

**ON THE CONSTITUTIONAL REQUIREMENT FOR
ADEQUATE PRENATAL CARE POST-*DOBBS***

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Healthcare is not a fundamental right for most American citizens. However, the Eighth and Fourteenth Amendments guarantee a minimum standard of healthcare for those who are incarcerated because inmates are left completely vulnerable to the decisions and conduct of government officials.¹ When an inmate is pregnant, that vulnerability to—and subsequent responsibility of—the government extends to the unborn.

By the end of 2016, U.S. prisons and jails held more than 83,700 inmates with child-bearing capacity.² The U.S. Bureau of Justice Statistics estimates that up to five percent of child-bearing people are pregnant when they are processed into prison or jail.³ A 2019 study reported one year of pregnancy data from twenty-two state prison systems and all federal prisons, where there were nearly 1400 admissions of pregnant people.⁴ This was the first study of its kind.⁵

Policymakers have yet to directly address the reproductive health needs of the incarcerated.⁶ The lack of healthcare standards for pregnant, incarcerated people makes sound policies inconsistent or non-existent.⁷

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1. See *Estelle v. Gamble*, 429 U.S. 97 (1976). See also *Collins v. Al-Shami*, 851 F.3d 727 (7th Cir. 2017).

2. Lauren Beal, Jennifer Clarke, Rachel Jones, William Mosher & Carolyn Sufrin, *Pregnancy Outcomes in the U.S. Prisons, 2016-2017*, 109(5) AM. J. PUB. HEALTH 799 (2019).

3. Melanie Kalmanson, *Innocent Until Born: Why Prisons Should Stop Shackling Pregnant Women to Protect the Child*, 44 FLA. ST. U. L. REV. 851, 852 (2017).

4. Lauren Kuhlik & Carolyn Sufrin, *Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions*, 14 HARV. L. & POL'Y REV. 417, 422 (2020).

5. *Id.*

6. *Id.* at 419.

7. *Id.*

Thirty-eight state prison systems had inadequate prenatal care.⁸ Only twelve states had policies explicitly stating that medical examinations were a requirement for prenatal care, while twenty-four states have no policies at all.⁹ Thirty-one states have no nutritional policies or guidelines in place for pregnant people, and in twelve states with policies in place, the only guidelines were vague phrases requiring “adequate” or “appropriate” nutrition for pregnant inmates.¹⁰ In the twelve states that do provide guidance, the rules are beyond vague, requiring corrections officials to ensure pregnant inmates have “adequate” or “appropriate” nutrition.¹¹ Yet, according to experts, when pregnant people consume inadequate and unbalanced diets, the risk for preterm births or birth defects drastically increases.¹² Under the Eighth Amendment, all U.S. prisons and jails are required to provide medical care, including prenatal and postpartum recovery care. However, only 53.9% of pregnant people in prison actually received some form of care while incarcerated.¹³

In *Dobbs v. Jackson Women’s Health Organization*, the Supreme Court re-deputized each state with the power to decide when its interests in the life of an unborn child outweigh a pregnant person’s right to bodily autonomy.¹⁴ While the *Dobbs* Court attempts to sidestep any implication that its ruling imposes a duty on states to recognize the constitutional rights of the unborn, state legislation crafted to restrict or ban abortion access may create such rights as an unintended consequence. This paper argues that state statutes codifying government interests in the health and welfare of the unborn trigger a constitutional right to prenatal care where adequate medical care is constitutionally required—namely in the penal system.

Part I of this Essay explores the healthcare mandates required by the U.S. Constitution in the era before the passage of *Dobbs*, specifically looking at abortion access and prenatal provisions in the penological system. Part II dissects abortion-related legislation passed by various states in the wake of *Dobbs*—emphasizing language within the legislative findings that are likely to trigger a constitutional obligation for prenatal

8. *Id.* at 439.

