

## Legislative Recommendations for Justice System-Involved Pregnant Women in Texas

### *Reducing Recidivism, Enhancing Family Unification, and Empowering Communities*

Dear Chairman White and Members of the Corrections Committee: My name is Claire Leonard. I am a Master of Science in Social Work graduate student at the University of Texas at Austin, and a Policy Associate with the Texas Criminal Justice Coalition. I have spent my spring semester researching programs and legislation that best serve justice system-involved pregnant women in Texas, and I am excited to have the opportunity to share my findings today.

#### CURRENT CHALLENGES FACING PREGNANT JUSTICE SYSTEM-INVOLVED WOMEN AND THEIR CHILDREN

Pregnant women in Texas prisons and jails are a distinct group that deserves particular attention from the Legislature because many of the challenges they face with respect to reentry, mental illness, substance use, and past trauma are intensified by maternal health challenges within correctional settings. The key facts about this population are striking:

- Incarcerated women have a more difficult time with reentry and higher recidivism rates than men.<sup>1</sup>
- Incarcerated pregnant women are less likely to have support from a family member during labor or birth and are more likely to have a baby with a low birth weight.<sup>2</sup>
- The majority of incarcerated women have less extensive criminal histories than incarcerated men and have been convicted of nonviolent offenses.<sup>3</sup>
- Incarcerated women are disproportionately Black and low-income, with mental health diagnoses, and histories of substance abuse and intense trauma.<sup>4</sup>

***In 2016, 196 women gave birth in Texas prisons – a number that does not begin to account for births in state and county jails.***<sup>5</sup>

This means that a minimum of 196 infants in Texas were unable to bond with their mothers, and the majority of these babies have likely been placed in kinship or foster care. Half of the children of incarcerated mothers will never be able to visit their mother during the period of incarceration.<sup>6</sup> This intensive separation risks the significant benefits derived from the development of a mother-child relationship: reduced recidivism among women, increased economic stability among women following reentry, and increased interest among women in undertaking rehabilitative efforts.<sup>7</sup>

The negative impact of separation on children can also be highlighted by the fact that parental incarceration is now formally recognized as an adverse childhood experience (ACE).<sup>8</sup> ACE's are tied to depression, chronic diseases, certain cancers, sexually transmitted infections, and an array of other mental health disorders.<sup>9</sup> The outcomes that are significantly increased for the children of incarcerated women include attachment disorders, substance use disorders, and severe lags in academic performance.<sup>10</sup> Children who have one or both parents incarcerated are also more likely to be placed in foster care or experience homelessness.<sup>11</sup>

#### EFFECTIVE AND PRACTICAL POLICY SOLUTIONS

##### **I. Limit the Use of Blue Warrants for Pregnant Women and Primary Caregivers**

Jailing individuals compounds the employment, financial, and housing strains that individuals with criminal records already face.<sup>12</sup> This practice is especially harmful for mothers and pregnant women, as it limits the ability of a primary caregiver to effectively provide for her children, while isolating pregnant women from their support networks and adding additional stress to a pregnancy. Texas lawmakers should limit the use of blue warrants

for pregnant women and primary caregivers with technical or nonviolent parole or probation violations through legislation that would allow judges, as well as the Parole Division of the Texas Department of Criminal Justice (TDCJ), to give special consideration to these individuals before issuing blue warrants, especially for offenses that are typically non-jailable. The specific consideration of pregnancy and primary caregiver status for individuals on parole and probation can prevent unnecessary jailing and reduce the financial and social strain that it would place on these families.

**II. Explicitly Regulate the Shackling Criteria for Pregnant Inmates**

Shackling a pregnant inmate during labor, delivery, or recovery from giving birth is illegal in Texas, unless prison authorities deem the mother a flight risk, but women can otherwise be shackled throughout their pregnancies.<sup>13</sup> There is no current state legislation regulating the process by which a pregnant woman or recent mother is deemed a flight risk, and shackling should not be permitted during the pregnancy unless absolutely necessary. The American Congress of Obstetricians and Gynecologists points to shackling of a pregnant, laboring, or postpartum mother as a health and safety risk to the mother and fetus, especially since shackles can keep a pregnant mother from catching herself while falling.<sup>14</sup> New legislation should identify a specific process by which a pregnant woman is deemed a flight risk or otherwise in need of shackling to eliminate the overuse of shackling.

**III. Invest in Community-Based Sentencing Alternatives for Pregnant Women, Mothers, and Primary Caregivers**

Pregnant women and mothers with substance use disorders and mental health diagnoses at the root of their criminal behavior are typically harmed by a prison or jail environment. Community-based sentencing alternatives combine substance use treatment and mental health services to address the underlying causes of criminal behavior while preparing mothers to live successfully in the community.<sup>15</sup> Family-based treatment alternatives to incarceration are considered a very practical public policy investment, as they consistently result in lower rates of recidivism.<sup>16</sup> The programs also lead to improved children’s health, family stability, sustained parental sobriety, increased family reunification, and significantly better outcomes for children than foster care placement.<sup>17</sup> Community-based sentencing alternatives can be funded by establishing a matching grant program for counties that would like to establish one.

**Community-Based Sentencing Alternatives** include mandated mental health, substance use, and life skills programming, although they are less restrictive than prison settings. These settings fall between a halfway house and a prison and take place in home-like environments. Children can typically stay with their mothers until they are school age so that child and caregiver transition back into their community together. Two effective examples of these programs exist in Washington State: the Family & Offender Sentencing Alternative and a partial confinement program called the Community Parenting Alternative.

**IV. Model Proposed Federal Legislation**

The Dignity for Incarcerated Women Act (DIWA) is a proposed piece of federal legislation that Texas lawmakers can mirror in two ways:

- 1) Increase visitation hours for incarcerated mothers so that children and their caretakers can communicate with parents more frequently. The Legislature should expand the minimum weekly visits for mothers in county jails, and require TDCJ to create special parent/child-only visitation days on certain school holidays.
- 2) Require TDCJ to consider a minor’s location when selecting a prison for any parent – a consideration that should also be extended to a pregnant mother and her nearest stated support system. This may require re-thinking the locations of certain female units so that they are not clustered in one part of the state, re-designating current male facilities as female facilities and vice versa.

## CITATIONS

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