



# COMMONWEALTH of VIRGINIA

## *Department of Criminal Justice Services*

The Honorable Jackson H. Miller  
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November 15, 2024

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***Re: Recommendations for Prioritizing Treatment for Incarcerated Women  
Who Are Pregnant and in Need of Substance Abuse Treatment***

As enacted by the Virginia General Assembly and the Governor in Chapter 625, Acts of Assembly, 2024 session, the Virginia Department of Criminal Justice Services (DCJS) established a work group to study and make recommendations related to prioritizing treatment for incarcerated women who are pregnant and in need of substance abuse treatment.

The work group was tasked with completing its work and submitting findings and recommendations to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2024.

The report is attached. If you have any questions or require additional information, please contact Tracey Jenkins, Division Director, Division of Programs and Services, at [tracey.jenkins@dcls.virginia.gov](mailto:tracey.jenkins@dcls.virginia.gov) or 804-225-0005.

Sincerely,

A handwritten signature in black ink, appearing to read "Jackson H. Miller".

Jackson H. Miller  
Director

Attachment



Recommendations for  
Prioritizing Treatment for Incarcerated Women  
Who Are Pregnant and in  
Need of Substance Abuse Treatment

November 2024

Virginia Department of Criminal Justice Services  
1100 Bank Street, Richmond, VA 23219  
[www.dcjs.virginia.gov](http://www.dcjs.virginia.gov)

## Preface

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In accordance with Chapter 625, Acts of Assembly, 2024 Session, the Virginia Department of Criminal Justice Services (DCJS), in collaboration with the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the Virginia Department of Health (VDH), convened a workgroup to study and make recommendations related to prioritizing treatment for incarcerated women who are pregnant and in need of substance abuse treatment. The workgroup reviewed information relevant to this population from federal sources and from other states, from healthcare professional associations, and in current Virginia laws, regulations, and standards related to treatment for pregnant women and individuals with substance use disorder (SUD).

DCJS collaborated with partners from DBHDS and VDH to identify workgroup participants and the topics for discussion. Based on this, a workgroup of subject matter experts was convened for a one day in-person meeting with representatives from the following organizations:

- Virginia Board of Local and Regional Jails
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Department of Corrections
- Virginia Department of Criminal Justice Services
- Virginia Department of Health
- Virginia Department of Juvenile Justice
- Virginia Department of Medical Assistance Services
- Virginia Department of Social Services
- Virginia Indigent Defense Commission
- Local and regional jails
- Local juvenile justice departments
- Local mental health and substance abuse services providers
- Virginia Commonwealth University Health
- Virginia Tech Carilion School of Medicine

A complete list of workgroup members and their affiliations is found in Appendix A.

DCJS presented information to the workgroup on women incarcerated in Virginia correctional facilities (state prisons, local and regional jails, and juvenile facilities) who are pregnant and in need of treatment for a SUD; current Virginia and federal statutes, regulations, and standards related to providing treatment for this population; what other states have established regarding statutes, regulations, and standards related to providing SUD treatment to this population; and best practices for this population. Workgroup members provided additional information throughout the meeting based on their own areas of expertise.

Based on the information provided, the workgroup developed 12 recommendations for prioritizing treatment for incarcerated women who are pregnant and in need of substance abuse treatment. These recommendations are described in the body of this report.

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## Executive Summary

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In accordance with Chapter 625, Acts of Assembly, 2024 Session, the Virginia Department of Criminal Justice Services (DCJS), in collaboration with the Virginia Department of Behavioral Health and Developmental Services (DBHDS) and the Virginia Department of Health (VDH), convened a workgroup to study and make recommendations related to prioritizing treatment for incarcerated women who are pregnant and in need of substance abuse treatment. DCJS presented information to the workgroup from federal sources and other states, healthcare professional associations, and current Virginia laws, regulations, and standards related to treatment for pregnant women and individuals with a substance use disorder (SUD).

Based on these reviews, the workgroup developed the following recommendations. Most of these recommendations will require additional funding.

