

Commonwealth of Virginia
Board of Local and Regional Jails

Recommendations for Services Provided to Inmates during Pregnancy, Pregnancy
Termination, Labor and Delivery, and Postpartum Recovery

Report to:

The Honorable Robert Mosier, *Secretary of Public Safety and Homeland Security*
Senator John Edwards, *Co-Chair, Senate Committee on the Judiciary*
Senator R. Creigh Deeds, *Co-Chair, Senate Committee on the Judiciary*
Senator Barbara Favola, *Chair, Senate Committee on Rehabilitation and Social
Services*
Delegate Robert Bell, *Chair, House Committee for Courts of Justice*
Delegate Tony Wilt, *Chair, House Committee on Public Safety*

Senate Bill 1300

July 1, 2022

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Section I: Executive Summary

Senate Bill 1300 (SB1300), directed the Board of Local and Regional Jails (the Board) to conduct a review of services provided to inmates during pregnancy, pregnancy termination, labor and delivery, and postpartum recovery. In the course of that review, SB1300 required the Board to convene and consult with a stakeholder workgroup and to develop recommendations to ensure that proper services are provided to inmates. In response to that mandate, the Board submits this report summarizing the relevant Board standards and best practices that were considered by the group and recommending the findings and conclusions made herein.

Section II: Background Information

Workgroup Charge

1. §1. That the Board of Local and Regional Jails (the Board) shall conduct a review of services provided to inmates during pregnancy, pregnancy termination, labor and delivery, and postpartum recovery. In conducting such review, the Board shall (i) identify and analyze all obstetric and gynecological services and any other services provided by local and regional jails to inmates during pregnancy, pregnancy termination, labor and delivery, and postpartum recovery; (ii) compare such services to best practices recommended by the American Correctional Association, American Jail Association, National Commission on Correctional Health Care, and American College of Obstetricians and Gynecologists; and (iii) develop recommendations to ensure that proper services are provided to inmates during pregnancy, pregnancy termination, labor and delivery, and postpartum recovery.

§2. In the course of such review, the Board shall convene and consult with a stakeholder work group composed of the following members: representatives of the Indigent Defense Commission, Legal Aid Justice Center, Virginia Sheriffs' Association, and Virginia Association of Regional Jails; at least one physician and one mental health professional who provides care to inmates; at least one obstetrician, one birth advocate, and one reproductive rights advocate; at least two former inmates who were pregnant or gave birth while incarcerated in a local or regional jail; and other interested stakeholders. No more than half of the work group members shall be employees of or under contract with a local or regional jail. The Board shall also, as necessary, consult with other relevant stakeholders and experts, including the Department of the Treasury's Division of Risk Management.

§3. Any records or information obtained from current or former inmates during such review shall be used only for purposes of conducting the review required by this act and shall be confidential and exempt from mandatory disclosure under the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia). No report or other

document generated by the Board or the work group during the review shall contain identifying information specific to any current or former inmate, local or regional jail, or prior case or complaint.

§4. The Board shall report its findings and recommendations to the Secretary of Public Safety and Homeland Security and the Chairmen of the Senate Committee on the Judiciary, Senate Committee on Rehabilitation and Social Services, House Committee for Courts of Justice, and House Committee on Public Safety by July 1, 2022. The Board shall post such report on its website.

§5. The Board shall adopt regulations consistent with its findings and recommendations.

Workgroup Members

<u>Name</u>	<u>Organization</u>	<u>Title</u>
Danette Hurst	Optum Behavioral Health	Vice President
Danielle Dallaire	W&M Psychological Sciences Department	Professor
Brian Parker	Virginia Department of the Treasury	Director of Risk Management
Michael Parham	Virginia Department of the Treasury	Assistant Director of Risk Management
Kenda Sutton-EL	Birth in Color RVA	Executive Director
Jessica Smith	Sentara Health	Psychologist
Katherine Tyson	VCU Health	OB/GYN
Michele Lewis	Northern Neck Regional Jail	Deputy Superintendent
Amy Dameron	Northern Neck Regional Jail	Director of Inmate Services

Jeff Vergakis	Hampton Roads Regional Jail	Superintendent
Roy Witham	Virginia Peninsula Regional Jail	Superintendent
Beth Arthur	Arlington County Sheriff's Office	Sheriff
Maria Jankowski	Indigent Defense Commission	Deputy Executive Director
Robyn de Socio	State Compensation Board	Executive Secretary

Section III: Organization of Work

With its charge clearly defined, the workgroup began its review in January of this year; meetings continued until the end of May. During its initial meeting in February 2022, the workgroup was asked to consider the charge of the group, to review a summary of the subject matter, and to develop a plan for future meetings. One of the workgroup's guiding principles was that of "reasonableness". The group consisted of advocates, health care providers, and jail administrators. Despite their differing backgrounds and perspectives, each member understood that administering health care in correctional environments differs from doing so in the community setting; the group's expectations were grounded by the practical implications of that distinction.