9. *Id.*

10. Rahgan Jensen, *Pregnancy During Incarceration: A “Serious” Medical Need*, 46 B.Y.U. L. REV. 529, 540 (2020).

11. *Id.*

12. Taylor Walker, *Across The Nation, States Fail To Meet Pregnant Women’s Health Needs In Prisons*, WITNESSLA, (Dec. 10, 2019), <https://witnessla.com/widespread-failure-to-meet-pregnant-womens-health-needs-in-prisons/>.

13. Jensen, *supra* note 10, at 538.

14. *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. ___, 142 S. Ct. 2228, 2284 (2022).

health in jails and prisons. Finally, Part III lays a roadmap for and assesses the impact caused by mandatory prenatal services for incarcerated people.

I. CONSTITUTIONAL HEALTHCARE MANDATES FOR INCARCERATED PREGNANT PEOPLE BEFORE *DOBBS*

The Constitution provides a limited right to healthcare for the incarcerated. The Fourteenth Amendment guarantees equal protection for those detained before trial—mandating humane conditions, medical care, protection from harm, and other rights while incarcerated. The Eighth Amendment protects convicted prisoners from cruel and unusual punishment, including the “deliberate indifference to serious medical needs of prisoners.”¹⁵ Prison and jail officials must provide a minimum standard of healthcare to the incarcerated because of these constitutional protections.

A. *Abortion as Healthcare for the Incarcerated Pre-Dobbs*

At its core, abortion is healthcare.¹⁶ Before *Dobbs*, access to abortion was constitutionally protected for the incarcerated. Where the states’ interests now usurp access to abortion, the state must use its power to protect the health and welfare of the unborn where healthcare is within the government’s sphere of responsibility—namely prisons and jails. It is important to note that restrictions on abortion access for incarcerated people have not historically been analyzed under *Roe v. Wade* and *Planned Parenthood of Pennsylvania v. Casey*, but under the *Turner v. Safley* test—which allows for restrictions on constitutional rights that are reasonably related to legitimate penological interests.¹⁷ When applying the Fourteenth Amendment, courts give corrections officials wide deference in analyzing the four *Turner* factors.¹⁸

15. See *Estelle v. Gamble*, 429 U.S. 97 (1976). In 1976, *Estelle v. Gamble* declared that the “deliberate indifference to serious medical needs of prisoners” qualified as cruel and unusual punishment because it is “inconsistent with contemporary standards of decency.”

16. Accord Nicole Huberfeld, *With Liberty and Access for Some: The ACA’s Disconnect for Women’s Health*, 40 *FORDHAM URB. L.J.* 1357, 1362–65 (2013). See also Kelly Zielinski, *The Implication of Texas Abortion Law SB8 on at-Risk Populations in Texas and Other States*, 23 *DEPAUL J. HEALTH CARE L.* 52, 72 (2022).

17. *Turner v. Safley*, 482 U.S. 78 (1987). The majority opinion in *Dobbs* specifically takes aim at *Turner* because the case was used to support the Court’s reasoning in *Casey*. *Dobbs*, 142 S. Ct. at 2257.

18. *Turner*, 482 U.S. at 78-79 (stating the test as “(1) whether there is a ‘valid, rational connection’ between the regulation and a ‘legitimate governmental interest’; (2) whether there are ‘alternative means’ for a prisoner to exercise that right; (3) the impact of accommodating the exercise

Penal facilities face constraints in the development and implementation of healthcare policies.¹⁹ However, those constraints must not entirely eliminate access to specific healthcare procedures.²⁰ In other words, the courts may not allow constitutional violations to continue simply because a remedy would infringe on prison administration.²¹ Corrections officials must consider alternatives that fully accommodate the prisoner's rights with "de minimis" burden.²² Plainly, monetary and administrative constraints alone do not overcome the *Turner* requirements.²³ As states look to preserve resources, a policy change must have more than a "minimal cost savings" once implemented.²⁴ Lastly, prison officials may not allow administrative barriers to severely delay access to healthcare.²⁵

B. Penological Prenatal Care Before Dobbs

For a healthy pregnancy and birth, it is crucial to make regular prenatal visits to a healthcare provider.²⁶ A pregnant person in custody does not have the freedom to call their healthcare provider or an ambulance but must rely solely on a corrections officer—who serves as the gatekeeper to inmates seeking medical care.²⁷ Without adequate training and education, corrections officers are not qualified to assess whether a pregnant person's symptoms warrant medical attention, leading to delays and neglect in care.²⁸

Where an abortion restriction is rationally related to penological interests, it has been inferred that prenatal care is required for the

of the right on guards, inmates, and prison resources; and (4) the absence of any reasonable alternatives to the regulation." See *Victoria W. v. Larpenter*, 369 F.3d 475 (5th Cir. 2004).

