

# Maternal Health Care While Incarcerated



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## SUMMARY

Pregnancy is an emotionally and physically challenging period for women, no matter what the circumstances. Coupled with the experience of being incarcerated, those challenges quickly become overwhelming and even unbearable. Incarcerated pregnant inmates should be afforded basic humane treatment that not only protects them from harm, but fosters development of a healthy baby as well.

The Grand Jury learned through records review that the population of the Central Women's Jail (CWJ) included a total of 334 pregnant inmates in 2018 and a total of 350 in 2019. The Grand Jury reviewed ten fetal deaths which occurred while the pregnant inmate was in custody, seven of which took place in 2018 and 2019. In each of those years, 27 abortions were performed. Inmates that were less than 20 weeks pregnant and miscarried while incarcerated were not tracked by the Correctional Health Services (CHS). At any given time, approximately 15 inmates are pregnant, representing 5% of the female population.

During its investigation of the CWJ, the Grand Jury found that the quality of maternal health care for incarcerated inmates varied widely. Care ranged from adequate prenatal care to handcuffing of an inmate during labor and delivery, to ignoring urgent requests for medical care. The Grand Jury also learned that some of these pregnancies ended in the death of the fetus.

In addition, the documentation reviewed of pregnancies and pregnancy care in the jails was found to be sparse, sometimes anecdotal, or wholly insufficient. Even when it exists, established policy was not always adhered to resulting in inconsistent medical and custodial care delivered to pregnant inmates. This report will focus on key components of maternal health care while incarcerated at the CWJ.

## REASON FOR THE STUDY

A number of reports by local journalists have been published about women in the Orange County jails who have been ignored or provided substandard medical care while pregnant. In some cases, substandard medical care allegedly led up to the deaths of their babies.<sup>1</sup> In addition, a study reported by the *ACLU Jails Project* in 2017, found that in Orange County, "pregnant women, who are incarcerated, are subject to poor medical attention and a lack of accommodations for their housing and dietary needs."<sup>2</sup> Due to the seriousness of these allegations, the 2019-2020

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<sup>1</sup> See Reference 1, 2, 3

<sup>2</sup> American Civil Liberties Union Foundation of Southern California, *Executive Summary: Orange County Jails* (2017) p. 8.

Orange County Grand Jury undertook an investigation of the maternal health care of pregnant inmates at the CWJ.

The goal of the 2019-2020 Orange County Grand Jury is to determine if pregnant inmates are being provided the necessary prenatal health care, as well as specific pregnancy-related screenings and accommodations, while incarcerated. This investigation seeks to determine if the Intake/Release Center (IRC) and CWJ are informing pregnant inmates of their health rights while incarcerated, and of health care and pregnancy-related programs that are available to them. In addition, this investigation considers whether or not Orange County is providing “medical services...at a community standard of care” to pregnant inmates in the County’s correctional facilities.<sup>3</sup>

## METHOD OF STUDY

In conducting its investigation, the Grand Jury interviewed multiple representatives of the Orange County Sheriff’s Department (OCSD), the Orange County Health Care Agency (HCA), Correctional Health Services (CHS), a Public Health Nutritionist, incarcerated pregnant inmates, as well as former female inmates after their release. It toured the IRC, CWJ, Theo Lacy Facility, and Juvenile Hall.

A thorough review was conducted of the OCSD and HCA procedures relating to pregnant inmate care and Title 15- *Minimum Standards for Local Detention Facilities* including but not limited to:

- Medical intake forms completed by CHS
- Hospital and medical records created during the inmate’s incarceration
- Inmate jail records from the OCSD

Due to federal laws that protect the privacy of medical records, four subpoenas were served to obtain medical details pertaining to in-custody deaths of infants.

The Grand Jury also conducted extensive research and document review pertaining to best practices for incarcerated pregnant inmates from medical societies, newspaper and journal articles, and government reports.

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<sup>3</sup> OC Health Care Agency <http://www.ochealthinfo.com/about/chs/achs>, last accessed 01/16/2020.

## BACKGROUND AND FACTS

Access to proper prenatal care is essential for a healthy pregnancy. It is estimated that eight to ten percent of women who enter jail are pregnant.<sup>4</sup> For many women, the first time that they learn that they are pregnant is when they enter jail.

At the time of their arrest and incarceration, many pregnant inmates lack prenatal care and need considerable support to improve the clinical outcomes of their pregnancies.<sup>5</sup> Many of these mothers have high-risk pregnancies due to economic and social conditions that led them to be incarcerated: poverty, lack of education, lack of adequate health care and substance abuse. The lack of careful screening and appropriate medical treatment during incarceration, could contribute to pregnant inmates and their babies being at risk for life-long health problems.<sup>6</sup>

National data on inmate pregnancy are scant and outdated. According to a 2004 Bureau of Justice Statistics survey, 3% of women in federal prisons and 4% in state prisons reported that they were pregnant at intake.<sup>7</sup> The Grand Jury learned through its investigation that the CWJ housed a total of 334 pregnant inmates in 2018 and a total of 350 in 2019 (see Figure 1 and Figure 2). At any given time approximately 15 inmates are pregnant, representing 5% of the rated capacity (274) of the CWJ.

The Grand Jury reviewed ten fetal deaths that took place while the inmate was in custody, seven of which occurred in either 2018 or 2019. A total of 27 abortions were performed in 2018 and 2019. Inmates that were less than 20 weeks pregnant and miscarried while incarcerated were not tracked by the CHS even though policy states they “shall keep a list of all pregnancies and their outcomes.”

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<sup>4</sup> Legal Services for Prisoners with Children, *Pregnant Women In California Prisons and Jails* (2006), Accessed August 8, 2019. [https://www.courts.ca.gov/documents/BTB\\_23\\_4K\\_5.pdf](https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf).

<sup>5</sup> National Commission on Correctional Health Care, Position Statement: Women’s Health Care in Correctional Settings (October 2014) [www.ncchc.org](http://www.ncchc.org).

<sup>6</sup> Hotelling, B.A., *Perinatal Needs of Pregnant, Incarcerated Women*, *J Perinat Educ*, 17(2):37-44.

<sup>7</sup> *Pregnancy Outcomes in US Prisons, 2016-2017*. *Am J Public Health*. 2019; 109.799-805: doi: 10.2105/AJPH.2019.305006.

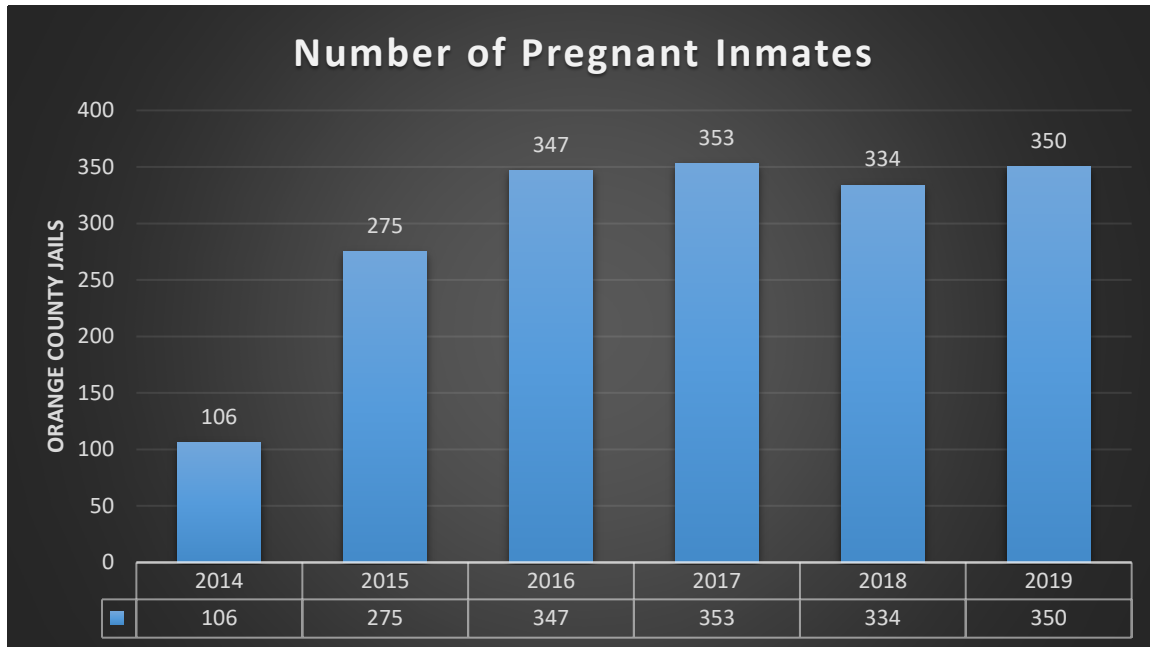


Figure 1. Number of pregnant inmates in Orange County Jails.

