

5-2022

Inadequate Healthcare, Inadequate Recovery: Exploring the Challenges of Compensating Pregnant Inmates Deprived of Adequate Healthcare at State Prisons

Katherine McKeon

Follow this and additional works at: https://opencommons.uconn.edu/law_review



Part of the [Civil Rights and Discrimination Commons](#), and the [Constitutional Law Commons](#)

Recommended Citation

McKeon, Katherine, "Inadequate Healthcare, Inadequate Recovery: Exploring the Challenges of Compensating Pregnant Inmates Deprived of Adequate Healthcare at State Prisons" (2022). *Connecticut Law Review*. 529.

https://opencommons.uconn.edu/law_review/529

CONNECTICUT LAW REVIEW

VOLUME 54

MAY 2022

NUMBER 3

Note

Inadequate Healthcare, Inadequate Recovery: Exploring the Challenges of Compensating Pregnant Inmates Deprived of Adequate Healthcare at State Prisons

KATHERINE MCKEON

Prenatal healthcare services available to pregnant inmates in state prisons are wholly inadequate. Despite the glaring shortcomings of state prisons' healthcare services, there has still only been limited attention paid to rectifying the problem. This lack of attention is problematic for many reasons, but especially because the number of women in prisons has increased in recent decades and inmates who are pregnant when they arrive to prison face conditions that risk extreme health condition.

Not only are pregnant inmates subjected to inadequate healthcare services, but they also have very few legal remedies available to them when they have been deprived of adequate healthcare services. The primary legal tool available to women who experience a deprivation of healthcare services while pregnant in prison is to file a claim under 42 U.S.C. § 1983, rooted in the Federal Civil Rights Act. Claimants can use this statutory provision to bring lawsuits against individuals or entities that have violated their federal rights, set out in federal codes and the U.S. Constitution, while acting under color of state law. However, it can be particularly challenging for women to make strong claims under § 1983. Since there is a lack of judicial clarity about what actually constitutes adequate and essential medical care, it is difficult for claimants to make convincing legal claims rooted in violations of the law.

*This Note begins by exploring the need for improvements in the healthcare available to pregnant inmates through the lens of *Laboy v. Semple*, a case filed in the United States District Court for the District of Connecticut. It then describes how pregnant inmates can make a claim under § 1983 when they have been deprived of adequate healthcare services, while noting the shortcomings and effectiveness of the various forms of § 1983 claims. This Note concludes by offering solutions to remedy both the inadequate healthcare services available in state prisons and the inadequate recovery avenues available to affected women.*

NOTE CONTENTS

INTRODUCTION	775
I. IDENTIFYING THE PROBLEM.....	778
A. FACTUAL BACKGROUND OF <i>LABOY V. SEMPLE</i>	778
B. SCOPE OF THE PROBLEM.....	781
II. LEGAL ARGUMENTS IN <i>LABOY V. SEMPLE</i>	783
III. 42 U.S.C. § 1983 CASES.....	784
A. LEGAL BACKGROUND OF 42 U.S.C. § 1983 CLAIMS	785
B. USING 42 U.S.C. § 1983 TO RECOVER FOR INADEQUATE HEALTHCARE SERVICES RECEIVED IN PRISONS	787
C. STATING A CLAIM UNDER 42 U.S.C. § 1983.....	788
D. EFFECTIVENESS OF 42 U.S.C. § 1983 LAWSUITS.....	792
IV. DEVELOPING BETTER HEALTHCARE SYSTEMS FOR PREGNANT WOMEN IN STATE PRISONS.....	793
CONCLUSION	796



Inadequate Healthcare, Inadequate Recovery: Exploring the Challenges of Compensating Pregnant Inmates Deprived of Adequate Healthcare at State Prisons

KATHERINE MCKEON *

INTRODUCTION

Connecticut is one of just six states in the United States to have implemented the First Congress of the United Nations' Standard Minimum Rules for the Treatment of Prisoners, which the United Nations first adopted in 1955.¹ These rules emphasize the importance of providing prison inmates with adequate access to healthcare and outline the “generally accepted principles and practice(s) in the treatment of prisoners.”² Specifically, these rules require women’s prison facilities to make “special accommodations for pregnant inmates to ensure that they receive any necessary care during and after pregnancy.”³