The Board's Executive Director managed the group and its processes and, in so doing, provided the procedures, standards, and potential recommendations for the group's consideration before and during each meeting. To encourage a more focused analysis and consideration of each individual part, the workgroup agreed to break the larger 'pregnancy' topic into the following subcategories:

Intake screening and Pregnancy Testing – The group focused on the administration of pregnancy tests and the screening process used to determine how quickly a pregnancy test should be made available. Best practices recommend testing within fourteen days of admission; however, the workgroup considered changing the screening standard to within 72 hours of admission to address those inmates who may be experiencing withdrawal. Additionally, the group focused on inclusion of potential gynecological issues, menstrual and postpartum history, and medication management in the screening tool.

Nutrition and Diet – The group focused on the availability of and access to requisite nutrition and dietary supplements associated with pregnancy needs. The workgroup also focused on ensuring that dietary needs were being assessed by a registered dietician and reviewed by a medical authority.

Assessment, Treatment, and Referral – The group focused on the assessment and treatment of pregnant inmates suffering from alcohol and substance abuse. Additionally, the group considered testing and treatment requirements for sexually-transmitted diseases/infections, identification and referral of normal and high-risk pregnancies, and the practicality of requiring an assessment for special accommodations (bottom bunk, adjusted work assignments, etc.) for pregnant individuals.

Education and Counseling – The group focused on potential updates to the inmate handbook to ensure inmates are aware of the resources available to them including the following: obstetrical services, access to visitation with their children, counseling services, important safety precautions, family planning services, nutritional guidance, and community resources available during and after incarceration.

Access to the child – The group focused on possible alternatives to incarceration and/or furloughs to gain access to the newborn child.

Restraint – The group agreed that current restraint standards codified in § 53.1-40.12 were sufficient and in keeping with the recommended best practices.

Termination of pregnancy – The group agreed to refrain from proffering any findings or recommendations on this topic.

As previously alluded to, during each of the aforementioned areas of focus, the workgroup considered the following before making any findings or recommendations: (1) applicable Board regulations; (2) recommended best practices from the American College of Obstetricians and Gynecologists (ACOG), the American Correctional Association (ACA), the American Jail Association (AJA), and the National Commission on Correctional Health Care (NCCHC); and (3) the practicality of implementing those practices in current settings.

Section IV: Recommendations

Intake Screening

During their second meeting, on the topic of intake screening, the workgroup reviewed applicable Board regulations, jail practices and procedures, and recommended best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Applicable Board Regulations:

6VAC15-40-370. Receiving and medical screening of inmates.

Written policy, procedure, and practice shall provide that receiving and medical screening be performed on all inmates upon admission to the facility. The medical screening shall:

- 1. Specify screening for current illnesses, health problems and conditions, and past history of communicable diseases;*
- 2. Specify screening for current symptoms regarding the inmate's mental health, dental problems, allergies, present medications, special dietary requirements, and symptoms of venereal disease;*
- 3. Include inquiry into past and present drug and alcohol abuse, mental health status, depression, suicidal tendencies, and skin condition;*
- 4. For female inmates, include inquiry into possible pregnancy or gynecological problems; and*
- 5. All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility.*

Best Practices recommend facilities do the following at intake:

1. Assess for pregnancy and risk at intake by inquiring about menstrual history, prior pregnancies, gynecologic problems, HPV vaccine history, current and prior contraception use, whether currently breastfeeding, heterosexual activity, and history of sexual and physical abuse
2. Screen and test for sexually transmitted infections based on ACOG and CDC guidelines for people in correctional facilities
3. Provide age appropriate screening for breast and cervical cancer
4. Screen for alcohol and other substance use disorders
5. Screen for mental health conditions
6. Screen for eligibility for emergency contraception at intake and ensure contraception is available in a timely fashion.