- 1) Revise Virginia Board of Local and Regional Jails (BOLRJ) Minimum Standards to include:
  - a. When, at the admission screening, a female responds affirmatively to the pregnancy inquiry, a pregnancy test shall be made available as soon as possible but no later than within 72 hours of booking. Thereafter, pregnancy tests shall be made available to individuals at assessment, within 14 days of admission, or as directed by a medical authority.
  - b. Pregnant individuals 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 individuals to a licensed obstetric provider (OBGYN, Nurse Practitioner, or 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.
- 2) Adopt the following “best practices” statement regarding treatment for pregnant women with a SUD: “All pregnant women in carceral settings should be offered and have access to evidence-based substance use disorder evaluation and treatment.”
- 3) To the extent possible, pregnant individuals should be diverted from incarceration and instead placed in appropriate community programs that recognize their unique treatment needs. This could be done through approaches such as family dockets, programs through local community services boards, and other treatment-oriented programs. Judges and other stakeholders will need to be educated about these alternative options.
- 4) Provide training to correctional facility administrators and staff on the special needs of pregnant individuals. In addition to an awareness to provide appropriate medical and psychological treatment, correctional facilities need to remain aware of the legal rights afforded incarcerated individuals.
- 5) Avoid the use of language that stigmatizes pregnant individuals, include those with lived experience in decision-making regarding this population, and address the need for trauma-informed responses when working with this population.
- 6) Facilities should develop a discharge plan to address pregnancy and postpartum needs following release. These services should include connection to an OBGYN provider, substance use disorder

Recommendations for Prioritizing Treatment for Incarcerated Women  
Who Are Pregnant and in Need of Substance Abuse Treatment

treatment, and Medication Assisted Treatment, if applicable. These plans should also be extended to the pretrial population. These plans should be developed prior to release to ensure “wrap around” services that prevent gaps from occurring in the period immediately following release. Providing such wrap-around services would reduce the risk of post-release relapse and overdose.

- 7) Provide access to Medication Assisted Treatment for a minimum of one-year postpartum (regardless of how the pregnancy ends). Providing such treatment will assist with postpartum depression and reduce the risk of post-release relapse and overdose.
- 8) Examine the feasibility of increasing Virginia’s number of Social Security Act 1115 waiver applications to allow pregnant individuals to access Medicaid while incarcerated. Current federal law generally prohibits incarcerated individuals from receiving Medicaid assistance. However, 1115 waivers give states additional flexibility to design and improve their programs, and to demonstrate and evaluate state-specific policy approaches to better serving Medicaid populations.
- 9) Examine the feasibility of the Commonwealth assuming financial responsibility for all pregnant individuals (including postpartum services) whether in Virginia Department of Corrections (VADOC) facilities or in local or regional facilities regardless of state responsible or local responsible status.
- 10) Increase training and support to local and regional jails on how to identify funding opportunities and better enable them to apply for grant funding to provide services to individuals under their custody.
- 11) A separate study should be conducted to develop recommended treatment standards for juvenile pregnant individuals with SUD that are confined in state or local facilities.
- 12) Virginia should collect more complete data concerning the prevalence of pregnant individuals with a SUD who are incarcerated to include:
  - a. Establish a mandatory process for identifying, counting, and tracking the number of incarcerated individuals who are pregnant and in need of substance use disorder treatment, to include the demographics of this population.
  - b. Conduct a study of how pregnant individuals are perceived and treated at different steps in the justice system – by law enforcement, prosecution, the judiciary, corrections, and post-release.
  - c. Develop a statewide inventory of services that are available to pregnant individuals in the justice system and examine the effects of these services on outcomes to determine best practices.

## Workgroup Methodology

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DCJS worked closely with DBHDS and VDH to develop an agenda and list of stakeholders to include on the workgroup. This planning group determined the scope of the workgroup and important areas to explore during the workgroup. The workgroup convened on August 16, 2024, at Henrico County Libbie Mill Library for a full-day session. Stakeholders included representatives from the following organizations:

- Virginia Board of Local and Regional Jails
- Virginia Department of Behavioral Health and Developmental Services
- Virginia Department of Corrections
- Virginia Department of Criminal Justice Services
- Virginia Department of Health
- Virginia Department of Juvenile Justice
- Virginia Department of Medical Assistance Services
- Virginia Department of Social Services
- Virginia Indigent Defense Commission
- Local and regional jails
- Local juvenile justice departments
- Local mental health and substance abuse services providers
- Virginia Commonwealth University Health
- Virginia Tech Carilion School of Medicine

DCJS provided information during the meeting on several topics the planning group found relevant to help make recommendations, including:

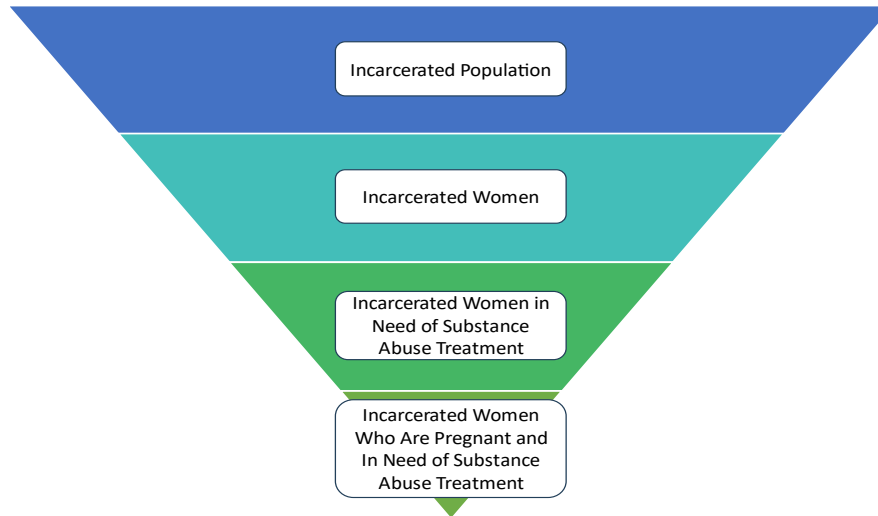
- Determining the number of women incarcerated in Virginia correctional facilities (state prisons, local and regional jails, and juvenile facilities) who are pregnant and need treatment for a SUD.
- Reviewing the current Virginia and federal statutes, regulations, and standards related to providing SUD treatment to incarcerated pregnant women.
- Examining what other states have established regarding statutes, regulations, and standards related to providing SUD treatment to incarcerated pregnant women.
- Exploring best practices for incarcerated pregnant women in need of treatment for a SUD.

Workgroup participants were encouraged to provide additional information based on their knowledge and expertise. Robust conversations occurred as participants shared their experiences with the intersection of incarceration, prenatal health, and substance use disorders. DCJS sought agreement from the workgroup to determine the final recommendations.

## Defining the Target Population

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One of the workgroup’s first tasks was to consider the size of the specific population cited in the legislative mandate – how many incarcerated pregnant females needing SUD treatment are there in Virginia’s state and local correctional facilities?



DCJS Virginia Department of Criminal Justice Services  
www.dcs.virginia.gov

The workgroup recognized that the population of interest – incarcerated women who are pregnant and in need of SUD treatment – would be a narrow and relatively small portion of the incarcerated population.

The workgroup found that there was little hard data available on the size or characteristics of this small subset of Virginia’s incarcerated population. It appears that Virginia has no systematic methods for capturing and maintaining this information.

### National Data

National data is very limited on the number of pregnant individuals in jails and prisons. There is even less data regarding incarcerated individuals who are pregnant and in need of SUD treatment. The 2002 Survey of Inmates in Local Jails conducted by the Bureau of Justice Statistics (BJS), showed that 5% of women in jails reported being pregnant at the time of admission.<sup>1</sup>

The Pregnancy in Prison Statistics study collected data for one year (2016–2017) from 22 state prisons, the Federal Bureau of Prisons, and six large jails, representing 57% of females in prison and 5% of females in jails.

The study found that 4% of females entering state prisons and 3% of females entering jails were pregnant. 117 of the pregnant individuals entering prison and 50 of the pregnant individuals entering jails had an opioid use disorder (OUD).<sup>2</sup>

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<sup>1</sup> Maruschak, L.M. (2006). *Medical Problems of Jail Inmates*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

<sup>2</sup> Pregnancy In Prison Statistics (retrieved August 2024). *Incarcerated Pregnant People in a 12 Month Period*. Advocacy and Research on Reproductive Wellness of Incarcerated People.



## Recommendations for Prioritizing Treatment for Incarcerated Women Who Are Pregnant and in Need of Substance Abuse Treatment

In federal fiscal year 2021, BJS was tasked by the U.S. House of Representatives Committee on Appropriations to include in the National Prisoner Statistics Program and Annual Survey of Jails statistics information relating to the health needs of incarcerated pregnant women in the criminal justice system (Federal, state, tribal, and local levels). The mandate did not explicitly include data on substance use disorder (SUD).