At first glance, the implementation of these rules may seem like a victory for pregnant inmates serving time in Connecticut state prisons. Despite Connecticut’s seemingly progressive step toward ensuring that pregnant inmates have access to adequate healthcare services while they are in jail, there are still violations of these fundamental healthcare protections in Connecticut state prisons. Even with the adoption of the United Nations’ Standard Minimum Rules, Connecticut state prisons still fail to provide pregnant inmates with access to healthcare during their pregnancies. The

* J.D. Candidate, University of Connecticut School of Law, May 2022. Katherine would like to thank *Connecticut Law Review*’s editorial board for its exceptional work in preparing this Note for publication. This Note is dedicated to Katherine’s grandmother, Bernadette Forget, for sparking her interest in the healthcare industry and providing her with unwavering support from the day she was born. Katherine would also like to give a special thanks to her parents, Jamie and Chris McKeon, for always believing in her and encouraging her in all of her endeavors.

¹ Heather L. McCray, *Pregnant Behind Bars: Chapter 608 and California's Reformation of the Medical Care and Treatment of Pregnant Inmates*, 37 MCGEORGE L. REV. 314, 316 n.21 (2006); see also *Accomplishments in 1968-1993*, CONN. STATE DEP’T OF CORR., <https://portal.ct.gov/DOC/Accomplishment/Accomplishments-in-1968-1993> (last visited Sept. 15, 2021) (noting that in the fiscal year of 1974–1975, the Connecticut Department of Corrections became “the first in the nation to adopt the United Nation’s [sic] minimum standards for treatment of offenders”).

² McCray, *supra* note 1, at 315–16 (quoting Steven M. Karlson, *International Human Rights Law: United States’ Inmates and Domestic Prisons*, 22 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 439, 451–52 (1996)).

³ *Id.* at 316.

limited services these prisons do provide are wholly inadequate and make it difficult for women to take proper care of their bodies.

Consider the recent case *Laboy v. Semple*, originally filed in the United States District Court for the District of Connecticut.⁴ Tianna Laboy filed suit in response to the circumstances surrounding the birth of her child while she was incarcerated at York Correctional Institution, an all-women's prison located in Niantic, Connecticut.⁵ Despite her many pleas for help, Ms. Laboy was effectively forced to give birth to her child in the toilet of her own cell, without any assistance from medical personnel.⁶ Ms. Laboy filed a civil rights action for damages under 42 U.S.C. § 1983 against the prison, alleging that the denial and delay in medical care violated her rights under the Fourth and Fourteenth Amendments to the U.S. Constitution and the Americans with Disabilities Act (ADA).⁷ This case did not make it to trial, as the parties settled in December 2020.⁸ Although Ms. Laboy's case was settled, the facts surrounding her case raise questions about the ways in which inmates can use 42 U.S.C. § 1983 to recover damages when prisons fail to provide them with adequate healthcare.

Using *Laboy* and similar cases as examples, this Note will expose the clear need for improved healthcare for pregnant women in prisons. This area of the law deserves attention now more than ever before, given its prevalence in the United States correctional system. A 2004 Bureau of Justice Statistics survey found that 4% of women in state prisons reported that they were pregnant when they first arrived at prison.⁹ While 4% may not seem high, there were 111,616 women in prisons across the United States at the end of 2016.¹⁰ This number represented a 742% increase in the number of women in prisons across the United States at the end of 1980.¹¹ The increasing rate of women in custody makes the issue of inadequate healthcare services available to pregnant women in state prisons an issue of utmost importance.

Despite the increasing number of women in prisons, there has been "limited attention to addressing incarcerated women's gender-specific health care needs."¹² In 1991, 6% of women who arrived at state prisons as

⁴ Redline of Proposed Second Amended Complaint at 1, *Laboy ex rel. Baby N. v. Semple*, No. 3:19-cv-00307-JCH (D. Conn. filed Sept. 1, 2020), ECF No. 111 attach. 1.

⁵ *Id.* at 5.

⁶ *Id.* at 16.

⁷ *Id.* at 1.