Discussion:

The workgroup determined that many of the topics recommended for screening by best practices are already regulated by the Board. Accordingly, the below recommendation is meant to be read alongside those regulations in providing a comprehensive picture of what the intake screening should include related to pregnant inmates. In its current form, Board Standard 6VAC15-40-370, receiving and medical screening of inmates, requires an inquiry into possible pregnancy or gynecological problems, as well as the possibility of sexually transmitted infections, during the admission health screening.

The workgroup's review of jail policies revealed that some jails do not allow for the continued use of oral contraceptives, even if the inmate was prescribed oral contraceptives for irregular menstrual cycles or other health issues. The workgroup believed that this could lead to potential health issues for some inmates and, consequently, included an inquiry into medication management for current or previous gynecological issues in its recommendations.

RECOMMENDATION 1:

For female inmates, the admission screening should include inquiry into the following: possible pregnancy or gynecological problems; menstrual and postpartum history including medication management of current/previous issues; prior pregnancies (whether resulting in miscarriage, delivery, or medical termination); and whether the inmate is currently breastfeeding.

Pregnancy Testing

Also in their second meeting, on the topic of pregnancy testing, the workgroup reviewed current jail practices and procedures, Board regulations, and best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Applicable Board Regulations:

6VAC15-40-370. Receiving and medical screening of inmates.

Written policy, procedure, and practice shall provide that receiving and medical screening be performed on all inmates upon admission to the facility. The medical screening shall:

- 1. Specify screening for current illnesses, health problems and conditions, and past history of communicable diseases;*

2. *Specify screening for current symptoms regarding the inmate's mental health, dental problems, allergies, present medications, special dietary requirements, and symptoms of venereal disease;*
3. *Include inquiry into past and present drug and alcohol abuse, mental health status, depression, suicidal tendencies, and skin condition;*
4. *For female inmates, include inquiry into possible pregnancy or gynecological problems; and*
5. *All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility.*

Best Practices recommend facilities do the following at intake:

1. Assess for pregnancy and risk at intake by inquiring about menstrual history, prior pregnancies, gynecologic problems, HPV vaccine history, current and prior contraception use, whether currently breastfeeding, heterosexual activity, and history of sexual and physical abuse
2. Offer a pregnancy test, as appropriate, to all females who could be pregnant within 48 hours of admission

Discussion:

Board Standard 6VAC15-370, currently requires an inquiry into the possibility of pregnancy. The ACA standards also require that intake screenings include an inquiry into the possibility of pregnancy. The National Commission on Correctional Health Care (NCCCHC) Position Statement on Women's Health Care in Correctional Settings posits that facilities should offer a pregnancy test within 48 hours of admissions to all inmates who could be pregnant¹ - the intent being, to ensure timely and appropriate prenatal care. Early identification of pregnancy is also recommended by the American College of Obstetricians Gynecologists (ACOG) guidance on health care for incarcerated women².

To align with the recommended best practices, the workgroup discussed timeliness of pregnancy testing within the jail setting. Review of the representative operating procedures revealed that most jails offer pregnancy testing. However, in some of the smaller facilities, health care providers are not available in-house on weekends and holidays to offer that test. In those facilities, emergency medical care and mental health care is provided pursuant to 6VAC15-360. This led the workgroup to adjust their recommendation to a timeline of 72 rather than 48 hours.

¹ National Commission on Correctional Health Care Position Statement: Women's Health Care in Correctional Settings, Adopted May 2020.

² American College of Obstetricians and Gynecologists Committee Opinion Number 830. Journal of Obstetrics and Gynecology, Vol. 138, No. 1, July 2021.

RECOMMENDATION 2:

When, at the admission screening, a female inmate responds affirmatively to the pregnancy inquiry, a pregnancy test shall be made available within 72 hours (three business days) of booking. Thereafter, pregnancy tests shall be made available to female inmates at assessment, within fourteen (14) days of admission, or earlier as directed by a medical authority.

Nutrition and Diet

In their third meeting, on the topic of nutrition and diet, the workgroup reviewed current jail practices and procedures, Board regulations, and best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Applicable Board Regulations:

6VAC15-40-550. Food service program.