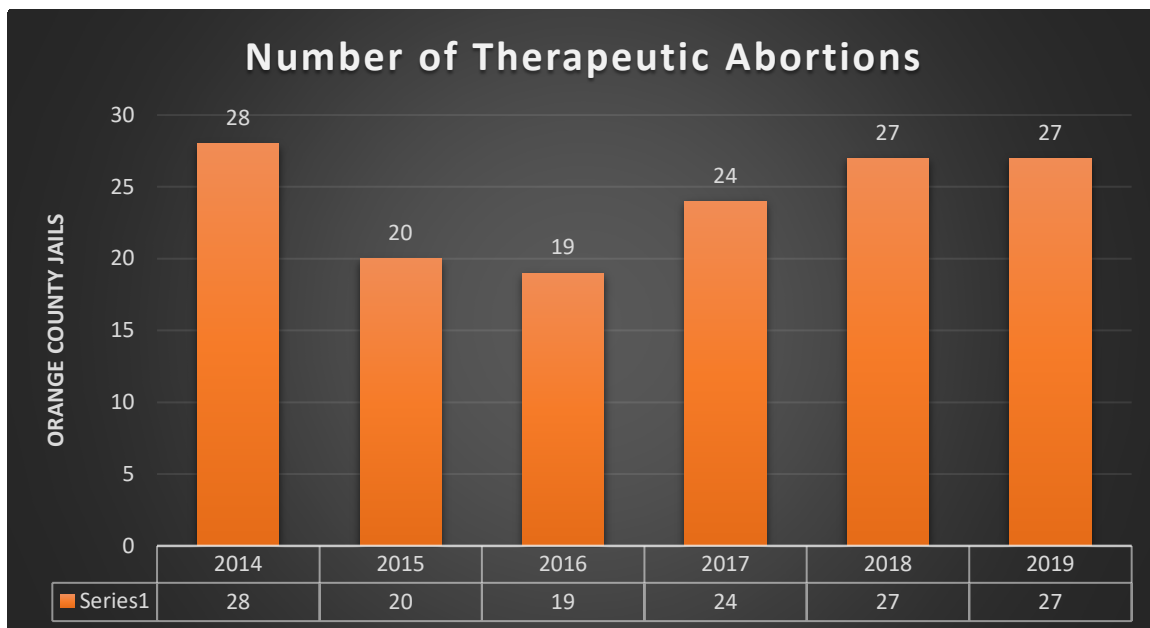


Figure 2. Number of therapeutic abortions in Orange County Jails.

### Intake Release Center

As a result of the 2018-19 Orange County Grand Jury report *The Silent Killer*, the OCSD agreed to construct four interview cubicles at the IRC to provide confidentiality during screenings to enable and increase the number of inmates who can be screened at one time, while decreasing

the overall time for new bookings. Construction for this project is funded and was scheduled to begin by December 31, 2019.<sup>8</sup> However, during a tour of the jail, it was noted that construction had not started and the configuration of the two existing health screening stations remain unchanged, with no additional temporary accommodations in place. It is now reported that the design phase of the project has been completed and construction is scheduled to begin as this report goes to publication with completion expected by December 2020.

The Grand Jury recommends that a deadline for the completion of the reconfiguration of the screening area at the IRC be monitored. Secondly, in the interim, the Grand Jury recommends that temporary partitions be installed to separate health screenings with a place to sit for new arrestees. This would allow CHS to conduct more accurate health screenings, improve access, and provide for more privacy for arrestees to answer personal health questions during their interviews as well as improve safety for nurses conducting the screening. This will also be consistent with COVID-19 recommendations.

### **Statement of Booking Officer**

Upon arrival at the Intake Release Center (IRC), which is under the control of the Orange County Sheriff's Department, arrestees receive a health screening conducted by a qualified Correctional Health Services staff member in accordance with regulations,<sup>9</sup> CHS staff is responsible for completing a screening interview with all arrestees in the IRC in a language that they understand. CHS clinical staff also assess all pregnant or suspected pregnant arrestees for behavior, illness, injury, bleeding, pain, body deformities, skin conditions, level of consciousness and any signs indicative of development disabilities. The results of the arrestee's health screening are to be recorded into an electronic health record.

In addition to a new arrestees' in-take and receiving interview, CHS reviews the Statement of Booking Officer (SOBO) form from the arresting agency and any medical transfer summary for medical and/or mental health information. After reviewing the comments and responses of the officer's statement on the SOBO form, CHS clinical staff signs the bottom of the form and return it to the officer for processing.

After reviewing submitted SOBO forms at the IRC, the Grand Jury found that most of them were satisfactorily completed by the arresting agency. However, on some of the forms, certain fields were not completed, or were illegible, including those for the officer's signature, badge number, and the agency for which the officer works. No additional comments were noted if an arrestee self-identified as pregnant. Without this information on the SOBO, CHS could accept an

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<sup>8</sup> 2018–2019 Orange County Grand Jury Final Report, "The Silent Killer" Hypertension in Orange County's Intake and Release Center, [http://www.ocgrandjury.org/pdfs/2018\\_2019\\_GJreport/2019-06-04\\_The\\_Silent\\_Killer\\_%20Hypertension\\_in\\_%20Orange\\_County's\\_Intake\\_and\\_Release\\_Center.pdf](http://www.ocgrandjury.org/pdfs/2018_2019_GJreport/2019-06-04_The_Silent_Killer_%20Hypertension_in_%20Orange_County's_Intake_and_Release_Center.pdf).

<sup>9</sup> Cal. Code Regs. Title 15, § 3999.100 *et seq.*



arrestee that should otherwise be declined. Even worse, the arresting agency will not be instructed to seek medical care for the arrestee prior to being booked into the IRC.

## Vital Signs

On intake, triaging staff are to obtain blood pressure, pulse, respiratory rate, temperature, and pain level, if any. Additional testing will be performed as clinically indicated including:

- a) A blood sugar check for pregnant and diabetic inmates
- b) SpO<sub>2</sub> will be recorded for respiratory conditions
- c) Baseline fetal heart tones for pregnant bookings  $\geq$  12 weeks
- d) A Urine Drug Screen (UDS) on all bookings prior to housing for inmates suspected or reporting substance use, and on all pregnant inmates.

During its investigation, the Grand Jury learned that health records such as: Vital Signs, Receiving Screening Questionnaire, Treatments, Fetal Heart Rate, and Initial Visit forms taken at the IRC and during an inmate's obstetrician/gynecologist (OB/GYN) visits were incomplete a majority of the time. In many cases, an inmate's vital signs were left blank or inadequately completed, with missing data throughout the care of the inmate. Clearly, an incomplete medical record:

- Demonstrates incomplete care;
- Demonstrates noncompliance with established policies;
- Contributes to inaccurate quality and care information; and,
- Results in incorrect diagnosis and improper treatment decisions.

Records that fail to concisely convey a patient's condition and the treatment prescribed to address that condition jeopardizes patient safety and hinders any effort to evaluate the quality of the care. With the exception of UDS, documentation of inmate's medical records was consistently found to be incomplete.

## Blood Pressure Measurement

When blood pressure is measured, the patient's arm should be at the level of the heart. The patient should be sitting or standing. The arm should be extended and should be about 2-3 inches below the shoulder. If the arm is allowed to hang down to the patient's side, blood pressure may register as much as 12 mm Hg. below its true value. This is not an issue when the patient is lying down, as long as the arm is kept alongside at the level of the body.<sup>10</sup>

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<sup>10</sup> [https://www.medicinet.com/effect\\_of\\_position\\_on\\_blood\\_pressure/ask.htm](https://www.medicinet.com/effect_of_position_on_blood_pressure/ask.htm), last accessed 01/23/2020.

During the Grand Jury's tour of the IRC, it observed that arrestees were brought to the triaging staff and remained standing, handcuffed behind the back when their blood pressure was taken. This practice is likely to result in an inaccurate blood pressure reading.

