

Memorandum in Support

WOMEN IN LAW SECTION

WILS #2

May 25, 2021

S. 401

By: Senator Biaggi

A. 211

By: M. of A. L. Rosenthal

Senate Committee: Finance

Assembly Committee: Ways and Means

Effective Date: Immediately

THE NEW YORK STATE BAR ASSOCIATION'S WOMEN IN LAW SECTION SUPPORTS THIS LEGISLATION

AN ACT to amend the public health law and the correction law to provide better health care to female and pregnant inmates.

LAW AND SECTIONS REFERRED TO: Section 207-b of the Public Health Law.

The New York State Bar Association's Women in Law Section (WILS) supports A211/S401, which seeks to improve women's healthcare in New York State correction facilities. A211/S401 mandates the provision of women's healthcare education for medical personnel in state and local correctional facilities, with explicit training in the care of victims of domestic and sexual violence; increases healthcare services for pregnant and postnatal prisoners, including gynecological and obstetrical counseling and services, and access to prenatal vitamins and nutrition; and requires the Department of Health to collect data and report on women's health in prisons. A second bill, A616/S39, also under consideration, seeks to address the needs of pregnant inmates in New York, but is limited to providing access to pregnancy and abortion counseling, information about nursery programs, and a support person at birth to inmates (programs also mandated by AS211/S401). The Committee also supports A616/S39, but strongly prefers the more robust A211/S401.

BACKGROUND

While incarcerated, women depend on the prison system for all their basic medical needs.¹ But because women's gender-specific medical needs are often tied to their

¹ "Incarceration Trends in New York," Vera Institute of Justice, (Dec. 2019) <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-new-york.pdf>. Men's national incarceration rates have decreased by 26 percent since 1980, but women's incarceration rates have increased dramatically. Of the 77,000 inmates in the New York state prison system, six percent are women, a number that has quadrupled since 1980. New York has the fourth largest female prison population in the country. ACLU, "Words From Prison – Did You Know," (April 2021) at <https://www.aclu.org/other/words-prison-did-you-know>.

reproductive health, providing women with the same healthcare as provided to men is insufficient.² This is especially true for women who are pregnant and who give birth while in custody.³ Yet, New York prisons are failing to provide minimally adequate medical treatment to women.⁴ In a 2019 report on women’s healthcare in New York State prisons and jails, the Correctional Association of New York (“CANY”) identified serious issues with the medical treatment received by women in the prison system, including “the delay of necessary medical care, the disrespect and dismissiveness with which women often are treated by medical personnel, the poor quality of care and lack of oversight of prison medical care, the failure to consistently provide care that is trauma-informed, and an ineffective grievance process that does not address problems.”⁵ In fact, concerns about inadequate medical treatment consistently rate at the top of grievances filed by women incarcerated in New York.⁶ The reforms proposed by A211/S401 are necessary to ensure that women’s basic health needs, and those of their children, are adequately met in New York correctional facilities.

ANALYSIS

Women entering prison in New York tend to have higher rates of serious health issues than the general population and are significantly more likely to have experienced physical or sexual abuse.⁷ Despite this, the care they receive in correctional facilities is often worse than the treatment they would receive in the community. A211/S401 seeks to address several of the most serious failings: inadequately trained medical providers; an absence of quality information about women’s health in prison; insufficient access to

² See “Women’s Health Care in Correctional Settings,” National Commission on Correctional Health Care (May 3, 2020) <https://www.ncchc.org/womens-health-care>.

³ *Women’s Incarceration: the experience in New York’s prisons*. (The Correctional Association of New York (CANY), 2019). <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5cc08885fa0d60251a568084/1556121734338/2019+Women%27s+Incarceration+Fact+Sheet.pdf> (reporting that 73% of incarcerated women in NY State are mothers). See also United Nations’ Universal Declaration of Human Rights, Article 25, “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, [...] including [...] medical care and necessary social services [...] Motherhood and childhood are entitled to special care and assistance.” Available at: <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>.

<https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5cc08885fa0d60251a568084/1556121734338/2019+Women%27s+Incarceration+Fact+Sheet.pdf>.

⁴ Kraft-Stolar, T. *Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons* (CANY, 2015) <https://www.yumpu.com/en/document/read/36948630/reproductive-injustice-full-report-final-2-11-15>.

⁵ Id.

⁶ Id. (107 of the 563 grievances filed (19%) in 2016 and 123 of the 720 grievances filed (17%) in 2015 concerned medical care, the highest category of grievances by far).

⁷ Gail T. Smith, Director of the Women in Prison Project at The Correctional Association of New York, Testimony Before Assembly Committees on Health and Corrections (October 30, 2017) <https://static1.squarespace.com/static/5b2c07e2a9e02851fb387477/t/5c891d74a4222f95b67541bb/1552489844668/2017.+>. A 1999 Bedford Hills study found that 94% of women had experienced physical or sexual abuse during their lives. CANY, *Women’s Incarceration: the experience in New York prisons*.

gynecological, prenatal, postnatal and abortion counseling and services; and lack of widespread testing for sexually transmitted diseases.