Written policy, procedure, and practice shall ensure a food service program that meets the following:

- 1. The menu meets the dietary allowances as stated in the Recommended Dietary Allowances (RDA), National Academy of Sciences;*
- 2. There is at least a one-week advance menu preparation;*
- 3. Modifications in menus are based on inmates' medical or reasonable religious requirements. Medical or dental diets shall be prescribed by the facility's medical authority;*
- 4. RDA evaluation of facility menus shall be completed by an independent registered dietitian or certified nutritionist every three years; and*
- 5. Additional evaluations shall be completed when a substantive change in the menu or food service provider occurs.*

Best Practices recommend provision of the following:

1. Healthy snack available outside of mealtimes
2. Dietary supplements for pregnant and breastfeeding inmates (to include an additional 300 calories per day in second and third trimesters)
3. Special housing and diet when necessary
4. Prenatal Vitamins (folic acid, calcium)

Discussion:

The workgroup discussed the nutritional needs of pregnant and lactating women, as well as ACOG recommendations for pregnant and lactating women. The group acknowledged that because maternal nutrition directly impacts the development of the fetus and the health of the mother, it is paramount to the health of the child. The group discussed digestive issues common in pregnant women including nausea, cravings, and smaller stomach capacity that may require access to snacks outside of regular mealtimes. With that in mind, the workgroup examined current Board Standards regarding nutrition and special diets.

Board Standard 6VAC15-40-550 requires a registered dietician to review menus at least every three years and includes a provision for medically prescribed diets. The workgroup discussed expanding 'medically prescribed diets' to include those approved by a registered dietician for pregnant and lactating inmates. The workgroup also emphasized the authority of the medical provider in determining requisite nutrition and supplements, in particular folic acid and calcium.

RECOMMENDATION 3:

Specialty Diets and supplements for pregnant and lactating inmates shall be determined by a registered dietitian and reviewed by the medical authority.

Education and Counseling

Also in their third meeting, on the topic of education and counseling, the workgroup reviewed current jail practices and procedures, Board regulations, and best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Applicable Board Regulations:

6VAC15-40-280. Availability and administration of educational services.

Written policy, procedure, and practice shall govern the availability and administration of educational services for inmates, including a written agreement with the local school authority for the provision of special education. The facility administrator shall coordinate with local authorities for the provision of community services and resources utilized for this purpose, where available.

Best practices recommend facilities do the following:

1. Provide education and counseling on the importance of adequate nutrition.
2. Provide prenatal nutritional guidance and counseling
3. Maintain a list of specialized obstetrical services
4. Advise inmates on levels of activity and safety precautions during pregnancy
5. Provide access to family planning services, including abortion counseling and services
6. Provide information about adoption or referral to adoption resources, including kinship adoption, open and closed adoption, and agency and private adoption
7. Make trauma-informed, gender-appropriate counseling and treatment available for all women, especially those with mental health issues.
8. Offer contraception counseling and access to initiating reversible methods of contraception methods in a noncoercive manner, especially in preparation for release.
9. Draft protocols for ensuring that the inmate has information and is connected to relevant community resources upon release.
10. Provide education about breastfeeding
11. Provide nondirective counseling about pregnancy prevention

Discussion:

In its review of the recommended best practices, the workgroup discussed several topics about which pregnant and postpartum women should be provided education and counseling which currently are not being offered by facilities. The group discussed the difficulty of applying many of the recommended practices to the general lack of available community resources in many facilities across the Commonwealth. The group acknowledged that much of the education/counseling information relevant to a pregnant inmate is likely to be provided by the inmate's health care provider. In the end, the group believed the below recommendations to be a practical interpretation of what facilities can provide.

RECOMMENDATION 4:

Educational materials and/or a list of local resources, as applicable, shall be made available to pregnant, lactating, or postpartum inmates on the subjects of nutritional needs, levels of activity, safety precautions, lactation/pumping policies, and child placement options.

Assessment, Treatment, and Referral

In their fourth meeting, the workgroup reviewed current jail practices, operating procedures, and Board Standards related to medical assessments, treatment, and referral and compared them to the recommended best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Best practices recommend facilities provide the following:

1. Pregnancy tests shall be made available to all inmates at assessment and within fourteen (14) days of admission or earlier as directed by a medical authority
2. Pregnant inmates shall be assessed for alcohol and other substance use disorders and, as necessary, treatment provided.
3. Testing and treatment for HIV, and care to prevent perinatal HIV transmission
4. Identification and proper referral of high-risk pregnancies
5. Assessment for special accommodations (bottom bunk, adjusted work assignments, etc.)