⁸ Kelan Lyons & Jenna Carlesso, *State Settles Lawsuit with Woman Who Delivered Her Baby in a Prison Toilet*, CT MIRROR (Dec. 1, 2020), <https://ctmirror.org/2020/12/01/state-settles-lawsuit-with-woman-who-delivered-her-baby-in-a-prison-toilet/>.

⁹ Carolyn Sufrin et al., *Pregnancy Outcomes in US Prisons, 2016–2017*, 109 AM. J. PUB. HEALTH 799, 799 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6459671/pdf/AJPH.2019.305006.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, REPRODUCTIVE HEALTH CARE FOR INCARCERATED PREGNANT, POSTPARTUM, AND NONPREGNANT INDIVIDUALS e26 (2021),

inmates or pretrial detainees were pregnant.¹³ A study of forty-three states, conducted by the U.S. Government Accountability Office, found that 1,900 women were pregnant when they were admitted to prisons across the United States in 1998 and, that same year, 1,400 women gave birth in prisons.¹⁴ These statistics are particularly alarming, given that many of these pregnancies are considered to be high-risk due to the “constellation of difficulties that pregnant incarcerated women face.”¹⁵ For example, histories of drug addiction, sexually transmitted diseases, mental health issues, and substance abuse disorders may complicate these pregnancies.¹⁶ Research also suggests a lack of prenatal education for pregnant women in prison, which can lead to misinterpretation of physical symptoms, self-evaluations, self-diagnoses, self-remedies, and a general spread of misinformation.¹⁷ In such high-risk environments, misinformation could have disastrous effects on pregnant women and their unborn children. The increasing number of women in prisons with potentially high-risk pregnancies creates a clear need for proper healthcare services in prisons across the country.

Prenatal healthcare services available in U.S. prisons are very limited.¹⁸ A 1993 study found that only 48% of the surveyed prisons reported that they developed specific policies regarding the medical treatment and healthcare of pregnant inmates.¹⁹ While 48% of prisons claimed to provide prenatal care, only 15% provided pregnant inmates with “appropriate diets” and only 9% provided pregnant inmates with access to full-time care from registered nurses.²⁰ Although prenatal care is advancing as a whole, correctional facilities are simply not implementing these medical services and treatment options in their facilities for inmates who are pregnant.²¹ Prison administrators certainly have “a long way to go” when it comes to meeting the healthcare needs of pregnant inmates.²² As a growing population at risk of developing serious conditions and complications, pregnant incarcerated women need access to adequate and proper healthcare now more than ever.

This Note aims to advise incarcerated pregnant women on the ways they can seek justice after experiencing deprivations of their rights to medical treatment while in prison, while simultaneously highlighting the ways

<https://www.acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2021/07/reproductive-health-care-for-incarcerated-pregnant-postpartum-and-nonpregnant-individuals.pdf>.

¹³ Kelly Parker, *Pregnant Women Inmates: Evaluating Their Rights and Identifying Opportunities for Improvements in Their Treatment*, 19 J.L. & HEALTH 259, 264 (2005).

¹⁴ *Id.* at 264–65, 265 n.27.

¹⁵ *Id.* at 265.

¹⁶ *Id.*; AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 12.

¹⁷ Parker, *supra* note 13, at 266.

¹⁸ *Id.* at 268.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 269.

advocates can demand better healthcare for such a vulnerable population. Specifically, this Note will conduct an analysis of the advantages and disadvantages of using 42 U.S.C. § 1983 as an avenue for pregnant inmates to recover damages after prisons have deprived them of adequate prenatal healthcare services. After evaluating the pros and cons of this avenue for recovery, this Note will consider the ways in which states can ensure that pregnant inmates and pretrial detainees have access to improved prenatal healthcare services in state prisons.²³

I. IDENTIFYING THE PROBLEM

A. *Factual Background of Laboy v. Semple*

The facts alleged in *Laboy v. Semple* illuminate the sort of situation in which a pregnant inmate may bring a 42 U.S.C. § 1983 case against a state prison. On August 15, 2017, the Connecticut Department of Corrections incarcerated Ms. Tianna Laboy and assigned her to the mental health unit of York Correctional Institution (“York”), located in Niantic, Connecticut, as a pretrial detainee.²⁴ At the time of her assignment to York, Ms. Laboy was eight weeks pregnant.²⁵ The University of Connecticut Medical Center and Correctional Managed Health Care classified Ms. Laboy’s pregnancy as high-risk because of her young age of nineteen, existing medical conditions, and the fact that she was initially pregnant with twins but had already lost one of the fetuses.²⁶ As a result, Ms. Laboy was more likely to deliver her baby pre-term.²⁷ With this complication, there were risks of “stillbirth, birth asphyxia and birth injury or trauma” for Ms. Laboy and the fetus.²⁸