As a result of this mandate, BJS undertook a feasibility study. In January 2024, BJS released the findings of that study in a technical report entitled, *Data on Maternal Health and Pregnancy Outcomes from Prisons and Jails: Results from a Feasibility Study*. BJS found several legal, technical, and resource challenges at both the individual and aggregate level with collecting the required data. While BJS did conclude it was feasible to collect data on pregnant females in jails and prisons, the next step in the process is to “examine items for inclusion in a survey instrument and further assess respondent burden before exploring options for national implementation in a BJS collection.”<sup>3</sup>

### Virginia Data

No reported data could be found on the number of pregnant incarcerated individuals or number of incarcerated individuals with SUD. However, data from the Virginia Department of Corrections (VADOC), Compensation Board, and the Virginia Department of Juvenile Justice (DJJ) found that, for FY2023 reporting, females made up:

- 6.6% of the VADOC incarcerated population (including those housed in local and regional jails).
- 17% of the local-responsible population in local and regional jails.
- 7.9% of DJJ’s direct care population.
- 24.7% of the juvenile detention center population (pre- and post-detention), with females accounting for 6.3% of post-detention with programs.

Most females housed at VADOC facilities have been in jails for a period of time before arriving in VADOC, so few women are transferred to VADOC while still pregnant.

Virginia Department of Juvenile Justice and local juvenile facilities reported that because females tend to come into and leave their facilities quickly, a screening may be done at intake, but testing is generally not conducted. If this information is captured, it is by the medical departments and not easily accessible. Therefore, there are no available data on numbers of females who are pregnant in juvenile facilities.

Additionally, little data was available on the numbers of pregnant women held in local or regional jails.

Some workgroup members were able to provide information on specific jails in Virginia, which show there may be a significant difference between the number of pregnant women, or pregnant women with SUD housed in various jails. For instance, the Fairfax County Jail (FCJ) reported that in 2000 it began standard pregnancy testing for all women of childbearing age who screen positive for a SUD. From 2021 to 2024, FCJ reported having 23 pregnant women in its jail. In 2021 and 2022, none of the pregnant women were identified as having a SUD. In 2023 and 2024, five (46%) and six (86%) of the pregnant women, respectively, were identified with SUD. On the other hand, Western Virginia Regional Jail (WVRJ) reported that in just FY2024, it had 32 pregnant women with 27, or 84%, of them diagnosed with a SUD. Between January 1, 2024, and August 31, 2024, WVRJ reported having 25 pregnant women with 100% of them diagnosed with a SUD.

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<sup>3</sup> Bronson, J., Irazola, S., and Maruschak, L.M. (2024). *Data on Maternal Health and Pregnancy Outcomes from Prisons and Jails: Results from a Feasibility Study*. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

## Review of Virginia and Other States' Laws Relevant to Substance Use Treatment for Incarcerated Pregnant Women

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A review of Virginia statutes found one that is relevant to this population but encourages education and not treatment. The *Code of Virginia*, § 53.1-40.16 states the Virginia Department of Corrections “shall provide, to the extent practicable, educational programming for prisoners known to be pregnant related to ...the impact of alcohol and drugs on the fetus.”

In preparing for the workgroup, the most relevant national review of state statutes identified was *State Laws on Substance Use Treatment for Incarcerated Pregnant and Postpartum People*, published in 2023 by the Center for Leadership Education in Maternal & Child Public Health, University of Minnesota-Twin Cities, School of Public Health. This report identified only seven states that have statutes related to treatment of substance use disorders in pregnant incarcerated women. The following excerpts from the report summarize these state statutes.

### California

California has eight statutes relevant to substance use screening and treatment for pregnant incarcerated women including, educating incarcerated pregnant women about withdrawal, diversion programs as an alternative to sentencing for mothers facing prison or jail time (including eligibility requirements), and the appropriation of funds for new residential facilities for pregnant women.

### Massachusetts

Massachusetts has one law relevant to substance use in pregnant incarcerated women; this statute requires pregnancy counseling before subsequent release of pregnant incarcerated women who have a SUD.

### Missouri

Missouri has three laws relevant to substance use among pregnant incarcerated women. These statutes pertain to the creation of a pilot diversion program, its eligibility requirements, and the allocation of funds for its maintenance.

### Minnesota

Minnesota has one law addressing SUD in its pregnant incarcerated population. The statute focuses on educating correctional staff about how to meet the needs of incarcerated women whose fetuses are at risk for fetal alcohol syndrome.