## **Testing Female Inmates for Pregnancy**

The Grand Jury reviewed policies that require pregnant inmates to receive timely and appropriate prenatal, obstetrical, and postpartum care while in-custody. Counseling and assistance are to be provided in accordance with the expressed desires of the inmate in planning for their unborn child. Female inmates will have a pregnancy test (a urine/blood human chorionic gonadotropin (hCG)) done within 3 days of booking, or earlier if the inmate states that she is pregnant. This is identified as "Medical" or "Mental Health" during intake screening. Pregnancy testing must take place prior to work assignments, before any medication is administered. Additional testing will be performed (as clinically indicated) to include: Urine Drug Screen, a blood sugar check for diabetic and pregnant inmates, and a baseline fetal heart tone reading on all pregnant bookings  $\geq$  12-weeks. Further data includes the inmate's height and weight. The Grand Jury consistently found these inmate health records to be deficient, with missing or insufficient documentation of vital signs, including height and weight from initial screening and throughout the medical care a pregnant inmate received while incarcerated.

In contrast, the Grand Jury found that CHS staff routinely performed pregnancy testing with female inmates in the IRC. However, a spot check of files revealed at least one pregnant inmate for whom a pregnancy test was not performed within the required 3 days, during which time she was assigned to work duty, violating the policy for pregnant inmates.

The Grand Jury reviewed policies that require inmates deemed pregnant or possibly pregnant shall have a pink tag (wristband) placed on them during the screening process prior to housing. This is done to alert security staff that that an inmate is pregnant or possibly pregnant. The Grand Jury found that inmates who were identified as pregnant or possibly pregnant while housed at the IRC were consistently given pink tags for identification during the receiving/screening booking process.

## **Classification of Pregnant Inmates**

The Grand Jury reviewed policies that require a Classification/Housing Review/ADA booking checklist be reviewed by the OCSD upon identification of pregnancy to determine where an inmate's housing location will be assigned. Flags will be entered into their health records based on Figure 3 below:

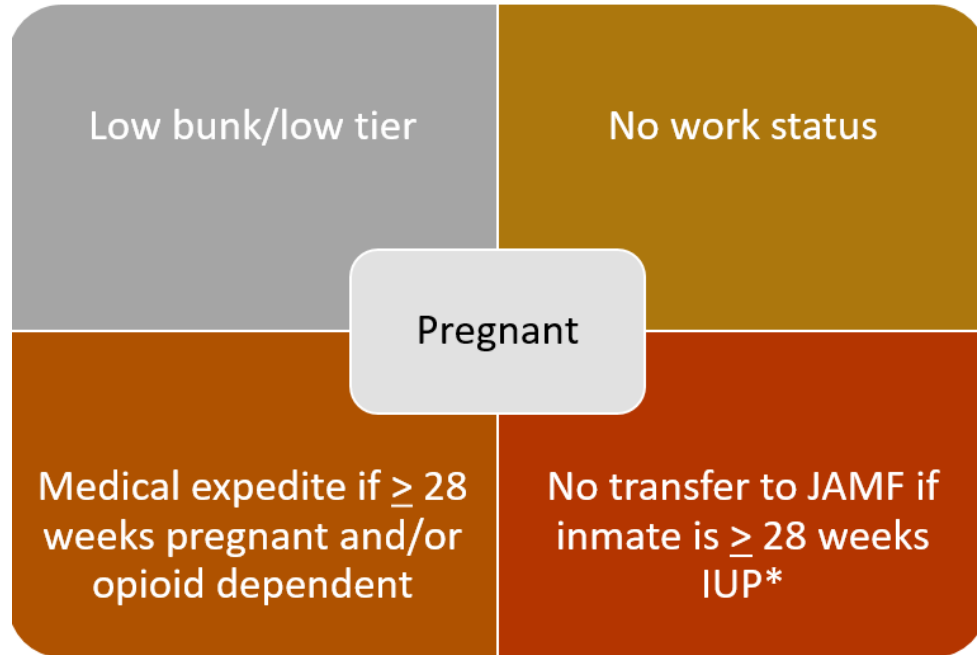


Figure 3. Classification/Housing Review/ADA Booking Checklist  
 \*JAMF is the James A. Musick Facility. IUP is intrauterine pregnancy.

The Grand Jury found that despite pregnant inmates being correctly identified in the screening process, they were not consistently assigned to a low bunk or tier as established policy dictates.

In reviewing completed Miscellaneous Message Slip (MMS) forms, the Grand Jury noted multiple requests from pregnant inmates to their medical prescriber to request a change of housing to a *low bunk*. Pregnant inmates were in fear of falling off a top bunk which could cause injury to their fetus if a fall were to occur. Some inmates were documented as having bruises from climbing up and down from the top bunk. Some pregnant inmates were unaware of their right to be assigned a low bunk or tier because this information was not included on the *Pregnant Inmate Information* form.

The Grand Jury reviewed one file where an inmate received a medical directive from the OB/GYN stating she was to be assigned to a “permanent (more than 6 months) low tier, low bunk”. However, the inmate was assigned an upper bunk upon returning from the hospital after the fetal demise of her 25-week old baby. In another case, an inmate who was  $\geq 28$  weeks pregnant had to use the MMS form to remind the OB/GYN to assign her to a low bunk, because the OB/GYN had failed to order her a low bunk/low tier.

### Identification of Pregnant Inmate Clothing

The Grand Jury reviewed policies that require a pink tag be issued to a female inmate in the Intake (during receiving screening) by CHS clinical triage staff to alert security staff that the

subject inmate is pregnant or possibly pregnant. Once inmates are assigned to a housing unit, a recently instituted policy requires pregnant inmates to be issued uniforms consisting of a pink smock top and pink pants. In site visits to the WCJ by members of the Grand Jury this was not observed, and interviews with pregnant inmates revealed that they were not issued pink uniforms. The Grand Jury attempted to schedule a follow-up visit to the jail to confirm if the clothing identification policy is being fully implemented. However, at the time of this report, jail visits were suspended due to the Coronavirus (COVID-19) pandemic.

## **Pregnant Inmate Rights**

Being in prison or jail during pregnancy can be a difficult time for many women, fraught with uncertainty about the kind of health care they might receive, about whether they will be shackled in labor, and about what will happen to their infants when they are born.<sup>11</sup> For this reason, it is important that pregnant inmates receive complete information about the policies and procedures that the jail will follow during their incarceration to care for them and their developing baby.

The current *Pregnant Inmate Information* form given to pregnant inmates fails to cover all the standards that apply to them. Important rights afforded to female pregnant inmates that are absent from this form include: access to a lower bunk and an extra mattress, specialized footwear (as opposed to open toe sandals) to minimize a tripping hazard, prohibiting pregnant inmates from being forcibly stripped searched, certain types of electronic scanning devices (body scanners), no work-status if pregnant, among others. California Penal Code § 3407(e) states “upon confirmation of an inmate’s pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates, including, but not limited to, the provisions of this chapter, the relevant regulations, and the correctional facility policies.”

The Grand Jury recommends that the *Pregnant Inmate Information* form be revised and updated to reflect current jail standards and policies governing pregnant inmates, including an inclusive list of rights to which pregnant inmate rights are entitled. Furthermore, documentation on California’s state law on consenting and testing for alcohol and/or drug abuse should be disclosed. Inmates should know if consenting and testing for alcohol and/or drugs will be kept confidential or if test results will be reported to the County of Orange Social Services Agency.

Lastly, if an inmate chooses to refuse any medical appointment, treatment, medication or other medical procedure recommended by CHS, the appropriate medical release and/or refusal form(s) shall be provided for signature by the inmate. It is the responsibility of a CHS staff member to witness the form by affixing their signature. If an inmate/detainee refuses to sign the form, staff members are instructed to write “*refused*” above the inmate/detainee signature line. The form then becomes part of the inmate’s medical record. The Grand Jury’s review of these records

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<sup>11</sup> *Pregnancy Outcomes in US Prisons, 2016-2017*. Am J Public Health. 2019;109.799-805: doi:10.2105/AJPH.2019.305006.

revealed that this policy is not being followed. Many forms were left blank or an “unverified” inmate’s signature was produced that did not match previous inmate’s signature on file.