While incarcerated at York, Ms. Laboy saw Dr. Tricia Machinski, the only gynecologist servicing the entire prison population at “regular

²³ The issue presented in this Note has a broad scope and can implicate issues of age, gender, sexuality, identity, socio-economic status, and more. This Note is not intended to be a comprehensive analysis of all of the different lenses of analysis that may be considered in conjunction with this topic. Instead, it focuses on the larger scope and implications of the problem. Future scholarship should explore the ways in which subgroups in the population of incarcerated pregnant women are affected by inadequate prenatal and reproductive healthcare in prisons. For more specific and thorough analyses of some of these topics, see Morgan S. Mason, Note, *Breaking the Binary: How Shifts in Eighth Amendment Jurisprudence Can Help Ensure Safe Housing and Proper Medical Care for Inmates with Gender Dysphoria*, 71 VAND. L. REV. EN BANC 157 (2018); Estalyn Marquis, “Nothing Less than the Dignity of Man”: Women Prisoners, Reproductive Health, and Unequal Access to Justice Under the Eighth Amendment, 106 CALIF. L. REV. 203 (2018); Christina Scotti, *Generating Trauma: How the United States Violates the Human Rights of Incarcerated Mothers and Their Children*, 23 CUNY L. REV. 38 (2020).

²⁴ Redline of Proposed Second Amended Complaint, *supra* note 4, at 2, 5.

²⁵ *Id.* at 6.

²⁶ *Id.* at 6–7.

²⁷ *Id.* at 6.

²⁸ *Id.* at 7.

intervals.”²⁹ Dr. Machinski exclusively worked during the weekdays, meaning that she was unavailable during the evenings and weekends, and, even worse, she was not required to be “on call” for inmates in need of her medical services.³⁰

The last time that Ms. Laboy saw Dr. Machinski was on February 6, 2018, seven days before Ms. Laboy gave birth to her child.³¹ On February 7, when Ms. Laboy was thirty-four weeks pregnant, she started experiencing pain in her lower abdomen, which is a sign of pre-term labor.³² Ms. Laboy was taken to the prison’s “RN sick call,” where nurses detected a fetal heart rate, but did not perform tests to check for pre-term labor, uterine contractions, or other problems.³³ The nurses also informed Ms. Laboy that she would not be able to see Dr. Machinski for nearly another week.³⁴

Three days later, Ms. Laboy went to RN sick call for a second time, complaining of more pain in her abdomen and vaginal discharge, which is another symptom of pre-term labor, but the nurses turned her away because “there was no protocol for this complaint.”³⁵ Ms. Laboy’s symptoms worsened over the next day as she experienced thicker discharge containing blood and increased pressure in her lower abdomen and pelvic area.³⁶ Ms. Laboy went to the RN sick call for a third time, seeking assistance, but the nurses turned her away and told her to return if she experienced contractions less than two minutes apart.³⁷ The next day, Ms. Laboy began to experience extreme abdominal pain that made her feel like “her stomach was twisting inside out.”³⁸ Ms. Laboy went to the RN sick call for a fourth time, but she was turned away after a nurse determined that she was not in labor.³⁹ The nurse made this determination without performing an internal exam, consulting Dr. Machinski, or reviewing Ms. Laboy’s prior medical history.⁴⁰

That night, Ms. Laboy lay awake “crying in pain.”⁴¹ Correctional officers heard Ms. Laboy’s cries but told her they could not help her because the nurses “didn’t want to see her again.”⁴² Around 4:30 A.M. on February 13, 2018, Ms. Laboy had a large amount of bloody discharge while using

²⁹ *Id.* at 12.

³⁰ *Id.*

³¹ *Id.* at 12, 16.

³² *Id.* at 12–13.