19. *Roe v. Crawford*, 514 F.3d 789 (8th Cir. 2008). Applying the *Turner* factors, the court held that although the policy was rationally related to the security interests of the prison, it eliminated the ability of an inmate to seek an elective abortion while incarcerated. It found that less restrictive alternatives were available to the facility and invalidated the policy as a violation of the Fourteenth Amendment.

20. *Id.* at 796–97.

21. *Brown v. Plata*, 563 U.S. 493 131 S. Ct. 1910, 1928–29 (2011).

22. *Crawford*, 514 F.3d at 798.

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

24. *Victoria W.*, 369 F.3d at 488, analyzing *Roe v. Crawford*, 514 F.3d 789, 798 (8th Cir. 2008).

25. *Todaro v. Ward*, 565 F.2d 48, 52–53 (1977). The Second Circuit court held that the prison's medical practices were "constitutionally infirm" because the screening and record-keeping procedures were causing serious delays in access to care and inadequate follow-up care.

26. Mahnoor Yunus, *The Challenges in Health Care for Pregnant Women in U.S. Correctional Institutions*, 19 HASTINGS RACE & POVERTY L. J. 125, 128 (2021).

27. Kuhlik & Suffrin, *supra* note 4, at 440.

28. *Id.*

incarcerated.²⁹ The U.S. District Court for the District of Columbia has been the only federal court to find that failure to provide routine prenatal care to the incarcerated is illegal—but analyzed that failure in the context of local law—not the Eighth Amendment.³⁰ In its ruling, the court required the prison to establish a clinic and provide prenatal care on a schedule recommended by the American College of Obstetrics and Gynecology.³¹ However, an appellate court overturned that portion of the opinion, holding that the district court had improperly exercised its discretion in analyzing claims under local, non-federal law.³² To date, no court has held that failure to provide routine prenatal care to the incarcerated violates the Eighth or Fourteenth Amendments.³³

II. THE *DOBBS* EFFECT

In *Dobbs*, the Supreme Court upheld a Mississippi law prohibiting abortion after the fifteenth week of pregnancy, except in medical emergencies or cases of severe fetal abnormality.³⁴ The Court noted that the state legislators emphasized facts about the growth and development of unborn humans during each week of gestation.³⁵ The Mississippi Legislature’s findings recount the stages of prenatal development and assert the state’s interest in “protecting the life of the unborn.”³⁶ In determining that rational basis was the appropriate level of scrutiny for abortion and other health laws, the Court identifies several interests legitimate enough to justify the restriction of abortion access—“*respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.*”³⁷

29. *E.g., Victoria W.*, 369 F.3d at 486-87.

30. *Women Prisoners of D.C. Dep’t of Corr. v. D.C.*, 877 F. Supp. 634 (D.D.C. 1994), *vacated in part, modified in part*, 899 F. Supp. 659 (D.D.C. 1995). The Circuit court went on to require the establishment of a prenatal clinic with weekly operations. *See Women Prisoners of D.C. Dep’t of Corr. v. D.C.*, 93 F.3d 910, 935 (D.C. Cir. 1996).

31. *Women Prisoners*, 93 F.3d 910.

32. *Kuhlik & Sufirin*, *supra* note 4, at 441.

33. *See also Fla. Women’s Medical Clinic, Inc. v. Smith*, 478 F. Supp. 233 (S.D. Fla. 1979) and *Fla. Women’s Medical Clinic, Inc. v. Smith*, 536 F. Supp. 1048 (S.D. Fla. 1982). The court held that the state has an interest in maternal health only after the first trimester, not before, and may not impose substantive clinical standards in the first trimester.