## Housing Classification

Pregnant inmates need a wide range of accommodations to deal with the physical demands of pregnancy. These include being assigned to a lower tier or bottom bunk so that they can avoid the strain and the risk of falling that comes with frequently climbing stairs or steps up to a bunk.<sup>12</sup> Due to the fact that pregnant women are at high risk of falling, activities with a risk of falling should be avoided. Specifically, incarcerated women should be given a bottom bunk during pregnancy and the postpartum period.<sup>13</sup>

In order for a pregnant inmate to receive the following specific accommodations: bottom bunk/ground floor housing, an extra mattress (if pregnancy is  $\geq 26$  weeks), nourishment snacks and nutritional supplements, she must have written authorization from a CHS prescriber. In the Grand Jury’s review of requests made by pregnant inmates by the submittal of Inmate Health Message Slip and other records pertaining to these standards, it was noted that there were significant inconsistencies throughout all of the cases. Some pregnant inmates were assigned a low bunk from the onset of their incarceration, while others had to make repeated requests to CHS prescribers stating they were pregnant and needed authorization for a low bunk. The Grand Jury reviewed one case where an inmate who had just returned from the hospital after having delivered a stillborn was assigned to the top bunk. She complained of being too weak to climb up to the top bunk and having uncontrollable bladder leakage as a result of the untimely fetal demise of her child. It took several weeks of repeated requests to CHS prescribers to finally have her bed assignment changed to the bottom bunk.

With regard to receiving an extra mattress (if pregnancy is  $\geq 26$  weeks), the Grand Jury found varying accounts of pregnant inmates receiving this accommodation. Since information such as the right to request an extra mattress is not noted in the Pregnant Inmate Rights form, pregnant inmates were often unaware of this accommodation. Inmates who were aware of this accommodation made requests to their CHS prescribers, but with mixed results. Some pregnant inmates received an extra mattress prior to their 26<sup>th</sup> week of pregnancy, while others were told that their request would be denied until they were officially 26 weeks pregnant. In one case, an inmate in her 2<sup>nd</sup> trimester was informed that she had to wait until she was 28 weeks pregnant - not the standard 26 weeks.

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<sup>12</sup> ACLU of California, *Reproductive Health Behind Bars in California*, p. 16 (January 2016) (hereafter cited as *Reproductive Health Behind Bars*) citing ACOG Committee Opinion No. 511, (see footnote 13 for full citation).

<sup>13</sup> American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511. *Obstet Gynecol* 2011;118: 1198-1202, 1199 (hereafter cited as ACOG Committee Opinion No. 511).

Inmates can also receive an extra mattress if their Body Mass Index (BMI) is  $\geq 40$ , regardless of whether or not they are pregnant. The Grand Jury's review of 21 inmate files revealed that BMI was not reported, even though the electronic health record systems used by CHS has the ability to automatically calculate BMI and populate the field once inmates' heights and weights are inputted. A simple audit of an inmate's vital signs would have easily identified the missing information and corrected the record.

The Grand Jury's overall assessment in reviewing the care and treatment of pregnant women revealed that pregnant inmates did not always receive the accommodations to which they are entitled, and that procedures are not in place to ensure that pregnant inmates receive the accommodations to which they are entitled.

## Restraints

Pregnant women are prone to falls due to changes in their centers of gravity and loosening of their joints, among other physiological changes.<sup>14</sup> Restraining pregnant inmates improperly poses serious medical risks that can lead to greater stress, complications, falls, and even miscarriages.<sup>15</sup>

California legislation passed in 2012 decrees that jails cannot shackle or restrain pregnant inmates with leg irons, waist chains, or handcuffs behind the body during any point while pregnant.<sup>16</sup> During labor, delivery, or recovery from delivery, additional restrictions apply: people cannot be restrained by the wrists, ankles, or both, unless necessary for the safety of the incarcerated person, the staff, or the public.<sup>17</sup> Any restraints used on the persons at any point in their pregnancy must be removed when a medical professional, in charge of the individual's care, determines such removal is necessary.<sup>18</sup> Jails must advise pregnant inmates about these limitations.<sup>19</sup>

During its investigation, the Grand Jury learned of recent changes pertaining to how OCS D restrains inmates while they are being transported to court and while awaiting court hearings in holding cells. As of the publication of this writing, pregnant inmates were identified as being pregnant solely from a master roster with inmate names, controlled by OCS D personnel. No differentiating uniforms identified pregnant inmates. Pink tags only alerted staff that an inmate was pregnant while in the IRC, but these were removed once the inmate is assigned housing. The Grand Jury also learned that there were irregularities with respect to enforcement of the

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<sup>14</sup>, *Reproductive Health Behind Bars in California*, p. 11, quoting Carolyn Suffrin, *End Practice of Shackling Pregnant Inmates*, S.F. CHRON. (Aug. 26, 2010).

<sup>15</sup> ACOG Committee opinion No. 511, *supra*

<sup>16</sup> Cal. Penal § 3407(a).

<sup>17</sup> Cal. Penal § 3407(b).

<sup>18</sup> Cal. Penal § 3407(c).

<sup>19</sup> Cal. Penal § 3407(e).

newly implemented policy requiring waist restraints not be used for pregnant inmates. Inmates who were aware of their pregnant inmate rights had to alert jail staff that they were pregnant, that they could not be waist restrained and must be handcuffed from the front. It was incumbent on the inmate to alert the deputy about her rights as a pregnant inmate. Interviews revealed pregnant inmates were uncomfortable speaking up due to the fear of being written up for noncompliance. Inmates who were aware of their pregnant inmate rights felt more compelled to speak up, whereas other pregnant inmates opted to comply with the deputy's orders without causing an incident.

## **Clothing Exchange**

Inmates are issued one set of clothing upon intake. Clothing and linen are strictly rationed to prevent them from being altered, bartered or fashioned into escape paraphernalia. No outside clothing is permitted.

California regulations provide that each facility administrator have written policies and procedures for the scheduled exchange of clothing each week. However, undergarments and socks must be exchanged twice each week.<sup>20</sup> Outer garments (except shoes), sheets and towels shall be exchanged at least once per week.<sup>21</sup>

The standard issue of clothing for female inmates includes (a) clean socks and footwear; (b) clean outer garments; and (c) clean undergarments, including a bra and two pair of underwear. Pregnant inmates who report spotting can request an exchange of clothing by notifying a guard or completing a Miscellaneous Message Slip (MMS).

Through its investigation, the Grand Jury learned that some inmates choose to launder their clothes in their cell, between scheduled clothing exchange times, to ensure they do not lose their clothes. Typically, inmates will wash their clothing in the sink in their cell, using personal soap purchased from the jail commissary. Although this laundering may remove dirt and odors, it does not disinfect the clothing. Inmates should be advised that the only way to reliably remove organisms that can cause disease is to use the institutional laundry.

## **General OB/GYN Care**

Pregnant women need regular prenatal care to carry a healthy pregnancy to term. California law recognizes this by requiring all pregnant women in a county jail receive (1) an assessment of the scope of medical services she needs, (2) prenatal vitamins, and (3) education about her pregnancy, childbirth, and infant care.<sup>22</sup> The prenatal visit schedule recommended by the

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<sup>20</sup> Cal. Code Regs. Title 15 § 1262 (2008).

<sup>21</sup> Ibid.

<sup>22</sup> Cal. Penal §§ 4023.6; 6030(e)

American College of Obstetricians and Gynecologists (ACOG) is required in state prisons, but is not required by county jails, although they are consistent with medical best practice that all jails should follow.<sup>23</sup>

To provide appropriate care, jails must have a comprehensive understanding of new inmates' medical conditions. However, mandatory pregnancy testing often violates privacy rights, and intrudes into one of the most private areas of people's lives—reproductive decision-making.<sup>24</sup> There are a variety of reasons people undergoing incarceration, particularly those who are to be held for a limited time, may not want to learn of their pregnancy status in a jail setting, and would prefer, instead, the privacy of their own homes or a doctor's office.<sup>25</sup> All people, including those incarcerated, have the right to refuse medical care and testing.<sup>26</sup>

Additionally, the Grand Jury reviewed policies that require that all female inmates have a urine pregnancy test (hCG) performed within at least 3 days of booking or earlier if the inmate states that she is pregnant, or is identified as “a Medical” or “Mental Health” candidate during intake screening. This must be done prior to any work assignment and/or before any medication is administered.

Lastly, CHS shall be responsible for keeping a list of “all pregnancies and their outcomes”. The Grand Jury investigation revealed that this information was often not documented or reported, if inmates were less than 20 weeks pregnant and succumbed to a miscarriage. In the Grand Jury's opinion, CHS is not adhering to their policy.

