*, PRISON POL’Y INITIATIVE (June 26, 2017), https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

² Shon Hopwood, *How Atrocious Prison Conditions Make Us All Less Safe*, BRENNAN CTR. FOR JUST. (Aug. 9, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/how-atrocious-prisons-conditions-make-us-all-less-safe>.

³ *Living Conditions in Prisons*, VERA, <https://www.vera.org/dignity-behind-bars/living-conditions-in-prison> (last visited Apr. 15, 2025).

⁴ Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, VERA (June 29, 2022), <https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs>.

⁵ *Health*, PRISON POL’Y INITIATIVE, <https://www.prisonpolicy.org/health.html> (last visited Apr. 15, 2025).

⁶ Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, VERA (June 29, 2022), <https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs>.

⁷ We use the term woman/women here as the data maintained about the incarcerated population is broken into men and women. We recognize that not all people capable of becoming pregnant are women.

⁸ Aleks Kajstura & Wendy Sawyer, *Women’s Mass Incarceration: The Whole Pie 2024*, PRISON POL’Y INITIATIVE (Mar. 5, 2024), <https://www.prisonpolicy.org/reports/pie2024women.html>.

⁹ Leah Wong, *Unsupportive Environments and Limited Policies: Pregnancy, Postpartum, and Birth During Incarceration*, PRISON POL’Y INITIATIVE (Aug. 19, 2021), https://www.prisonpolicy.org/blog/2021/08/19/pregnancy_studies/.

¹⁰ *Id.* Policy levers can improve the experience; for example, most states prohibit or limit the use of shackles on pregnant women, particularly during the birthing process. Renuka Rayasam, *Most States Ban Shackling Pregnant Women in Custody, Yet Many Report Being Restrained*, KFF HEALTH NEWS (Nov. 17, 2023), <https://kffhealthnews.org/news/article/pregnant-women-prison-handcuffs-restraints-laws/>.

¹¹ Anna Roh, *Forced to Give Birth Alone: How Prisons and Jails Neglect Pregnant People Who are Incarcerated*, COLUMBIA MAILMAN SCHOOL OF PUBLIC HEALTH (Feb. 28, 2022), <https://www.publichealth.columbia.edu/news/forced-give-birth-alone-how-prisons-jails-neglect-pregnant-people-who-are-incarcerated>.

- ¹² Laura Abbott et al., *Institutional Thoughtlessness and the Incarcerated Pregnancy*, CRIMINOLOGY & CRIM. JUST. (2024), <https://journals.sagepub.com/doi/epub/10.1177/17488958241228995>.
- ¹³ *The Turnaway Study*, U.C. S.F.: ADVANCING NEW STANDARDS IN REPROD. HEALTH, <https://www.ansirh.org/research/ongoing/turnaway-study> (last accessed Apr. 12, 2025).
- ¹⁴ Healthy People 2030, *Incarceration*, U.S. DEP'T HEALTH & HUM. SERVS., <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/incarceration> (last accessed June 26, 2024).
- ¹⁵ 410 U.S. 113 (1973).
- ¹⁶ 597 U.S. 215 (2022). v
- ¹⁷ In addition to the District of Columbia, the twenty-six states where abortion is generally available by law are Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington. See generally *After Roe Fell: Abortion Laws by State*, CTR. REPRO. RIGHTS, <https://reproductiverights.org/maps/abortion-laws-by-state/> (last accessed Apr. 15, 2025) (surveying state abortion laws following the repeal of *Roe* and examining which states have either expanded access, protected, not protected, acted with hostility to, or even outlawed abortion).
- ¹⁸ The nine states where abortion is generally available by law that also have some sort of prison policy that controls abortion access for people who are incarcerated are California, Colorado, Illinois, Maryland, Massachusetts, Minnesota, New Jersey, New York, and Oregon.
- ¹⁹ CAL. PENAL CODE § 3405, § 3408, § 4028.
- ²⁰ N.Y. CORR. LAW § 611(4) (LexisNexis 2025).
- ²¹ 775 ILL. COMP. STAT. 55/1-15, 55/1-20 (2019).
- ²² COLO. REV. STAT. § 17-1-114.5 (2023).
- ²³ N.J. ADMIN. CODE § 10A:16-6.4, § 10A:31-13.10 (2025).
- ²⁴ Three states with carceral abortion laws that delegate abortion policies to state agencies or jails are Maryland, Massachusetts, and Oregon. See *Md. Code Regs. 12.02.09.02*; SPECIAL HEALTH CARE PRACTICES, MASS. DEP'T CORRS. (2021); ORS 169.076.
- ²⁵ See ORS 169.076.
- ²⁶ BRITTNEY PLESSER, ACCESS FOR ALL, IN OREGON?: A REVIEW OF ABORTION ACCESS IN OREGON'S COUNTY JAILS 8–9 (2023); *Jail Standards*, OR. STATE SHERIFFS' ASS'N, <https://oregonsheriffs.org/jail-standards/> (last visited Apr. 25, 2025) ("Yamhill County Ordinance 634 explicitly bans Yamhill County agents from facilitating 'by any means the performance of an abortion, other than to the extent required by federal and state law,' to include the use of staff time and physical support.").
- ²⁷ *Md. Code Regs. 12.02.09.02* (2025).
- ²⁸ *Md. Corr. Servs. Code § 9-601* (2024).
- ²⁹ SPECIAL HEALTH CARE PRACTICES, MASS. DEP'T CORRS. (2021).
- ³⁰ California, Colorado, Illinois, Minnesota, New Jersey, and New York all have prison policies that are consistent with statewide abortion protections because either by statute or other regulation, people who are incarcerated have at least a presumptive right to abortion. Maryland, Massachusetts, and Oregon, however, inadequately reflect statewide abortion protections in policies governing access to abortion for people who are incarcerated.
- ³¹ 775 ILL. COMP. STAT. 55/1-15, 55/1-20 (2019).
- ³² 775 ILL. COMP. STAT. 55/1-20 (2019).
- ³³ CAL. PENAL CODE § 3405.
- ³⁴ COLO. REV. STAT. § 17-1-114.5 (2023), N.Y. CORR. LAW § 611(4) (LexisNexis) (2025), N.J. ADMIN. CODE § 10A:16-6.4 (2025).
- ³⁵ SPECIAL HEALTH CARE PRACTICES, MASS. DEP'T CORRS. (2021).
- ³⁶ See Mass. Gen. Court H. 2371 (2023–2024 session); Mass. Gen. Court H. 2658 (2025–2026 session).
- ³⁷ Compare MD. DEP'T PUB. SAFETY & CORR. SERVS., CLINICAL SERVICES & INMATE HEALTH (last revised 2015) (providing that terminations of pregnancy are "restricted to the first trimester only" and that "[c]onsiderations for termination of pregnancy outside of the first trimester will not be done without a life threatening event" at the review of the departmental Chief Medical Officer), with *Governor Moore Signs Proclamation to Enshrine Reproductive Freedom in Maryland's Constitution*, OFF. GOVERNOR WES MOORE (Jan. 17, 2025), <https://governor.maryland.gov/news/press/pages/governor-moore-signs-proclamation-to-enshrine-reproductive-freedom-in-maryland-s-constitution.aspx>.
- ³⁸ 42 U.S.C. § 1396d (32)(A); Samantha Artiga & Robin Rudowitz, *Health Coverage and Care for the Adult Criminal Justice-Involved Population*, KFF (Sept. 5, 2024), <https://www.kff.org/uninsured/issue-brief/health-coverage-and-care-for-the-adult-criminal-justice-involved-population/>; Committee on Health Care for Underserved Women, *Reproductive Health Care for Incarcerated Pregnant, Postpartum, and Nonpregnant Individuals*, Am. Coll. Obstetrics & Gynecologists, at e26, <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals> (reaffirmed 2024); Natashi Kamhi, et al., *Medicaid's Evolving Role in Advancing the Health of People Involved in the Justice System*, THE COMMONWEALTH FUND (Nov. 18, 2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/medicaid-role-health-people-involved-justice-system>.