³³ *Id.* at 13.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 14.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 15.

⁴² *Id.*

the bathroom and she continued to have extreme pain in her abdomen.⁴³ She used the call button in her cell to speak with medical staff members, who told her that Dr. Machinski planned to come to the prison around 7:30 A.M. and could see her at that time.⁴⁴ Around 5:30 A.M., Ms. Laboy tried to have breakfast in the cafeteria, but the “continuous, sanguineous discharge” from the labor she was experiencing was so heavy that she had to place a t-shirt between her legs to prevent leaking, since she did not have any feminine hygiene products.⁴⁵ After breakfast, Ms. Laboy was unable to walk back to her cell without clinging to the prison walls for support.⁴⁶

About an hour later, while sitting on the toilet in her locked cell with her cellmate, Ms. Laboy gave birth to her child.⁴⁷ Her child was born five weeks early and was not initially breathing in the moments following its birth.⁴⁸ Ms. Laboy’s cellmate suggested that she pat the baby on its back to dislodge the birth fluid.⁴⁹ Following this advice, Ms. Laboy was finally able to help her child breathe for the first time without assistance from any medical personnel.⁵⁰ Ms. Laboy had used the intercom in her cell two different times to tell the prison staff that she was about to give birth, but the medical personnel did not arrive to assist her until approximately five minutes after her child was born.⁵¹ Upon their arrival, the medical staff members did not have any blankets, towels, or birth kits with them, even though the correctional officers had alerted them about the details of the situation.⁵² It was not until ten minutes after the baby was born that the medical staff members returned to Ms. Laboy’s cell with proper medical equipment and cut the umbilical cord.⁵³ Ms. Laboy’s child spent two weeks in an intensive care unit after being born in the prison cell at York.⁵⁴

Once news broke about the conditions in which Ms. Laboy was forced to give birth while in prison, “clerics, human rights activists and community leaders” demanded that the state of Connecticut and the Attorney General “give Laboy justice and provide female prisoners with adequate health care.”⁵⁵ This case sparked concerns in Connecticut about the medical

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 15–16.

⁴⁷ *Id.* at 16.

⁴⁸ Dave Collins, *Connecticut Settles Suit by Inmate Who Gave Birth in Prison Cell*, HARTFORD COURANT (Dec. 1, 2020, 6:28 PM), <https://www.courant.com/news/connecticut/hc-news-connecticut-inmate-jail-cell-birth-lawsuit-20201201-pd6rkvhtancxchfchovkyz3s4-story.html>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Redline of Proposed Second Amended Complaint, *supra* note 4, at 16–17.

⁵² *Id.* at 17.

⁵³ *Id.*

⁵⁴ Collins, *supra* note 48.

⁵⁵ *Id.*

treatment that inmates receive in prisons across the state.⁵⁶ Although Ms. Laboy's case certainly highlights the shortcomings of the healthcare services available to pregnant inmates in Connecticut state prisons, this case is just one instance of a national problem. Similar occurrences are happening at state prisons all over the country, illustrating the need for comprehensive prison healthcare reform.

B. *Scope of the Problem*

Tianna Laboy's story is just one consequence of a national failure to properly allocate healthcare resources to state prisons. Consider the example of Talisa Pool. An Arkansas jury convicted Ms. Pool in state court and sentenced her to ten years in prison.⁵⁷ While she was out on bond pending her appeal, Ms. Pool learned she was pregnant.⁵⁸ She turned herself in to begin serving her sentence before she had any prenatal care appointments.⁵⁹ On May 8, 2001, Ms. Pool was at the Sebastian County Detention Center (SCDC) when she realized she was vaginally bleeding.⁶⁰ After informing SCDC staff that she was pregnant and "passing blood clots," she asked to see one of SCDC's nurses.⁶¹ The nurse who examined Ms. Pool seemed to doubt that she was actually pregnant and recommended that Ms. Pool just get some rest.⁶²

After her appointment with the nurse, Ms. Pool returned to her cell, where she "stayed in her bed all day, slept, and held her belly" because of the severe cramping pain in her abdomen.⁶³ Ms. Pool repeatedly asked for Tylenol and sanitary pads throughout the day, but SCDC staff told her that the facility had run out of those products.⁶⁴ Meanwhile, Ms. Pool was bleeding so badly that fellow inmates brought one of her sanitary pads containing blood clots to a deputy, who was supposed to show it to a nurse on duty.⁶⁵ However, no one came to check on Ms. Pool.⁶⁶ Over the next few days, Ms. Pool repeatedly bled through her clothes.⁶⁷ Although she asked to see a doctor numerous times, she never spoke to one.⁶⁸ Her pain was so

⁵⁶ *Id.*

⁵⁷ Pool v. Sebastian Cnty., 418 F.3d 934, 937 (8th Cir. 2005).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 937–38.