## Nutrition

Appropriate maternal nutrition can contribute to the delivery of a healthy, full-term newborn of an appropriate weight. An adequate supply of nutrients is required to maintain the delicate balance between the needs of the mother and those of the fetus. An inadequate supply of nutrients will cause biological competition between the mother and the conceptus in which the well-being of both is at serious risk.<sup>27</sup> Pregnant women have additional caloric and nutritional needs, including iron supplements and 600 mcg (microgram) of folate [folic acid] per day.<sup>28</sup> Medical guidelines suggest about 350 more calories per day during the 2<sup>nd</sup> trimester, increasing to about 500 calories per day during the 3<sup>rd</sup> trimester.<sup>29</sup>

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<sup>23</sup> *Reproductive Health Behind Bars*, p. 14.

<sup>24</sup> *Reproductive Health Behind Bars*, p. 6, citing *Loder v. City of Glendale*, 14 Cal. 4<sup>th</sup> 846 (1997) and others, FN 13.

<sup>25</sup> *Reproductive Health Behind Bars*, p. 7.

<sup>26</sup> Cal. Code Regs. Title. 15, § 1214 (1998).

<sup>27</sup> *The Journal of Nutrition*, Vol. 133, Issue 5, May 2003, p. 1732S–1736S, <https://doi.org/10.1093/jn/133.5.1732S>.

<sup>28</sup> National Commission on Correctional Health Care, Position Statement: Women's Health Care In Correctional Settings (October 2014) <http://www.ncchc.org>.

<sup>29</sup> Amy O'Connor, *Increased Appetite During Pregnancy*, , May 30, 2019, <https://www.whattoexpect.com/pregnancy/symptoms-and-solutions/appetite.aspx>



Through its investigation on prenatal nutritional matters, the Grand Jury found that pregnant inmates are prescribed prenatal vitamins, which can be extended until 30 days following delivery or the date of elective abortion. Prenatal vitamins include 27 mg of iron and 1000 mcg of folate per tablet, which exceeds the recommended daily dosage of 600 mcg.

The mainline daily meals menu is modified to meet the requirements for pregnant inmates. A pregnancy diet is ordered by the OB/GYN for 90 days and can be extended as needed. This diets provide 32 ounces of non-fat milk each day and appropriate whole meat proteins, rather than processed meat, in an overall menu that averages 2,650 daily calories. A review of menu nutrient analysis reports for September 2017, revealed a range of total daily calories from a high of 3,120 calories to a low of 2,346 calories.

Despite daily meals meeting the requirements, pregnant inmates interviewed reported that they were often hungry. If reported to the OB/GYN, additional food including a snack and milk can be ordered. Food is also available in the commissary for purchase, but they may not have money available to purchase additional food.

## **Water**

Pregnant women need constant access to potable water to avoid dehydration.<sup>30</sup> Through its investigation, the Grand Jury learned that dehydration is not uncommon among pregnant inmates. It is especially important to stay hydrated during the last trimester when dehydration can cause contractions that can trigger preterm labor. An adequate supply of water also helps prevent urinary infections, hemorrhoids, and constipation, all of which are common during pregnancy. Drinking water dilutes urine, which reduces the risk of infection.

While water is accessible to inmates in their cells, pregnant inmates expressed concern over the taste of tap water that is available in jail. As a result, pregnant inmates were found to be drinking far less water per day than the amount recommended for them. Pregnant inmates were more likely to stay hydrated when given flavoring packets such as Sqwincher<sup>31</sup> (hydration powder mix) mixed with water. The flavoring packets are only dispensed by CHS clinical staff and only with authorization from the inmate's OB/GYN or CHS prescriber. For safety reasons, inmates are not allowed to have bottled water in their cells which means that inmates must drink from the faucets in their cells making it difficult to track water intake.

Although the Grand Jury requested maintenance logs and service records for the jail's water supply, the records were not produced prior to the publication of this report.

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<sup>30</sup> *Reproductive Health Behind Bars*, page 16.

<sup>31</sup> Trademark registered by Kent Precision Foods Group, Inc.

The Grand Jury recommends that additional educational materials be made available to all pregnant inmates relating to the importance of staying hydrated and the recommended daily water intake for pregnant women.

## **Jail Commissary**

Commissary orders in the jail are privileges allotted to inmates to order and purchase items that are not available through normal provisions of supplies and meals. Inmates with funds allocated on their accounts may purchase an array of candy, snacks, stationary items, hygiene products, greeting cards, and beverages. With the wide array of items available to purchase, the Grand Jury noted that packaged water was not listed among the items available for purchase.

The Grand Jury recommends that packaged water units be added to the items available for purchase by inmates.

## **UTI**

A urinary tract infection, or UTI, is an infection in any part of the urinary system, including the kidneys, bladder, ureters, and urethra.<sup>32</sup> It is diagnosed based on the presence of a pathogen in the urinary tract with associated symptoms.<sup>33</sup> An estimated 11% of women in the United States report at least one physician-diagnosed urinary tract infection per year, and the lifetime probability that a woman will have a UTI is 60%.<sup>34</sup> UTIs occur in about 8% of pregnant women, and untreated UTIs can have serious consequences, including pyelonephritis (inflammation of the kidney), preterm labor, low birth weight, or sepsis.<sup>35</sup>

For pregnant women in their first trimester, a 2011 Committee Opinion from the American College of Obstetricians and Gynecologists recommended sulfonamides and nitrofurantoin may be prescribed only if other antimicrobial therapies are deemed clinically inappropriate.<sup>36</sup>

During its investigation, the Grand Jury learned through the cases reviewed that the rate of UTI among pregnant female inmates was as high as 65%. Nitrofurantoin was the most commonly prescribed medication for a UTI diagnosis.

The Grand Jury recommends that the CHS take a proactive approach, setting forth general guidelines and recommendations for all female inmates that will help them avoid UTIs in most instances. These guidelines can be conveniently divided into the categories of hygiene, clothing,

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<sup>32</sup> WebMD, <https://www.webmd.com/women/guide/your-guide-urinary-tract-infections>, last accessed 01/23/2020.

<sup>33</sup> American Urogyneecologic Society, Best-Practice Statement: Recurrent Urinary Tract Infection in Adult Women, *Female Pelvic Med Reconstr Surg* 2018;24: 321-335.

<sup>34</sup> Treatment of urinary tract infections in nonpregnant women. ACOG Practice Bulletin No. 91. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2008;111:785-94

<sup>35</sup> Delzell JE Jr, Lefevre ML, Urinary tract infections during pregnancy. *Am Fam Physician* 2000;61:713-21.

<sup>36</sup> American College of Obstetricians and Gynecologist Committee on Obstetric Practice. ACOG Committee Opinion No. 494; sulfonamides, nitrofurantoin, and risk of birth defects. *Obstet Gynecol* 2011;117:1484-5.

diet, activities, and medications. Posting this information and/or adding it to the *Pregnant Inmate Rights* form will be impactful to this group. Most importantly, pregnant inmates should have access to a clean pair of underwear every day rather than two pair issued twice a week, per the standard issue clothing exchange that is currently being implemented.

## Opioid Treatment Plan

Pregnant women with opioid use disorder (OUD) have unique health needs. Opioid use in pregnancy has escalated dramatically in recent years, paralleling the epidemic observed in the general population.<sup>37</sup> Maternal opioid use during pregnancy quadrupled from 1999 to 2014, from 1.5 per 1,000 to 6.5 per 1,000 delivery hospitalizations.<sup>38</sup> In addition to the effects of opioids on the pregnant woman herself, substance use during pregnancy is associated with higher rates of pregnancy complications including fetal growth restriction, placental abruption, preterm labor, or fetal death. These effects are directly due to substance abuse itself, and associated behaviors such as smoking, poor nutrition, lack of prenatal care, and needle sharing.<sup>39</sup>

Due to these risks, screening for and treatment of OUD during pregnancy is of the utmost importance. Maintenance of opioid-assisted therapy can reduce the risk of withdrawal, which can precipitate preterm labor or fetal distress.<sup>40</sup> Pregnant women with opioid use disorders must not be detoxified, but must be offered opiate substitution therapy.<sup>41</sup> Opioid-dependent patients, who abruptly stop using opioids, will suffer withdrawal symptoms such as severe nausea, vomiting, muscle aches, diarrhea, fever, dehydration, and insomnia as well as cravings that can occur when people first enter incarceration<sup>42</sup>. Thus, continued Medication Assisted Treatment (MAT) with methadone or buprenorphine throughout the duration of the pregnancy is considered

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<sup>37</sup> American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Committee Opinion No. 71, Opioid use and opioid use disorder in pregnancy., *Obstet Gynecol* 2017; 130:e81-94.