34. *Dobbs*, 142 S. Ct. at 2228.

35. *Id.* at 2243–44.

36. *Id.* at 2284.

37. *Id.* (emphasis added).

Several states have declared similar interests in the prenatal health of the unborn through legislation designed to restrict abortion access. This state interest is broad enough to extend to prenatal care in the penal facilities—where healthcare is constitutionally required. The specific language of multiple states justifies this reach.

Alabama: Alabama passed a pro-life amendment to the state constitution in 2018.³⁸ The amendment declares that Alabama “acknowledges, declares, and affirms that it is the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.”³⁹

Triggered by *Dobbs*, the Human Life Protection Act bans abortion in Alabama with very limited exceptions. The act prohibits a person from intentionally performing or attempting to perform an abortion but specifies that receiving an abortion is not cause for criminal or civil penalty.⁴⁰ According to the legislative findings for the Human Life Protection Act, the state constitution was amended based on the “*public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children.*”⁴¹

Arizona: The Arizona legislature drafted Senate Bill 1164 to mirror the Mississippi law challenged in *Dobbs*, banning abortion after fifteen weeks of pregnancy.⁴² In its legislative findings, the bill notes various identifiable characteristics of a fetus at each week between six and twelve weeks of gestation.⁴³ Arizona requires that its laws be interpreted to “*acknowledge on behalf of an unborn child at every stage of development, all rights, privileges, and immunities available to other persons, citizens, and residents,*” only restricted by the U.S. Constitution or U.S. Supreme Court.⁴⁴

Georgia: A 2019 law triggered by *Dobbs* bans abortion at six weeks of gestation in Georgia with exceptions in cases of rape or incest, and to protect the health of the mother.⁴⁵ The Living Infants and Fairness Equality Act includes unborn children at any stage of development in its definition of a person.⁴⁶ In the legislative findings, the General Assembly

38. Alabama State Abortion Policy Amendment, Amendment 2; ALA. CODE § 26-23H-4

39. ALA. CONST. art. I, § 36.06 (emphasis added).

40. ALA. CODE § 26-23H-8.

41. H.R. 314 § 2(b) (Ala. 2019) (emphasis added).

42. Ariz. S. 1164, 55th Leg. (2022).

43. Ariz. S. 1164, sec 3. A.2., 55th Leg. (2022) (emphasis added).

44. See Ariz. S. 1457, 65th Leg. (2023).

45. The Georgia Supreme Court on November 23, 2022, reinstated the state’s ban on abortions after roughly six weeks of pregnancy.

46. H.R. 481 § 3 (Ga. 2019).

of Georgia noted that medical developments demonstrate “unborn children are *a class of living, distinct persons*” and “more expansive state recognition of unborn children as persons did not exist at the times of *Casey* and *Roe v. Wade*.”⁴⁷

Kentucky: Abortion is banned in Kentucky after six weeks of gestation, with no exceptions for rape or incest, after two 2019 statutes were triggered by *Dobbs*. House Bill 148 defines an unborn human being to include “the entire embryonic and fetal stages of the unborn child *from fertilization to full gestation and childbirth*.”⁴⁸ Senate Bill 9 declared that the state has legitimate interests “*from the outset of the pregnancy* in protecting . . . the life of an unborn.”⁴⁹

After *Dobbs*, the Kentucky legislature determined that there was inadequate legislation to protect the life, health, and welfare of pregnant people and unborn human life.⁵⁰ At the repeal of *Roe v. Wade*, policymakers restored the declared policy of the state “*to recognize and to protect the lives of all human beings regardless of their degree of biological development*.”⁵¹

Louisiana: In 2019, Louisiana lawmakers passed Senate Bill 184 banning abortion after a fetal heartbeat is detected. The abortion statute’s legislative intent prescribes “the longstanding public policy that *every unborn child is a human being from the moment of conception and is, therefore, a legal person for purposes under the laws of this state and Constitution of Louisiana*.”⁵²