⁶¹ *Id.* at 938.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *See id.* at 939 ("Noticing that blood had overflowed the pad and through Pool's clothes, the nurse asked why she hadn't been taken to the doctor . . . Pool responded that she didn't know and that she had been bleeding like this for a couple of days.")

⁶⁸ *Id.*

intense that she could not eat or perform daily tasks.⁶⁹ Ms. Pool tried screaming as loudly as possible to get the attention of the prison deputies, but they told her that there were no doctors available for her to see and that there was nothing wrong with her.⁷⁰ Ms. Pool was put into an observation cell so she could rest, but she did not receive any medical aid until after she had a miscarriage on May 13, 2001.⁷¹

One of the deputies at the prison, Deputy Griffin, submitted a formal affidavit after Ms. Pool's miscarriage with her account of the incident.⁷² Deputy Griffin reported that she and many of her coworkers were aware of what was happening to Ms. Pool, since they all had talked about it.⁷³ She explained that she went to her supervisor regarding Ms. Pool's condition, but her supervisor told her, "F[* * *] her . . . , she's going to prison and doesn't need a baby anyway."⁷⁴ Her supervisor also told her not to help Ms. Pool because she "just wanted attention."⁷⁵ The "deliberate indifference" of the SCDC staff after Ms. Pool informed multiple deputies and nurses of her pain and continued bleeding formed the basis of Ms. Pool's § 1983 lawsuit.⁷⁶

Throughout the United States, pregnant inmates at state prisons experience similarly inadequate conditions. Diana Sanchez, a twenty-six-year-old inmate at Denver County Jail, called for help for hours before giving birth to her son, alone, in her cell.⁷⁷ Ms. Sanchez received no medical aid or assistance during the birth of her son.⁷⁸ Unfortunately, her story is not unique, since reports from women in prisons across the country reveal a "similar disregard for pregnant women's basic needs."⁷⁹ Pregnant inmates are not able to promptly see their doctors, do not have consistent prenatal care providers, do not receive sufficient information about their pregnancies, frequently experience delayed medical attention if complications arise, and often have very poor diets.⁸⁰ One prisoner at Valley State Prison for Women, a prison in California, noted that "[y]ou can tell by the way [the medical practitioners in the prison] treat you when you're pregnant that they don't care."⁸¹

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 940.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ MYRNA RAEDER, U.S. DEP'T OF JUST., NAT'L INST. OF CORR, PREGNANCY- AND CHILD-RELATED LEGAL AND POLICY ISSUES CONCERNING JUSTICE-INVOLVED WOMEN 14 (2013).

⁷⁷ Roxanne Daniel, *Prisons Neglect Pregnant Women in Their Healthcare Policies*, PRISON POL'Y INITIATIVE (Dec. 5, 2019), <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Robin Levi et al., *Creating the "Bad Mother": How the U.S. Approach to Pregnancy in Prisons Violates the Right To Be a Mother*, 18 UCLA WOMEN'S L.J. 1, 27–29 (2010).

⁸¹ *Id.* at 33.

Another woman, describing her experiences with the medical practitioners at the prison where she was incarcerated, said, “They don’t care. You gotta be dying or you gotta be bleeding.”⁸² The common theme among these cases and testimonials is that there is a “glaring—and dangerous—lack of concern” among medical and non-medical staff members at state prisons when it comes to “the health and well-being of pregnant people.”⁸³

While there are indeed some correctional facilities that respond to the prenatal needs of pregnant inmates in a proper and adequate manner, these facilities are certainly not the norm. But it is clear that the level and adequacy of the medical care that a pregnant inmate receives can be entirely dependent on where she is incarcerated.⁸⁴ This reality, however, further highlights the scope of the problem. A woman’s available healthcare options should not be left to chance.