### Maryland

Maryland has one law related to pregnant incarcerated women who have a SUD. This statute directs correctional facilities to have policies on the medical care of pregnant incarcerated women with SUD.

## New Jersey

New Jersey has one law related to pregnant incarcerated women and treatment. It requires wardens to allow pregnant incarcerated women access to residential drug use and mental health diversion programs if they meet certain eligibility requirements.

## Texas

Texas has six statutes relevant to screening, education, or treatment for SUD in incarcerated pregnant populations. Two statutes related to screening focus on creating programs to identify pregnant incarcerated women struggling with alcohol use or alcohol use disorder; three statutes related to education focus on informing incarcerated pregnant women about the risks of alcohol and drug consumption during pregnancy; and one statute focuses on treatment related to an intervention for alcohol use among incarcerated pregnant women who screen positive for alcohol use disorder/alcohol use during pregnancy.

Based on its review of the statutes in these seven states, the University of Minnesota report offered the following recommendations.

- 1) State legislatures could create new policies mandating all prisons and jails to provide both SUD screening and treatment for all pregnant individuals involved in the criminal legal system. These statutes should refrain from using stigmatizing language when referring to incarcerated individuals.
- 2) Prisons and jails should provide evidence-based treatment for SUD.
- 3) All prisons, jails, and detention facilities should be vigilant in creating programs to screen and treat SUD among all pregnant individuals in custody. This screening and treatment should be humane, trauma-informed, and honor personal dignity, recognizing the role that trauma often plays in the development of SUD.
- 4) States should continue to implement alternatives to incarceration, especially for pregnant and postpartum incarcerated individuals overcoming a SUD.
- 5) Programs targeted at treating SUD in incarcerated pregnant individuals should consider offering sustained mental health counseling services to get at the root cause of the SUD, which could reduce risk for relapse.
- 6) Legislation could be introduced that identifies SUD as a serious medical need so that prisons and jails have a constitutional obligation to provide an adequate standard of care for SUD, especially among pregnant incarcerated individuals.<sup>4</sup>

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<sup>4</sup> Augustin, D., Steely Smith, M. K., Zielinski, M. J., Sufrin, C., Kramer, C. T., Benning, S. J., Laine, R., & Shlafer, R. J., (2023). *State Laws on Substance Use Treatment for Incarcerated Pregnant and Postpartum People*. Center for Leadership Education in Maternal and Child Public Health, University of Minnesota.

## Review of Federal Agency Findings and Professional Associations' Standards

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The workgroup reviewed standards and recommendations developed by national agencies and professional associations for guidance on SUD treatment for pregnant women. Some of these included or extrapolated to those who are incarcerated. Due to the recent focus on the growth in opioid use disorder (OUD) over the past decade, much of the current literature on SUD treatment focuses on treatment for this specific disorder. The following are the relevant findings.

### Substance Abuse and Mental Health Services Administration and National Institutes of Health

The primary evidence-based standard of care for pregnant women with OUD is Medication Assisted Treatment (MAT). This has been extended to those who are incarcerated.

- MAT (buprenorphine or methadone) combines behavioral therapy and medication to treat OUD.
- MAT correlates with better health outcomes, whereas detox correlates with higher relapse and overdose rates.
- As such, assessment for pregnancy and OUD should be conducted at intake and treatment started after identification.

Additional best practices identified:

- Use a self-administered screening tool to assess SUD/OUD (mitigates feeling of stigma, guilt, and shame)
- Screen for mood disorders, PTSD, trauma, violence, health issues, eating disorders
- Person-centered care
- Trauma-informed care
- Peer support
- Education about how substance use affects the fetus
- Substance use disorder treatment
- Address mental health conditions
- Provide culturally responsive care
- Transition planning/connection from the facility to the community (no gap in access to medication)

### American Correctional Association Standards (applies to accredited state facilities)

#### *5-ACI-6A-10 Pregnancy Management (Mandatory)*

If female offenders are housed, access to pregnancy management is specific as it relates to the following:

- Pregnancy testing
- Routine prenatal care
- High-risk prenatal care
- Management of the chemically addicted pregnant inmate

#### *5-ACI-5E-11 Substance Abuse Programs*

Written policy, procedure, and practice provide for substance abuse programs, to include monitoring and drug testing for inmates with drug and alcohol addiction problems.