<sup>38</sup> Haight, S. C., Ko, J. Y., Tong, V.T., Bohm, M.K., & Callaghan, W.M. (2018). Opioid use disorder documented at delivery hospitalization-United States, 1999-2014. *Morbidity and Mortality Weekly Report*, 67, 1-51.

<sup>39</sup> American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Committee Opinion No. 711: Opioid use and opioid use disorder in pregnancy. *Obstet Gynecol*, 13, e81-e94.

<sup>40</sup> ACOG Committee Opinion No. 511. *Obstet Gynecol* 2011;118; 1198-1202, 1199.

<sup>41</sup> National Commission on Correctional Health Care, Position Statement: Women's Health Care In Correctional Settings (October 2014) [www.ncchc.org](http://www.ncchc.org).

<sup>42</sup> Substance Abuse and Mental Health Services Administration. (2011). *Medication-assisted treatment for opioid addiction: Facts for families and friends* (HHS Publication No. SMA 09-4443). Rockville, MD. Retrieved from <http://www.californiamat.org/wp-content/uploads/2019/06/MAT-InfoFamilyFriends.pdf>

primary best treatment for OUD by ACOG,<sup>43</sup> American Society of Addiction Medicine,<sup>44</sup> the National Commission of Correctional Health Care,<sup>45</sup> and the World Health Organization.<sup>46</sup>

The United States Supreme Court case *Estelle v. Gamble* established that correctional facilities are constitutionally mandated to tend to incarcerated individuals with “serious medical needs.”<sup>47</sup> Currently, pregnant inmates within the OCJ reporting opioid use shall be evaluated by a medical prescriber within 24-hours to avoid withdrawal during pregnancy. CHS clinical staff shall evaluate such inmates identified as chemical abusers using the Clinical Opiate Withdrawal Scale (COWS). Documentation shall include last dose, amount frequency, and whether or not dosing is prescribed.

Through its investigation, the Grand Jury learned that the OCJ complied with ensuring opioid dependent pregnant inmates have access to either a triage prescriber, or to a prescriber on-call within 24-hours of all new bookings.

Currently, there are two tracks of treatment plans for opioid dependent inmates.

1. Track 1- Methadone Maintenance
  - a. Requirements to include all of the following:
    - i. Currently receiving methadone maintenance from a methadone clinic
    - ii. Last dose of methadone is within 72-hours duration
    - iii. Methadone clinic is able to verify inmate’s last administered dose from a methadone clinic
2. Track 2- Medically Supervised Withdrawal
  - a. The following shall be referred to either a CHS Triage Prescriber or Prescriber On-Call within 24 hours to implement medically supervised withdrawal:
    - i. Methadone is non-prescribed/street drug
    - ii. Last dose of methadone maintenance received from a methadone clinic  $\geq$  72 hours

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<sup>43</sup> American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Opinion No. 711: Opioid use and opioid use disorder in pregnancy. *Obstet Gynecol*, 13, e81-e94.

<sup>44</sup> American Society of Addiction Medicine. (2015). *The national practice guideline for the use of medications in treatment of addiction involving opioid use*. Retrieved from <https://www.asam.org/docs/default-source/practice-support/guidelines-and-consensus-docs/asam-national-practice-guideline-supplement.pdf>

<sup>45</sup> National Commission on Correctional Health Care. (2016). *Substance use disorder treatment for adults and adolescents (Position statement)*. Chicago, IL. Retrieved from <https://ncchc.org/filebin/Positions/Substance-Use-Disorder-Treatment-2016.pdf>

<sup>46</sup> World Health Organization (2014). *Guidelines for the identification and management of substance use and substance use disorders in pregnancy*. Geneva, Switzerland: Author. Retrieved from <https://www.who.int/publications/i/item/9789241548731>

<sup>47</sup> *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

When released from jail, pregnant inmates on Track 1-Methadone Maintenance had a greater advantage over inmates being treated on Track 2-Medically Supervised Withdrawal. Track 1 patients were able to continue their opioid treatment post-release with their existing methadone clinic, whereas those on Track 2 lacked adequate discharge plans and links to services after their release.

The main difference noted during the Grand Jury's investigation was that the OCJ lacked adequate discharge plans upon an inmate's release from jail. OCJ must develop a process to assist inmates with health insurance applications prior to their release. It is unacceptable for the most vulnerable to navigate this complicated process without sufficient guidance.

### **Inmate Health Messaging Slips**

To receive medical care outside regularly scheduled OB/GYN visits, inmates are required to complete an *Inmate Health Message Slip* to communicate specific health care needs or other pertinent information to security staff. These forms are collected at regular intervals during the day and or they can be delivered to the medical staff when medications are being dispensed. If an inmate considers her health needs to be urgent, the forms can be given to security personnel. The CHS clinical staff then triages the forms and refers urgent requests to clinical staff for immediate attention. The inmate is then referred to a CHS Prescriber immediately if problems relating to pregnancy are identified, such as abdominal cramping, vaginal spotting, fetal heart rate <120 or >160, or drug dependency associated with withdrawal. Non-urgent requests are logged electronically and addressed as staff is available.

Although the *Inmate Health Message Slip* has a blank space for recording the date the form was received, the Grand Jury's review of randomly selected slips noted that several were not dated, nor did they include the last four digits of the employee number as required by policy. Although the procedure for processing *Inmate Health Message Slip* was found to be adequate, the completed slips are not reviewed periodically to ensure that the procedure is being followed consistently.

### **In-Custody Deaths**

There has never been a national systematic assessment of pregnancy outcomes that includes data on abortions, stillbirths, miscarriages, ectopic pregnancies, or neonatal and maternal deaths in prisons. In a 2016-2017 study of 753 live births, the following was observed<sup>48</sup>:

- 92% were live births
  - 6% were preterm and 0.3% were very early preterm
  - 68% were vaginal births and 32% cesarean

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<sup>48</sup> *Pregnancy Outcomes in US Prisons, 2016-2017*. Am J Public Health. 2019;109. 799-805: doi: 10.2105/AJPH.2019.305006.

- 8% were non-live births
  - 6% were miscarriages
  - 1% were abortions
  - 0.5% were stillbirths
  - 0.25 % were ectopic pregnancies

The Grand Jury reviewed a report on pregnant inmates who were sent to the hospital for treatment during incarceration in 2018 and 2019. In 2018, 13 pregnant inmates in the OCJ were sent to the hospital and all delivered successfully. In 2019, 14 pregnant inmates were sent to the hospital, where eight (57%) delivered successfully and 6, (43%) did not. Four of the pregnancies (29%) were ectopic (embryo implants somewhere other than the uterus, e.g. the fallopian tubes), which exceeds the national average indicated above.

In comparing the above report with inmates' health records and reports of custodial deaths, at least five hospitalizations were not included. Due to the shutdown of the county operations for the COVID-19 pandemic, the Grand Jury was not able to investigate the discrepancy further. The Grand Jury reviewed ten custodial deaths investigated by Orange County District Attorney's Office. Medical records were subpoenaed for these custodial deaths, of those, seven were not received before the county operations shutdown, and the three that were received are summarized below.

#### Inmate A

In reviewing in-custody death of Infant A, the Grand Jury learned the following facts:

- A 30-year-old pregnant inmate with an extensive history of mental health treatment, was arrested for trespassing. She was homeless and had no next of kin to be contacted.
- Nine days after being booked into OCJ, she suffered a fetal demise at 28-weeks pregnant.
- With no next of kin, Inmate A is unrepresented at the hospital for surrogate decisions on her behalf.
- Inmate A was given an epidural and was unable to ambulate.
- Doctors notated that Inmate A had been "cooperative".
- Inmate A was "shackled" in at least one place while in labor.
- Medical doctors repeatedly recommended that the deputy remove her shackles during her hospitalization, particularly since she was immobilized from her epidural during labor.
- The deputy did not comply with medical doctor's requests.
- Medical staff requested to speak with the deputy's commander about removing the inmate's shackles, but to no avail.
- Inmate A delivered a stillborn infant within hours after arriving at the hospital.

- The official cause of death is pending investigation by the Orange County Coroner's division.