In its 2015 report, CANY identified several serious issues with access to reproductive health care. It reported that in New York prisons, “there is virtually no oversight of reproductive health care, substandard written policies, poor quality medical charts, a lack of health education, and inadequate data analysis.”⁸ Additionally, medical personnel lack training on issues affecting survivors of domestic violence and sexual assault, who represent a significant percentage of women in prison. A211/S401 creates an educational program for medical providers focused on reproductive health and issues affecting survivors of intimate and sexual violence, and requires data collection and reporting on women’s health in prisons, together addressing systemic failures and ensuring that more women receive appropriate treatment.

Women’s overall health is often tied to the health of their reproductive systems, a fact that New York State prisons have overlooked and A211/S401 seeks to correct.⁹ Three-quarters of female inmates report inadequate access to medical care.¹⁰ A211/S401 amends the correction law to define gynecological services as part of the routine medical care that must be provided to inmates. Pregnant inmates are more likely than the general population to have risk factors for premature birth, low birth weight deliveries, and other adverse outcomes; inadequate nutrition contributes to the problem. A211/S401 requires that prisons provide pregnant inmates with access to prenatal vitamins and an adequate diet, a combination that has been shown to reduce the rates of birth defects and premature birth by supporting healthy fetal development.¹¹ Incarcerated women in New York are often not informed of their right to an abortion, which can result in delays in access to treatment, and women have been penalized for changing their mind about having an abortion.¹² New mothers in prison are not uniformly provided information about the nursery program, a program that allows women up to a year of bonding time with their new babies instead of the four days provided to non-nursery mothers.¹³ A211/S401 requires that women are provided information about their right to access abortion services and a nursery program.

⁸ Smith, *supra* note 1; *See also* Kraft-Stolar, T. *Reproductive Injustice*, at 3.

⁹ *See* Kraft-Stoler, “Reproductive Injustice,” at 3.

¹⁰ *See* CANY, *Women’s Incarceration: the experience in New York prisons* (over 70% of incarcerated women surveyed reported that they did not have adequate access to medical providers and that doctors’ treatment does not meet their needs).

¹¹ Shlafer, R. J., Stang, J., Dallaire, D., Forestell, C. A., & Hellerstedt, W., *Best Practices for Nutrition Care of Pregnant Women in Prison*, *Journal of correctional health care : the official journal of the National Commission on Correctional Health Care*, 23(3), 297–304 (2017). <https://doi.org/10.1177/1078345817716567> . *See also* Kraft-Stolar, at 6. (While DOCCS has a special pregnancy diet, it does not include adequate supplements and includes foods that pregnant women are advised to avoid.); and, CANY, *Women’s Incarceration: the experience in New York Prisons* (Most women CANY surveyed reported inadequate access to food.).

¹² Shlafer, R.J. et al, *supra*, at 89.

¹³ Law, V. *Empty Cribs in Prison Nurseries*, *Type Investigations* (May 13, 2018). <https://www.typeinvestigations.org/investigation/2018/05/13/incarcerated-mothers-prison-nurseries/>

Women in New York correctional facilities experience higher rates of Hepatitis C and HIV than incarcerated men.¹⁴ But female inmates have reported that their communications with health care providers have not been confidential; in some instances women have been publicly shamed for their reproductive health issues.¹⁵ This stigma discourages women from seeking out testing and treatment for sexually transmitted illnesses.¹⁶ Ensuring that testing is offered to everyone, as A211/S401 does, expands access and diminishes stigma. Additionally, the educational program for medical providers that A211/S401 creates is likely to reduce lapses in confidentiality for inmates seeking reproductive healthcare.

The other prison health bill under consideration, A616/S39, is limited to providing access to pregnancy and abortion counseling, information about nursery programs, and a support person at birth to inmates. Those reforms are needed. As described above, pregnant inmates currently do not receive adequate counseling about their options, resulting in delays in treatment or inadequate treatment. However, although we support A616/S39, too, we believe that it is crucial the more comprehensive bill, A211/S401, is passed. The additional changes recommended by this bill are needed to ensure that pregnant women receive the full range of services that they need to have a healthy pregnancy and deliver a healthy baby and to ensure that correctional facilities in the state are equipped to provide minimally adequate medical treatment to the women in their care.

CONCLUSION

Based on the foregoing, the New York State Bar Association's Women in Law Section strongly supports the enactment of A211/S401.

Submitted by: Women in Law Section (WILS):
Terri A. Mazur, Chair

Prepared by:
WILS Legislative Affairs Committee:
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¹⁴ Smith, *supra*. (“The incidence of HIV and Hepatitis C is higher for incarcerated women than for men. The rate of women’s HIV infection in New York facilities is 2.8%; 1.9% of men in New York prisons are infected, according to the New York Department of Health Zero Prevalence Study. Tests of persons newly admitted to DOCCS in 2015 showed that 10.3% of men and 24.2% of women were infected with Hepatitis C. As of 2014, DOCCS reported that the per capita health care cost for men in custody was just under \$6,000, and the per capita cost for women was just over \$12,000.”)

¹⁵ Smith, *supra*.

¹⁶ Kraft-Stolar, T., Vasandani, J., and Williams, A., *HIV Services For Women In New York State Prisons* (CANY, 2015), at 7.