³⁹ Emily Widra, *New Research Links Medical Copays to Reduced Healthcare Access in Prisons*, PRISON POL'Y INITIATIVE (Aug. 29, 2024), <https://www.prisonpolicy.org/blog/2024/08/29/fees-limit-healthcare-access/>.

⁴⁰ Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, VERA (June 29, 2022), <https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs>.

⁴¹ *MEDICAL DEBT BEHIND BARS: THE PUNISHING IMPACT OF COPAYS, FEES, AND OTHER CARCERAL MEDICAL DEBT 18* (2024).

⁴² Matthew Rae et al., *Health Costs Associated with Pregnancy, Childbirth, and Postpartum Care*, PETERSON-KFF: HEALTH SYSTEM TRACKER (July 13, 2022), <https://www.healthsystemtracker.org/brief/health-costs-associated-with-pregnancy-childbirth-and-postpartum-care/>.

⁴³ Maryland, New Jersey, and New York neither restrict the use of state funds for people who are incarcerated nor explicitly allocate financial responsibility for carceral abortions in state law.

⁴⁴ *SPECIAL HEALTH CARE PRACTICES*, MASS. DEP'T CORRS. (2021).

⁴⁵ Sam Dier, *Illinois Gov. JB Pritzker Moves to Make Abortion More Accessible to People in Prisons*, NPR ILLINOIS (Nov. 3, 2022) <https://www.nprillinois.org/illinois/2022-11-03/illinois-gov-jb-pritzker-moves-to-make-abortion-more-accessible-to-people-in-prisons>.

⁴⁶ *Id.*

⁴⁷ *MINN. DEP'T CORRS., 500.108: ABORTION HEALTHCARE* (2023).

⁴⁸ N.Y. CORR. LAW § 500-H, § 611(4).

⁴⁹ *Know Your Rights: Abortion Access in California*, ACLU N. CAL., <https://www.aclunc.org/our-work/know-your-rights/know-your-rights-abortion-access-california> (last visited Apr. 15, 2025).

⁵⁰ N.Y. CORR. LAW § 500-H, § 611(4) (LexisNexis 2025).

⁵¹ N.Y. CORR. LAW § 500-H (LexisNexis 2025); *See also Reproductive Health Care in Correctional Settings*, LETITIA JAMES N.Y. STATE ATT'Y GEN., <https://ag.ny.gov/resources/organizations/police-departments-law-enforcement/reproductive-health-care-correctional-settings> (last visited Apr. 4, 2025) (noting that "[r]eproductive health care shall be available free of charged for incarcerated individuals and medical care cannot be denied for inability to pay" and "[t]he 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 re-imbursement by an applicable third-party insurer.").

⁵² COLO. REV. STAT. § 17-1-114.5 (2023).