Upon further investigation, the Grand Jury learned that female inmates do not have equal access to Patient's Rights Advocates to support or provide a voice to females receiving mental health services in jail, whereas the males being housed at Men's Central Jail (MCJ) receive regular visits from Patient's Rights Advocates. In addition, incarcerated males at the MCJ are provided pamphlet information on Rights for the Incarcerated Individuals Receiving Mental Health Services in the OCJ, posted in common areas for general access by the inmates. Inmate A, who had an extensive record of mental health issues at the OCJ, would have benefited greatly from access to an advocate overseeing her hospitalization care and possibly could have sidestepped certain decisions of deputies to shackle this inmate to her bed while she was in labor.

In addition, California Penal Code §3407 states in pertinent part:

(b) A pregnant inmate in labor, during delivery, or in recovery after delivery, **shall not be restrained by the wrists, ankles, or both**, unless deemed necessary for the safety and security of the inmate, the staff, or the public.

(c) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of restraints is medically necessary.

The Grand Jury made numerous requests to the OCSD to produce documentation justifying the decision to leave Inmate A shackled while in labor. This was in spite of medical staff's determination that restraints were "unnecessary" because Inmate A was unable to ambulate due to her receiving an epidural during labor. In reviewing the documentation provided, the Grand Jury concluded that the explanation for the use of restraints was grossly inadequate.

The Grand Jury recommends that contracted service personnel with the OCJ be provided with policies regarding the monitoring and securing of pregnant inmates.

#### Inmate B

In reviewing in-custody death of Infant Jane Doe, the Grand Jury learned the following:

- Inmate B was a 26-year-old Caucasian pregnant inmate being prescribed Subutex<sup>49</sup> at the OCJ.
- Six weeks after being booked into OCJ, she suffered a neonatal demise of a 25-week old baby girl.

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<sup>49</sup> Trademark registered by Reckitt Benckiser Pharmaceuticals, Inc.

- Inmate B’s arrest record was requested from the OCSD, but it was not provided as of the publication of this report.
- Three weeks prior to the in-custody death of Infant Jane Doe, Inmate B had “desperately” requested to be tapered off her prescription of Subutex. A request was accommodated a week later.
- Inmate B went into preterm labor in her jail cell. She screamed and pleaded with staff for help. Staff consulted with her, gave her a Tylenol, and advised her to lay down.
- A short time later Inmate B’s contractions increased and staff ultimately called for an ambulance to transport her to the hospital.
- The first ambulance called was unable to accommodate Inmate B after 30 minutes of waiting. The reason for this was unclear.
- An hour after the first request, a second ambulance was summoned, and Inmate B was transported to the hospital, less than a three-mile drive.
- Inmate B delivered her baby in route to the hospital.
- Hospital records noted that Inmate B’s medical record was not available.

Upon further investigation, the Grand Jury learned that CHS is trained to provide appropriate care when a pregnant inmate is in labor, including prompt transport to a hospital. Inmate B was clearly in active labor and should have been afforded this right. Given the fact that Inmate B was a high risk pregnancy due to her pre-existing medical conditions, OCJ staff should not have hesitated to seek emergency transportation to the hospital.

OCSD should initiate training that insures that all personnel are properly trained and/or certified to perform the types of health care they may be called upon to perform. Staff and facilities should be periodically audited to insure they are prepared to handle the complications of pregnancy at all times. This would increase the quality of care for pregnant inmates and reduce County liability.

Inmate B made multiple requests through the jail’s Miscellaneous Messaging Slip to be seen for urgent medical concerns she had. Three times she was unable to be seen by the OB/GYN over a course of two weeks. Her first request was denied because the doctor had too many patients ahead of her. Her second request was denied because the OB/GYN had too many emergency calls pending. Finally, Inmate B missed her scheduled OB/GYN appointment because she had to appear in court. With only one part-time OB/GYN accessible to pregnant inmates in the jail, the Grand Jury recommends that OB/GYN coverage be increased in the women’s jail.

#### Inmate C

- Inmate C was a pregnant 29-year-old Caucasian who delivered a 25-week stillborn fetus in her jail cell.



- Inmate C began experiencing contractions and pressed the emergency button in her jail cell to summons a nurse.
- CHS staff did not consult with the on-site OB/GYN or the CHS Prescriber as symptoms of preterm labor worsened.
- Inmate C was instructed to lay down, rest, and to drink more water.
- A few hours later, Inmate C pressed the emergency call button again because she was experiencing stronger stomach cramps and vaginal bleeding.
- Inmate C was moved to the Female Observation Unit (FOU).
- A short time later in the FOU, Inmate C gave birth while sitting on the toilet in her cell.
- Orange County Sheriff-Coroner's office determined the cause of death to be: *Intra-uterine fetal demise associated with placental infarction and chorioamnionitis*.
- After the demise of her baby, Inmate C had to ration her pads because staff gave her only a few per day to help with bleeding.
- Inmate C submitted a Miscellaneous Message Slip to CHS to request additional pads as heavy bleeding continued. Her request was approved nearly one month later.

Inmate C required closer monitoring of medical care from the onset of her incarceration and should have been considered a high-risk pregnancy due to her preexisting health conditions. Inmate C was not sent to the hospital when she first experienced pre-labor symptoms. The delay in calling for emergency service by staff is contrary to CHS Preterm Labor Guidelines procedures.

## Conclusion

The processing of pregnant inmates at Orange County Women's Jail, and the maternal health care provided them demonstrate inconsistent quality of care. The purpose of this report was to investigate the quality of care afforded to a vulnerable sector of the inmate population during an extremely stressful time in their lives. For proper care and placement of female inmates, a confirmation of pregnancy must be made as soon as possible upon arrival at the jail setting. Without this information, an inmate cannot be properly housed, restrained (if required), medically assessed and treated, and properly nourished. Changes in the intake process, together with increased attention to details and particulars of each incoming inmate will assure greater safety, while reducing the County's exposure to potential liability.

The custodial and medical care given to pregnant inmates must be monitored and the performance of personnel providing the care must be audited to ensure that pregnant inmates receive the care set forth in the approved policies, procedures, and regulations.

With these thoughts in mind, the 2019-2020 Orange County Grand Jury respectfully submits the following Findings and Recommendations with the hope they will serve to ensure quality care for pregnant inmates housed in Orange County jails.

## FINDINGS

In accordance with California Penal Code §§ 933 and 933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation and report titled *Maternal Health Care While Incarcerated*, the 2019-2020 Orange County Grand Jury made 26 principal findings, as follows.

- F1. The 2018-2019 Grand Jury recommended that four interview cubicles be constructed by the Orange County Sheriff's Department at the Intake Release Center. The Orange County Sheriff's Department agreed with that recommendation. However, as of the date of the publication of this report, the construction of the four cubicles had not been completed.
- F2. The *Statement of Booking Officer* form does not question if an arrestee is or could be pregnant when processed into the Orange County Jail, potentially resulting in inmates receiving the wrong care and/or placement.
- F3. Taking blood pressure when an arrestee is handcuffed behind the back could result in an inaccurate reading, potentially resulting in improper care and/or placement.
- F4. All the printed reports of pregnant inmates' electronic medical records were found to be incomplete with missing data.
- F5. Correctional Health Services routinely performed pregnancy testing during the intake booking process.
- F6. Correctional Health Services consistently issued pink tags (wristbands) during the intake booking process identifying inmates as pregnant or possibly pregnant.
- F7. Although pregnant inmates were correctly identified by Correctional Health Services during the intake booking process with a pink tag (wristband), they were not consistently assigned to a low bunk or a low tier as is required for pregnant inmates.
- F8. At the time of the Grand Jury's visit to the Women's Central Jail, inmates were not issued pink pants to identify them as being pregnant as is required by the current Clothing Identification system.
- F9. The *Pregnant Inmate Information* form does not include all of the required standards and policies governing pregnant inmates.