## Current Landscape in Virginia Jails and Virginia Department of Corrections

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Under Executive Order 26 (2022), the Secretary of Public Safety and Homeland Security established a Reentry to Recovery Workgroup which surveyed the VADOC and local and regional jails to determine what services are provided for inmates with OUD. The survey yielded 41 responses, which revealed the following:

- 26 facilities indicated that every inmate has access to medications for opioid use disorders (MOUD) if clinically indicated.
- 33 indicated that if an individual enters their facility on MOUD, it can be continued.
- 8 stated that if an individual enters their facility not on MOUD, but could benefit from it, they would start MOUD.
- 31 facilities stated that they provide MOUD to pregnant individuals.
- 19 facilities stated that they have a specialized SUD program.

The VADOC has four facilities that house females and cited the following available SUD services:

- Assessment
- Residential treatment
- Sanctions for substance use with reductions that encourage treatment participation
- SUD support services
- MAT services
- Additional programming

The Virginia Department of Juvenile Justice (DJJ) rarely houses pregnant individuals. Additionally, the local detention centers often have individuals for such a short period of time that they may not know an individual is pregnant. While both DJJ and many local detention centers provide SUD treatment, they do not focus specifically on the pregnant population. It was determined through conversations with the workgroup that the juvenile population needs to be studied separately from the adult population due to additional challenges, such as custody status and parental consent.

Treatment programs vary greatly between jails, and it was beyond the scope of this study to identify the existing programs in each jail and the eligible populations to participate in these programs. However, examples of local and regional programs that assist this population were identified.

Henrico Sheriff's Office, Recovery in a Secure Environment (R.I.S.E.) Program, Henrico County Regional Jail East is a peer-run program implemented to address substance use, criminal behaviors, and positive opportunities for recovery-based peer interactions that includes one program pod for women that addresses substance abuse while pregnant among other issues that women with SUDs tend to face.

Henrico Area Mental Health and Developmental Services lends guidance and support to the R.I.S.E. program. In addition, they oversee several outpatient programs, including the SUD Case Management Program for Pregnant and Parenting Women. They partner with Henrico Jail to include individuals housed in the jail in this program.

## Recommendations for Prioritizing Treatment for Incarcerated Women Who Are Pregnant and in Need of Substance Abuse Treatment

The MOTIVATE Clinic through VCU Health provides OBGYN and social work services to pregnant women housed in Henrico County Jail West. This includes pregnant women in need of SUD treatment. Additionally, Riverside Regional Jail brings pregnant women in need of SUD treatment to the MOTIVATE Clinic for prenatal care. MOTIVATE provides evidence-based, compassionate, person-centered care, and is comprised of several professional disciplines to provide OBGYN care and addiction treatment and recovery services.

Another example is the Emerald Program through the Virginia Tech Carilion Clinic. They see pregnant women in need of SUD treatment from area local and regional jails, either while they are incarcerated or upon release. The Emerald Program provides prenatal, postpartum, and addiction treatment and recovery services. Currently, the jails bring individuals to the clinic, but the Emerald Program is exploring the possibility of being able to provide services in the jails. They also see a number of women post incarceration. They are working to strengthen their relationships with the jails, so that individuals who need services are given their information prior to release. Additionally, the Carilion Clinic is opening a residential program in spring 2025 that will be for court-ordered pregnant women in need of SUD treatment and their children.

After surveying several localities and local community service board webpages regarding addiction and SUD treatment, women and pregnancy services, and corrections outreach, no other programs mentioned SUD treatment of incarcerated pregnant individuals. There are other jail and community programs that assist individuals with SUD and community programs that assist pregnant individuals with SUD; however, there do not seem to be many programs that focus solely on incarcerated women who are pregnant and in need of SUD treatment. Local and regional jails with SUD treatment programs likely include the pregnant population, but not always. An example was identified of a local jail with a treatment program that houses the pregnant population at the regional jail, which means they are not eligible for programming in the local jail.

## Review of Current Relevant Virginia Standards

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In addition to reviewing relevant statutes in Virginia and other states, the workgroup reviewed current Virginia standards directly related to the care and treatment of pregnant individuals with a SUD. The workgroup focused on the VADOC Health Services Operating Procedures and the Board of Local and Regional Jails (BOLRJ) Regulation Administrative Code.