North Dakota: Abortion is banned in North Dakota with very limited exceptions because of a North Dakota law that went into effect April 24, 2023. The stated purpose of the North Dakota Abortion Control Act is to protect unborn human life and maternal health within present constitutional limits. It reaffirms the “*tradition of the state of North Dakota to protect every human life whether unborn or aged, healthy or sick*.”⁵³ The legislation’s definition of “human being” includes the unborn “*during the entire embryonic and fetal ages from fertilization to full gestation*.”⁵⁴

Ohio: Ohio Senate Bill 23 banned abortion after around six weeks of pregnancy in Ohio went into effect June 24, 2022. However, that law is

47. H.R. 481 § 2 (Ga. 2019) (emphasis added).

48. Ky. H.B. 148(c)(1), 2019 Leg. Reg. Sess. (2019) (emphasis added).

49. Ky. S.B. 9(2), 2019 Leg. Reg. Sess. (2019)

50. KY. REV. CODE § 311.710 (2).

51. KY. REV. CODE § 311.710 (5) (emphasis added).

52. N.D. CENT. CODE § 12.1-31-12 (emphasis added).

53. Abortion Control Act, N.D. STAT. § 14-02.1-01 (emphasis added).

54. N.D. STAT. § 14-02.1-02 (9).

being challenged in the courts and is currently not in effect.⁵⁵ As a result, Ohio bans abortion after twenty-one weeks of pregnancy and has some other restrictions on abortion access. The Ohio General Assembly declared a compelling interest in protecting the life of the unborn from the “moment of conception.”⁵⁶

Tennessee: The Human Life Protection Act banned abortion in Tennessee with very limited exceptions.⁵⁷ The act was passed with the intent to preserve and protect potential life throughout pregnancy.⁵⁸ The state legislators noted the “*substantial advances in scientific methods and medical technology that have significantly expanded knowledge and understanding of prenatal life and development.*”⁵⁹

In the legislative findings, the general assembly declares Tennessee’s “legitimate, substantial, and compelling interest in protecting the rights of all human beings, *including the fundamental and absolute right of unborn human beings to life, liberty, and all rights protected by the Fourteenth and Ninth Amendments to the United States Constitution.*”⁶⁰ Further, the state codifies legitimate, substantial, and compelling interests in valuing and protecting the unborn in abortion and non-abortion circumstances.⁶¹

Texas: Abortion is completely banned in Texas after six weeks of pregnancy, with no exceptions for rape, incest, or nonviability. The Texas Heartbeat Act defines an unborn child as “a human fetus or embryo in *any stage of gestation from fertilization until birth.*”⁶² In the legislative findings, the state asserted compelling interests “*from the outset of a woman’s pregnancy in protecting the health of the woman and the life of the unborn child.*”⁶³

Utah: Abortion in Utah is currently legal up to eighteen weeks of pregnancy. However, state legislators were the first in the nation to issue a ban on abortion clinics, currently in litigation. The state legislature mandated an information module and public website to provide a geographically indexed list of resources and public and private services available to assist, financially or otherwise, a pregnant woman during pregnancy, at childbirth, and while the child is dependent, including

55. Preterm-Cleveland v. Yost, 2022 WL 16137799 (Ohio C.C.P. Oct. 12, 2022).

56. Ohio S. 23, 133rd Leg. (2019).

57. The law was triggered by *Dobbs* but required 30 days after the Supreme Court ruling to become effective.

58. Human Life Protection Act, TENN. STAT. § 39–15–214 (2019).

59. *Id.*

60. *Id.*

61. *Id.*

62. Texas Heartbeat Act, § 3(7) (emphasis added).

63. *Id.* § 171.202, Legislative Findings.

medical assistance benefits for prenatal care, childbirth, and neonatal care.⁶⁴

West Virginia: Passed in 2022, House Bill 302 completely bans abortion with exceptions for rape, incest, and nonviability. In enacting the law, the West Virginia legislature found a legitimate interest in protecting unborn lives.⁶⁵

III. REMEDIES WHERE PRENATAL CARE IS INADEQUATE

The legislative findings have been used to argue that a state's interests require it to invest in adequate prenatal care for the incarcerated.⁶⁶ Jail and prison officials are required to provide adequate prenatal care to the incarcerated where states have asserted a legitimate interest in the health and welfare of the unborn. Where facilities fail to do so, a Section 1983 claim on behalf of the unborn may prevail should the court or legislature determine that pregnancy is a serious medical need.

