

Memo of Support
Providing Additional Rights to Pregnant Inmates

A.9965 (Rosenthal)/ S.7868 (Biaggi)
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AN ACT to amend the correction law, in relation to the rights of pregnant inmates.

Every pregnant individual has a right to be treated with dignity and to have the necessary resources and supports that enable them to truly exercise agency in their reproductive decision making. However, we live in a society where these fundamental rights are constrained by conditioned beliefs as to who is deserving of, or entitled to, this respect and treatment under the law. These dynamics are even more pronounced in the criminal law system. Inherently, incarceration undermines reproductive autonomy. This is distinctly true for Black womxn and womxn of color, whose lives lie in the intersections of identities that are devalued and forced to exist within systems of oppression.

This legislation is one step towards dismantling the overt and insidious ways in which the criminal law system fails to respect and uphold the reproductive health and rights of incarcerated pregnant people. Of note, the legislation will:

- *Ensure that a pregnant inmate can have present the support person of their choosing during labor and delivery.* At the core, the need to require this in state law exposes the inhumane conditions we currently force pregnant inmates to endure simply because they are incarcerated. This spring, at the height of the pandemic, concerns were rightfully raised over hospital policies that limited, if not eliminated, the presence of support persons for laboring womxn. The tension was one of the wellbeing and rights of the laboring womxn, and the public health concerns driving efforts to minimize COVID transmission. Concern for the physical, emotional and mental health and wellbeing of the laboring individual must apply equally to all. Unlike the shift in hospital policy during the pandemic, the Department of Corrections and Community Supervision (DOCCS) longstanding policy of prohibiting outside support persons has no grounding in public health preservation. In fact it is in direct conflict with research and lived experience that the presence of support persons facilitates a safer and overall more positive birth experience, which is what inspired the criticisms of the hospital policies during the COVID pandemic.¹ People were right to rise up then, and we should be showing up now to end this blatantly discriminatory policy.

¹ Bohren MA, Hofmeyr G, Sakala C, Fukuzawa RK, Cuthbert A. Continuous support for women during childbirth. Cochrane Database of Systematic Reviews 2017, Issue 7. Art. No.: CD003766. DOI: 10.1002/14651858.CD003766.pub6

- *Guarantee pregnant inmates are notified of their ability to apply for a nursery program, enabling them to remain with their child following delivery.* In 2017, Bedford Hills, the sole nursery program in the state, reported 22 of 27 beds in use, despite there being roughly 71 pregnant inmates that year.² While perhaps some of this underutilization can be attributed to a lack of awareness, reports also indicate the presence of a system whose arbitrary dictation of who is “eligible” for participation stands in the way of women and their infants benefiting from this program.³ Clarifying in law that every pregnant inmate is informed of this valuable program is an important first step towards creating a system accountable to the needs of incarcerated pregnant womxn.
- *Require that all pregnant inmates are informed of their option to participate in pregnancy counseling and their right to obtain abortion care.* Reproductive autonomy hinges on the having a full understanding of your options and the capacity to exercise personal decision-making based upon that knowledge. Incarceration does not, and must not, override one’s right to reproductive autonomy and decision making. Indeed, these rights are embedded in our state and federal constitutions. It is imperative that all pregnant inmates are informed of their right to, and receive upon request, compassionate, non-judgmental, trauma informed pregnancy options counseling and abortion care.

These are important first steps to address the insidious ways in which the reproductive rights and wellbeing of pregnant inmates are dangerously disregarded. We must commit to uplifting the voices of the impacted and center their experiences and needs in efforts to intentionally end the many systems that perpetuate harm. In this moment of reckoning in which we are challenging entrenched systems of racism and injustice, this legislation is a needed step towards equality and justice for all. It is for that reason, that Planned Parenthood Empire State Acts, the National Institute for Reproductive Health Action Fund and the New York Civil Liberties Union are proud to support this measure.

²Testimony by Gail T. Smith, Director, Women in Prison Project The Correctional Association of New York Before Assembly Committees on Health and Corrections (2017). Retrieved from <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c891d74a4222f95b67541bb/1552489844668/2017.+CANY+testimony+on+healthcare+in+women%27s+prisons.pdf>

³The Women in Prison Project of the Correctional Association of New York. (2015). Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons. <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c4f5d01758d466ad39b0a97/1548705033102/2015+Reproductive+Injustice+in+New+Yorks+Prisons.pdf>