### Virginia Department of Corrections (VADOC)

Health Services Operating Procedures, 720.2 Medical Screening, Classification, and Levels of Care states, “Intake health screening for inmate transfers, excluding intrasystem, commences upon the inmate’s arrival at the facility and is performed by the health-trained or qualified health care personnel. All findings are recorded on a screening form approved by the Health Authority. The screening must include at least the following:

- 1) Inquiry into:
  - d. Use of alcohol and other drugs, including type(s) of drugs used, mode of use, amounts used, frequency used, date or time of last use, and history of any problems that may have occurred after ceasing use.
  - e. The possibility of pregnancy and history of problems (female only); and other health problems designated by the responsible physician.”<sup>5</sup>

### Virginia Board of Local and Regional Jails (BOLRJ)

[Code of Virginia § 53.1-5\(6\)](#) – The Board has the duty to establish health care standards including for medical and behavioral health and “procedures for enforcing such minimum standards” in consultation with Virginia Department of Behavioral Health and Developmental Services and Virginia Department of Health.

[6VAC15-40-370\(3\)-\(4\)](#) – The Board requires local lockups and regional jails to provide written policies and procedures establishing medical screening that will among other elements “include inquiry into past and present drug and alcohol abuse...” and “[f]or female inmates, include inquiry into possible pregnancy or gynecological problems...”

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<sup>5</sup> VADOC Operating Procedures: Health Services Operating Procedure 720.2. Medical Screening, Classification, and Levels of Care. August 1, 2024.

## Recommendations from Virginia Board of Local and Regional Jails Report

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The workgroup found that the most relevant work on the target population comes from a 2022 report to the General Assembly by the Virginia Board of Local and Regional Jails (BOLRJ). SB1300 (2022) directed the BOLRJ to review current services provided to jail inmates during pregnancy through postpartum, and to develop recommendations to ensure that proper services are delivered to these inmates. In July 2022, BOLRJ published its report *Recommendations for Services Provided to Inmates during Pregnancy, Pregnancy Termination, Labor and Delivery, and Postpartum Recovery*.

The BOLRJ's report focused on services for pregnant inmates confined only in jails, not state facilities, and it did not specifically address the needs of pregnant inmates with SUDs. Nonetheless, the report contained valuable information relevant to the current study, and the workgroup reviewed the findings of the BOLRJ's 2022 report.

In particular, the workgroup reviewed and discussed two of the recommendations made in the BOLRJ's report, which are listed below.

### *BOLRJ 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.

### *BOLRJ 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.

According to BOLRJ, the recommendations will be used as the basis for revisions to the Board's Minimum Standards for Local and Regional Jails (6VAC15-40). BOLRJ planned to begin the process in FY2023 but were delayed by unforeseen circumstances. They now plan to undertake these revisions during FY2025.



## Workgroup Recommendations

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Based on its review of research, relevant laws, regulations, and standards in Virginia and other states, concerning the treatment of pregnant individuals in need of SUD treatment, the workgroup proposed several recommendations. Most of these recommendations will require funding to implement.

### RECOMMENDATION 1

Revise BOLRJ Minimum Standards to include:

- a. When, at the admission screening, a female responds affirmatively to the pregnancy inquiry, a pregnancy test shall be made available as soon as possible but no later than within 72 hours of booking. Thereafter, pregnancy tests shall be made available to individuals at assessment, within fourteen days of admission, or as directed by a medical authority.
- b. Pregnant individuals 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 individuals to a licensed obstetric provider (OBGYN, Nurse Practitioner, or 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.

*Recommendation 1 repeats, with modifications, recommendations 2 and 5 made by the Virginia Board of Local and Regional Jails in its 2022 report "Recommendations for Services Provided to Inmates during Pregnancy, Pregnancy Termination, Labor and Delivery, and Postpartum Recovery." The workgroup felt that these modifications should apply to all Virginia correctional facilities, not just local and regional jails.*

### RECOMMENDATIONS 2

Adopt the following "best practices" statement regarding treatment for pregnant women with SUD: "All pregnant women in carceral settings should be offered and have access to evidence-based substance use disorder evaluation and treatment."

### RECOMMENDATION 3

To the extent possible, pregnant individuals should be diverted from incarceration and instead placed in appropriate community programs that recognize their unique treatment needs. This could be done through approaches such as family dockets, programs through local community services boards, and other treatment-oriented programs. Judges and other stakeholders will need to be educated about these alternative options.