Discussion:

Board Standards require an inquiry into possible alcohol or substance use in 6VAC-15-40-370. According to the National Commission on Correctional Health Care, incarcerated women have high rates of substance use disorders³. Their position statement includes a provision that counseling and treatment be made available for women with alcohol and other substance use disorders. This aligns with the American College of Obstetrics and Gynecology Committee Opinion. Though screening for substance use is already in place in Virginia's jails, the workgroup expanded this in their recommendation to include further assessment and treatment for substance use disorders when pregnancy is confirmed.

During the discussion, the workgroup considered additional testing requirements of pregnant women for sexually transmitted infections and HIV as recommended by the NCCHC, the ACOG, and the American Public Health Association Standards⁴. Ultimately, the workgroup recognized that testing of this sort is part of routine OBGYN care.

³ National Commission on Correctional Health Care Position Statement: Women's Health Care in Correctional Settings, Adopted May 2020.

⁴ American Public Health Association: *Standards for Health Services in Correctional Institutions* (2003).

The focus then shifted to referrals for obstetrical care. The workgroup discussed the difficulty in locating OBGYN providers who are willing to serve the inmate population in many of the smaller localities in a timely manner.

Board standard 6VAC15-40-360 requires 24-hour emergency medical care. The workgroup understood this standard to apply should an inmate show some emergent risk related to pregnancy or postpartum issues. This would not negate the need for ongoing prenatal care. Following discussions on the aforementioned issues, the workgroup made the following recommendations:

RECOMMENDATION 5:

Pregnant inmates shall be assessed for potential alcohol and/or substance use within 72 working hours (three business days) of admission screening, initial confirmation of pregnancy, or earlier as deemed necessary by the medical authority, and necessary treatments shall be made available. Additionally, documented efforts shall be made to refer pregnant inmates to an OBGYN, a Nurse Practitioner, or a midwife for initiation of care as soon as possible but no later than within 72 working hours (three business days) of assessment, initial confirmation of pregnancy, or earlier as deemed necessary by the medical authority.

Access to the child

In their fifth meeting, the workgroup reviewed current jail practices, operating procedures, and Board Standards related to an inmate's access to their child and compared them to the recommended best practices from the ACOG, the ACA, the NCCHC, and the AJA. Below is a summary of the information considered by the group, of the group's discussion, and of the recommendations that were ultimately agreed upon.

Best practices recommend that "People who give birth while in custody should be allowed maximum time for parent-infant bonding while in the hospital after delivery."⁵

Discussion

The workgroup recognized that access to the child should not be limited to just during hospitalization and discussed ways by which inmates may gain access to their newborn child. As the procedures may vary depending upon the locality in which the inmate is

⁵ American College of Obstetricians and Gynecologists Committee Opinion Number 830. Journal of Obstetrics and Gynecology, e29, Vol. 138, No. 1, July 2021.

detained, the workgroup recommended that each jails inmate handbook provide information specific to that locality.

RECOMMENDATION 6:

Inmate handbooks shall include a statement directing pregnant and/or postpartum inmates to contact their attorney to initiate consideration of available alternatives to incarceration and/or furloughs to gain access to the child.

Section V: Other Considerations & Next Steps

In addition to the topics addressed in their recommendations, the workgroup reviewed Board regulations and best practices regarding restraint and termination of pregnancy. The group agreed that current restraint standards codified in § 53.1-40.12 were sufficient and in keeping with the recommended best practices. The group agreed to refrain from proffering any findings or recommendations on the topic of pregnancy termination favoring the advice and expertise of the inmate's healthcare provider to assist in providing available options.

The SB 1300 workgroup's six recommendations will be used as the basis for revisions to the Board's Minimum Standards for Local and Regional Jails (6VAC15-40). The Board will begin the process in fiscal year 2023. The following standards will likely require revision:

- 6VAC15-40-280. Provision of reading materials;
- 6VAC15-40-360. Twenty-four-hour emergency medical and mental health care;
- 6VAC15-40-370. Receiving and medical screening of inmates;
- 6VAC15-40-380. Inmate access to health care;
- 6VAC15-40-550. Food service program; and
- 6VAC15-40-580. Number and spacing of meals.