Section 1983 provides a civil remedy to those who have been deprived by a state official of a right held under federal law. To state a claim under Section 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law, including physicians providing medical services in state prisons and jails.⁶⁷

Generally, Section 1983 claims by inmates can be divided into two types: use-of-force and conditions-of-confinement. Use-of-force claims arise when an inmate alleges that an officer applied excessive physical force to his or her person. More applicable here are conditions-of-confinement claims, which allege an injury resulting from a condition of an inmate's incarceration—including inadequate medical care, failure to protect an inmate from other inmates, and unsanitary or inhumane conditions.⁶⁸

64. UTAH CODE § 76-7-305.5.

65. WEST VA. CODE § 16-2R-1.

66. See, e.g., Press Release, CBC Health Braintrust, *Rep. Robin Kelly, Sen. Durbin Introduce the CARE For Moms Act*, Sept. 19, 2023.

67. *West v. Atkins*, 487 U.S. 42, 48 (1988).

68. Abby Dockum, *Kingsley, Unconditioned: Protecting Pretrial Detainees with an Objective Deliberate Indifference Standard in Section 1983 Conditions-of-Confinement Claims*, 53 ARIZ. ST. L.J. 707, 712–13 (2021).

A. *Classifying Pregnancy as a Serious Medical Need Based on States' Legislative Findings*

A serious medical need is “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.”⁶⁹ The United States Supreme Court determined that a medical need is sufficiently serious when a person is incarcerated under conditions that pose a substantial risk of serious harm.⁷⁰ Courts have yet to find that prenatal care is a serious medical need during routine pregnancies. When the failure to provide prenatal care to the incarcerated has been unconstitutional, it has been attributed to a fetal or maternal abnormality.⁷¹ However, incarceration is known to heighten the risks of an adverse pregnancy outcome from exposure to violence and high levels of stress and abuse.⁷² Therefore, incarcerated pregnant people require highly specific care for protection from low birth weight and preterm birth.⁷³

Previous case law only required penal institutions to provide prenatal care when they are aware of circumstances demonstrating a substantial risk of serious harm to the pregnant person and/or the pregnancy, such as an abnormality or labor.⁷⁴ In the aftermath of *Dobbs*, sentiments are already beginning to shift.⁷⁵ *Estelle v. Gamble* has not resulted in a system that codifies all “serious medical needs” or oversight of health care delivery in institutions of incarceration.⁷⁶ The lack of standardization leaves that definition to the tremendous discretionary power of each institution.⁷⁷

Once pregnancy is recognized as a serious medical need, penal policies that interfere with access to prenatal care will fail the *Turner* test and be declared unconstitutional. Having declared the state’s interest in the unborn categorically, a policy that works to the detriment of that interest cannot be rationally related. Furthermore, financial and administrative barriers cannot be used to justify the denial of a

69. *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008).

70. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

71. Labor and delivery during all pregnancies also constitute a serious medical need.

72. Nicolette Wolfrey, *Incarceration Harms Moms and Babies*, NAT’L P’SHP OF WOMEN AND FAMILIES (2021).

73. *Id.*

74. Kuhlik & Sufirin, *supra* note 4, at 441.

75. *See e.g.*, *Hill v. Clayton Cnty. Georgia*, 2022 WL 17558831 at *6 (N.D. Ga. Dec. 9, 2022). A Georgia court found that unfulfilled requests for prenatal care create a plausible claim for a violation of the Eighth and Fourteenth Amendments.