*The workgroup discussed the possibility of pregnant women with SUD being held in jail until after they give birth, regardless of sentencing status. The workgroup suggested addressing this potential inequity through alternative programs and stakeholder education.*

#### RECOMMENDATION 4

Provide training to correctional facility administrators and staff on the special needs of pregnant individuals. In addition to an awareness to provide appropriate medical and psychological treatment, correctional facilities need to remain aware of the legal rights afforded incarcerated individuals.

*Workgroup members noted that pregnant inmates may perceive offers of “help” or “treatment” as requiring them to give up privacy or other rights, which may inhibit them from seeking help. For example, pregnant individuals may perceive that they can be forced to give up their child or agree to receive unwanted certain medications in order to receive help. The workgroup also talked about the increased security risks for individuals taking medications as part of their treatment for SUD. Pregnant individuals are a vulnerable population that may be at higher risk for bullying in these cases.*

#### RECOMMENDATION 5

Avoid the use of language that stigmatizes pregnant individuals, include those with lived experience in decision-making regarding this population, and address the need for trauma informed responses when working with this population.

#### RECOMMENDATION 6

Facilities should develop a discharge plan to address pregnancy and postpartum needs following release. These services should include connection to an OBGYN provider, substance use disorder treatment, and Medication Assisted Treatment, if applicable. These plans should also be extended to the pretrial population. These plans should be developed prior to release to ensure “wrap around” services that prevent gaps from occurring in the period immediately following release. Providing such wrap-around services would reduce the risk of post-release relapse and overdose.

*Several jails currently have forensic discharge planners that work with the sentenced population to transition them to behavioral health services in the community upon release. It was suggested by the workgroup that the number of forensic discharge planners could be increased throughout the Commonwealth and assist the target population regardless of disposition status. It was noted there may be a need for these planners to assist individuals who are unexpectedly released to the community.*

#### RECOMMENDATION 7

Provide access to Medication Assisted Treatment for a minimum of one-year postpartum (regardless of how the pregnancy ends). Providing such treatment will assist with postpartum depression and reduce the risk of post-release relapse and overdose.

#### RECOMMENDATION 8

Examine the feasibility of increasing Virginia’s number of Social Security Act 1115 waiver applications to allow pregnant individuals to access Medicaid while incarcerated. Current federal law generally prohibits incarcerated individuals from receiving Medicaid assistance. However, 1115 waivers give states additional flexibility to design and improve their programs and to demonstrate and evaluate state-specific policy approaches to better serving Medicaid populations.

### RECOMMENDATION 9

Examine the feasibility of the Commonwealth assuming financial responsibility for all pregnant individuals (including postpartum services) whether in VADOC facilities or in local or regional facilities regardless of state responsible or local responsible status.

### RECOMMENDATION 10

Increase training and support to local and regional jails on how to identify funding opportunities and better enable them to apply for grant funding to provide services to individuals under their custody.

### RECOMMENDATION 11

A separate study should be conducted to develop recommended treatment standards for juvenile pregnant individuals with SUD that are confined in state or local facilities.

*The workgroup recognized that pregnancy and substance use testing and treatment for juveniles may involve legal custody and/or consent issues which are unique to juveniles, would require additional study, and were beyond the purview of the current workgroup.*

### RECOMMENDATION 12

Virginia should collect more complete data concerning the prevalence of pregnant individuals with SUD who are incarcerated. To accomplish this, workgroup members suggested the following:

- Establish a mandatory process for identifying, counting, and tracking the number of incarcerated individuals who are pregnant and in need of SUD treatment, to include the demographics of this population.
- Conduct a study of how pregnant individuals are perceived and treated at different steps in the justice system – by law enforcement, prosecution, the judiciary, corrections and post-release. For example, how does law enforcement determine whether a pregnant individual who is arrested should be taken to a lockup or to a medical facility? Are judges more or less likely to incarcerate a pregnant person than a similarly situated person who is not pregnant?
- Develop a statewide inventory of services that are available to pregnant individuals in the justice system and examine the effects of these services on outcomes to determine best practices.

*The workgroup was hampered by the lack of information available on the prevalence and characteristics of this population. Additionally, the workgroup found that more information is needed about how actors throughout the criminal justice system – not just in correctional facilities – perceive and respond to justice-involved pregnant individuals.*

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## Appendix A: Workgroup Members

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Recommendations for Prioritizing Treatment for Incarcerated Women  
Who Are Pregnant and in Need of Substance Abuse Treatment

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