II. LEGAL ARGUMENTS IN *LABOY V. SEMPLE*

In the wake of her traumatic and disturbing birth experience, Ms. Laboy sued Scott Semple, the Commissioner of the Connecticut Department of Correction; Dr. Tricia Machinski, the OB/GYN for York Correctional Institution; two correctional officers (Alberto Ortiz and Silvia Surreira); and two nurses (Michelle Fiala and Brianna Simmons).⁸⁵ Claiming that all of the listed defendants acted “recklessly and maliciously,” and “with wanton disregard,” Ms. Laboy sought damages under 42 U.S.C. § 1983 for the “denial and delay in medical care in violation of the Fourteenth and Fourth Amendments to the United States Constitution as well as violations of the Americans with Disabilities Act.”⁸⁶

On December 2, 2020, the United States District Court for the District of Connecticut terminated the case’s proceedings after both parties agreed to settle the lawsuit.⁸⁷ The terms of the settlement provided that the state of Connecticut would pay \$250,000 to the Laboy family and the state would waive any “right to recover debts Laboy incurred from her incarceration.”⁸⁸ If Tianna Laboy took her case to trial, the state of Connecticut threatened to recover financial compensation for the amount it spent on her medical treatment at York.⁸⁹ DeVaughn Ward, one of Ms. Laboy’s attorneys, explained that his client may have successfully been able to take the case to

⁸² *Id.*

⁸³ *Id.* at 29.

⁸⁴ Parker, *supra* note 13, at 269.

⁸⁵ Redline of Proposed Second Amended Complaint, *supra* note 4.

⁸⁶ *Id.*

⁸⁷ Order Terminating Motion to Dismiss, Laboy *ex rel.* Baby N. v. Semple, No. 3:19-cv-00307-JCH (D. Conn. filed Dec. 2, 2020), ECF 151; Lyons & Carlesso, *supra* note 8.

⁸⁸ Kelan Lyons, *CT Pays \$250,000 to Woman Who Gave Birth in a Prison Cell*, CT MIRROR (Dec. 12, 2020), <https://ctmirror.org/2020/12/12/ct-pays-250000-to-woman-who-gave-birth-in-a-prison-cell/>.

⁸⁹ *Id.*

trial and receive a jury verdict of \$600,000 or \$700,000, but she may not have actually been able to keep any of that money because of the state's threats to assume her prison lien out of the money in the jury award.⁹⁰ This explains why the state's waiver of its right to recover debts that Ms. Laboy incurred during her incarceration was an element of the settlement agreement.

Since this settlement is hardly "restorative justice," Tianna Laboy and her family do not consider it to be "something to celebrate or rejoice."⁹¹ Ms. Laboy and her family see this settlement as a "resolution of federal causes of action stemming from the birth of her daughter in a prison cell."⁹² This resolution, however, has not done anything to remedy the real problem, which is the deprivation of adequate healthcare services for pregnant inmates and pretrial detainees in state prisons in Connecticut. The Laboy family expressed frustration with the politics of their legal experience, noting that "the state of Connecticut just pays money, and conditions in York Correctional Institut[ion] have not improved for Ms. Laboy nor any of the other women incarcerated there."⁹³ The state never admitted liability as a term of the settlement.⁹⁴

Connecticut lawmakers have criticized the state's seventeen-year-old no-bid agreement with UConn Health and its correctional healthcare unit as being "long on cost, short on accountability and unlike any other agency-vendor relationship in the state."⁹⁵ In a joint statement, the American Civil Liberties Union of Connecticut, the Connecticut Bail Fund, Planned Parenthood of Southern New England, and Sex Workers and Allies Network expressed concern over the current status of the state's treatment of incarcerated pregnant people and advocated for a new, "comprehensive statewide law to protect pregnant incarcerated people's health, human rights, and safety, and to ensure Connecticut prisons and jails uphold their Constitutional obligation to provide incarcerated people with the medical care they need."⁹⁶

III. 42 U.S.C. § 1983 CASES

In the wake of the *Laboy v. Semple* settlement, there are a few key questions that must be answered in order to address the current healthcare model at state prisons. Is § 1983 really the best way for pregnant women who are deprived of proper healthcare while in state prisons to remedy the

⁹⁰ *Id.*; Lyons & Carlesso, *supra* note 8.