76. Kuhlik & Sufirin, *supra* note 4, at 427.

77. *Id.* at 428.

constitutional right. Classifying prenatal care as a serious medical need post-abortion restriction stage satisfies the first element of the 1983 claim.

B. Establishing a Standard For Care

Prenatal care recommended by the National Commission on Correctional Health Care (NCCHC),⁷⁸ the American College of Obstetricians and Gynecologists (ACOG), and the American Public Health Association (APHA) includes regular medical examinations, education on breastfeeding options, laboratory and diagnostic tests following national guidelines, treatment plans documenting clinically indicated levels of activity, nutrition, medications, housing, and safety precautions, and administration of recommended vaccines.⁷⁹ ACOG recommends that incarcerated pregnant people should receive the same prenatal care services—including regular visits with a qualified provider and certain laboratory and ultrasound tests—that are standard in the community.⁸⁰

Policymakers looking for a model to replicate that ensures adequate prenatal care for the incarcerated can begin with practices that have already been successfully implemented. Several state laws go further than the courts have, mandating that prisons provide prenatal care to pregnant incarcerated individuals. California stands apart from the rest of the states, with a clear requirement for specific supplemental nutrients, as well as two extra servings each of milk, fruit, and veggies per day.⁸¹ Minnesota provides financial support for prenatal care and assistance to improve relationships with their children.⁸² The more progressive Connecticut mandates that correctional facilities employ at least one licensed healthcare provider to educate pregnant inmates on prenatal nutrition, high-risk pregnancy, and addiction and substance abuse during pregnancy and childbirth.⁸³ The Connecticut Department of Correction is required to provide prenatal, labor, and postpartum services and supports including an opportunity to pump and store breast milk for their babies.⁸⁴

78. The National Commission on Correctional Health Care provides accreditation to healthcare systems within institutions of incarceration.

79. Jensen, *supra* note 10, at 539.

80. Kuhlik & Sufirin, *supra* note 4, at 441.

81. See CAL. PENAL CODE § 3406.

82. Kate Hannaher, *Caring for Invisible Patients: Challenges and Opportunities in Healthcare for Incarcerated Women*, 29 HAMLINE J. PUB. L. & POL'Y 161, 204 (2007).

83. CONN. GEN. STAT. ANN. § 18-69c.

84. CONN. GEN. STAT. ANN. § 18-69d.

One option for care would be for policymakers to consider expanding incarcerated pregnant people's access to doula services to improve perinatal care and support healthy pregnancies. Doulas are trained professionals who provide physical, emotional, and informational support during and shortly after childbirth.⁸⁵ Evidence shows that the use of doulas improves birth outcomes.⁸⁶ For the incarcerated, doula services can decrease cesarean births, operative vaginal births, use of analgesics, and duration of labor.⁸⁷

IV. CONCLUSION

Adequate healthcare is a constitutional right for incarcerated people in the United States. Where abortion is legal, the healthcare services available to inmates can only be adequate if access to abortion care is included. Where access to abortion is restricted or prohibited, there is an equally binding requirement to provide incarcerated people with adequate prenatal care. State legislators moved quickly to pass restrictive abortion bills surrounding the *Dobbs* decision, citing their intent to protect or nurture the unborn. An analysis of such bills' legislative intent—particularly within the legislative findings—reveals an obligation by the state to provide adequate prenatal care in penal institutions, where healthcare is constitutionally required.

85. Mahnoor Yunus, *The Challenges in Health Care for Pregnant Women in U.S. Correctional Institutions*, 19 HASTINGS RACE & POVERTY L. J. 125, 148–49 (2021).

86. See Rebecca Schlafer, et al., *Doulas' Perspective About Providing Support to Incarcerated Women: A Feasibility Study*, 32(4) PUB. HEALTH NURSING 316 (2015).

87. *State Policy Approaches to Incorporating Doula Services into Maternal Care*, ASTHO EXPERTS BLOG (Aug. 9, 2018), <https://205.174.25.45/StatePublicHealth/State-Policy-Approaches-to-Incorporating-Doula-Services-into-Maternal-Care/08-09-18/>.