- F10. Medical care refusal acknowledgement forms were not correctly completed in that the signature line was blank with neither the inmate's signature nor a staff notation of "refused" indicating that the inmate refused to sign the form.
- F11. Pregnant inmates were not consistently provided an extra mattress if pregnancy was  $\geq 26$  weeks as required.
- F12. There are irregularities with respect to enforcement of the newly implemented policy prohibiting the use of waist restraints on pregnant inmates.
- F13. Many inmates choose to launder their clothes in their cells between scheduled clothing exchanges.
- F14. Once identified as pregnant, Correctional Health Services provides daily prenatal vitamins to inmates.
- F15. Orange County Sheriff's Department Food Services Unit has modified the standard diet for pregnant inmates to address their nutritional dietary needs.
- F16. Dehydration is common among pregnant inmates in the Central Women's Jail.
- F17. Individual units of water are not available for purchase at the jail commissary.
- F18. Based on the cases that were provided to the Grand Jury to review, the rate of Urinary Tract Infection among pregnant inmates in the Central Women's Jail was as high as 65%.
- F19. Orange County Jail complied with ensuring that opioid dependent pregnant inmates have access to either a triage prescriber or to a prescriber on-call within 24-hours of all new bookings.
- F20. Not all opioid-dependent pregnant inmates receive adequate discharge plans and linkage of services upon their release from jail.
- F21. *Inmate Health Message Slip(s)* were not consistently documented by Correctional Health Services with date and employee number.
- F22. Although male inmates have access to Patient's Rights Advocates, female inmates do not have equal access to Patient's Rights Advocates.
- F23. Contracted service providers are not aware of and do not have access to the Orange County Jail policies regarding the monitoring and securing of pregnant inmates.
- F24. Orange County Sheriff's Department may be required to provide emergency medical care to pregnant inmates.

- F25. Health Care Agency contracts with one OB/GYN doctor to provide services at the Central Women's Jail only two days a week.
- F26. Although Correctional Health Services policy states that they "shall keep a list of all pregnancies and their outcomes" for inmates who were less than 20 weeks pregnant, Correctional Health Services did not track the outcomes for these pregnancies.

## RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court

Based on its investigation and report titled *Maternal Health Care While Incarcerated*, the 2019-2020 Orange County Grand Jury makes the following 21 recommendations.

- R1. The Orange County Grand Jury recommends that the Orange County Sheriff's Department be monitored for the completion of the reconfiguration on the screening area at the Intake Release Center by newly scheduled date of December 2020. (F1)
- R2. The Orange County Grand Jury recommends that the Correctional Health Services amend the *Statement of Booking Officer* form to include a question about pregnancy when processing female arrestees into the Orange County Jail. (F2)
- R3. The Orange County Grand Jury recommends that taking inmate's blood pressure readings with their body in a position that will result in accurate readings thereby leading to proper placement and care. (F3)
- R4. The Orange County Grand Jury recommends that Correctional Health Services provide training for jail staff to properly and accurately complete required forms and to audit the completion of these forms to assure accuracy. This will increase inmate safety and reduce County potential liability stemming from incomplete inaccurate records. (F4, F10)
- R5. The Orange County Grand Jury recommends that pregnant inmate's records be audited to ensure that they receive the accommodations to which they are entitled to. (F7, F11)
- R6. The Orange County Grand Jury recommends that pregnant inmates be consistently issued pink pants to accurately identify their classification. (F8)
- R7. The Orange County Grand Jury recommends that the *Pregnant Inmate Information Standards* form be revised and updated to reflect jail standards and policies governing

- pregnant inmates to include an inclusive list of rights to which pregnant inmates are entitled. (F9)
- R8. The Orange County Grand Jury recommends that female inmates be informed of their rights with respect to consenting and testing for alcohol and/or drugs and whether the test results will be kept confidential or if the results will be reported to the County of Orange Social Services Agency (F9)
- R9. The Orange County Grand Jury recommends that OCJ provide clean undergarments (i.e., underwear) for each day of the week for female inmates. (F13)
- R10. The Orange County Grand Jury recommends that inmates be advised that the only way to reliably remove organisms that can cause disease from clothes is to use the institutional laundry. (F13)
- R11. The Orange County Grand Jury recommends that pregnant inmates' weight be consistently tracked to assure they are receiving adequate nutrition. (F4)
- R12. The Orange County Grand Jury recommends that educational materials be made available to all pregnant inmates relating to the importance of staying hydrated and the minimum recommended daily water intake during pregnancy. (F16)
- R13. The Orange County Grand Jury recommends that individual units of water be available for purchase at the jail commissary. (F17)
- R14. The Orange County Grand Jury recommends that the Correctional Health Services take a proactive approach on establishing guidelines and recommendations for all female inmates that will help them avoid Urinary Tract Infections. (F18)
- R15. The Orange County Grand Jury recommends that all opioid-dependent pregnant inmates receive adequate discharge plans and linkage to support services upon release from jail. (F20)
- R16. The Orange County Grand Jury recommends that the *Inmate Health Message Slip* be "hard stamped digitally" (not hand-written or left blank) to ensure that procedures are being consistently followed and inmate health care needs are being addressed. (F21)
- R17. The Orange County Grand Jury recommends that female inmates have equal access to Patients' Rights Advocates as the male inmates do. (F22)
- R18. The Orange County Grand Jury recommends that contracted service providers with the Orange County Jail be provided with policies regarding the monitoring and securing of pregnant inmates. (F23)

- R19. The Orange County Grand Jury recommends that the Orange County Sheriff's Department conduct training that insures that all personnel are properly trained and certified to perform the type of health care, including childbirth, that they may be called on to perform. (F24)
- R20. The Orange County Grand Jury recommends that all pregnancy outcomes occurring during incarceration be tracked. (F26)
- R21. The Orange County Grand Jury recommends that all jail personnel be regularly trained on policies for pregnant inmates and that activities be supervised to ensure compliance. (F7, F8, F11, F12)

## RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

### §933

*(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.*

### 933.05.

*(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:*

*(1) The respondent agrees with the finding.*

*(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

*(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:*

*(1) The recommendation has been implemented, with a summary regarding the implemented action.*

*(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*

*(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*

*(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

*(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or*

*department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.*

*(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.*

*(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.*

*(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.*

*(Amended by Stats. 1997, Ch. 443, Sec. 5. Effective January 1, 1998.)*



## Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

### Findings

Orange County Board of Supervisors	F1-26
Orange County Sheriff-Coroner	F1, F7, F8, F11, F12, F13, F15, F16, F17, F23, F24

### Recommendations

Orange County Board of Supervisors	R1-21
Orange County Sheriff-Coroner	R1, R5, R6, R9, R10, R13, R18, R19, R21

## Responses Requested

Responses are requested from the following non-elected agency or department heads:

### Findings

Orange County Health Care Agency	F22, F23, F25
Correctional Health Services	F2, F3, F4, F5, F6, F7, F9, F10, F11, F14, F18, F19, F20, F21, F22, F23, F26

### Recommendations

Orange County Health Care Agency	R17, R18
Correctional Health Services	R2, R3, R4, R5, R7, R8, R11, R12, R14, R15, R16, R18, R20

## REFERENCES

1. Fausto, Alma. 2019. “Unborn child of pregnant jail inmate in Orange County dies”. *The Orange County Register*. July 31. Accessed June 1, 2020. <https://www.ocregister.com/2019/07/31/pregnant-jail-inmates-unborn-child-dies-at-hospital/>
2. Ockerman, Emma. 2019. “Pregnant Woman Says Her Baby Died After Prison Guards Stopped at Starbucks on the Way to the Hospital.” *Vice News*. September 10. Accessed June 1, 2020. [https://www.vice.com/en\\_ca/article/ywawqx/pregnant-woman-says-her-baby-died-after-prison-guards-stopped-at-starbucks-on-the-way-to-the-hospital](https://www.vice.com/en_ca/article/ywawqx/pregnant-woman-says-her-baby-died-after-prison-guards-stopped-at-starbucks-on-the-way-to-the-hospital)
3. Saavedra, Tony. 2019. “Death of 3 babies born to mothers in custody added to federal lawsuit against Orange County jail.” *The Orange County Register*. September 9. Accessed June 1, 2020. <https://www.ocregister.com/2019/09/09/death-of-3-babies-born-to-mothers-in-custody-added-to-federal-lawsuit-against-orange-county-jail/>

## GLOSSARY

ACOG	The American College of Obstetricians and Gynecologists
BMI	Body Mass Index
CCR	California Code of Regulations
CHS	Correctional Health Services
COVID-19	Corona Virus Disease-19
COWS	Clinical Opiate Withdrawal Scale
CWJ	County Women's Jail
FOU	Female Observation Unit
HCA	Health Care Agency
hCG	Human Chorionic Gonadotropin
IRC	Intake Release Center
IUP	Intrauterine Pregnancy
JAMF	James A. Musick Facility
MAT	Medication Assisted Treatment
mcg	Microgram
MCJ	Men's County Jail
MMS	Miscellaneous Messaging Slip
OCJ	Orange County Jail
OCSD	Orange County Sheriff's Department
ODU	Opioid Use Disorder
PC	Penal Code
SOBA	Statement of Booking Agency
UDS	Urine Drug Screen
UTI	Urinary Tract Infection