⁹¹ Lyons & Carlesso, *supra* note 8.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Lyons, *supra* note 88.

⁹⁵ Christine Dempsey, *DOC: Baby Born in Prison Cell, Health Workers Knew Inmate Was Pregnant*, HARTFORD COURANT (Feb. 15, 2018, 2:45 PM), <https://www.courant.com/breaking-news/hc-br-niantic-baby-born-in-jail-20180215-story.html>.

⁹⁶ *Id.*

injustice they have suffered? If these civil suits are ineffective, why are they so common? Is there a better way to fix this broken system? What is the best way to ensure that pregnant women in prisons have access to the healthcare that they need to keep themselves and their babies healthy?

Although Tianna Laboy's § 1983 case may have been worth up to \$700,000, Ms. Laboy was effectively forced to settle for a much lower amount in order to ensure that she was able to receive any compensation for the harm she endured at York. Further, as evidenced by the Laboy family's statements, Ms. Laboy's § 1983 claim failed to result in any meaningful change in the way healthcare services are delivered to pregnant inmates and pretrial detainees at York. Despite the chilling details of Ms. Laboy's experience, York and the State of Connecticut have done little to actually change the healthcare model of the prison, leaving many pregnant women without sufficient resources to properly care for their own health and the health of their unborn children. Ms. Laboy received incomprehensible medical treatment while she was pregnant at York. Yet the legal remedy available to her failed to provide her with just compensation for the harm she endured, and it failed to deter the same prison, and others, from continuing to provide inadequate healthcare to pregnant inmates.

A. *Legal Background of 42 U.S.C. § 1983 Claims*

Section 1983 is a common provision through which prisoners can recover for inadequate healthcare services and treatments while they are in state prisons. More specifically, these claims are rooted in the Federal Civil Rights Act, through which state prisoners can enforce their constitutional rights to medical treatment by bringing suit in federal court.⁹⁷ As previously mentioned in this Note, the "main provision for prisoners' claims" under the Federal Civil Rights Act is 42 U.S.C. § 1983.⁹⁸ Claimants can bring § 1983 lawsuits against individuals or entities that have violated their federal rights, set out in federal codes and the U.S. Constitution, while "acting 'under color of [state] law.'"⁹⁹ This restriction of the law's applicability to actions under color of state law means federal prisoners cannot utilize § 1983 as a legal basis for claims of inadequate medical care.¹⁰⁰

While § 1983 was originally passed and designed to combat racial tensions in the United States and provide people of color with an avenue of recovery, any person can seek recovery under the statute, regardless of race.¹⁰¹

⁹⁷ Damon Martin, Comment, *State Prisoners' Rights to Medical Treatment: Merely Elusive or Wholly Illusory?*, 8 BLACK L.J. 427, 433 (1983).

⁹⁸ *Id.*

⁹⁹ *Section 1983 Lawsuit – How to Bring a Civil Rights Claim*, SHOUSE CAL. L. GROUP, <https://www.shouselaw.com/ca/civil-rights/1983-lawsuits/> (July 26, 2021).

¹⁰⁰ Martin, *supra* note 97, at 434.

¹⁰¹ CTR. FOR CONST. RTS., *JAILHOUSE LAW.'S HANDBOOK 7* (6th ed. 2021).

Based on the Ninth Circuit's holding in *Martinez v. City of Los Angeles*,¹⁰² even people who are not U.S. citizens can bring suit under § 1983 based on the statute's reference to "any citizen of the United States or [any] other person within the jurisdiction thereof."¹⁰³ In short, individuals only need to have been "within the jurisdiction" of the United States when their rights were violated in order to be eligible to seek recovery through a § 1983 lawsuit.¹⁰⁴

A prisoner who wishes to bring a § 1983 claim for inadequate healthcare in a prison must allege facts that support the conclusion that a state officer violated an inmate's right secured by the Constitution or another federal law.¹⁰⁵ In *Cooper v. Pate*, a 1964 Supreme Court case, the Court affirmed that prisoners have a right to seek relief under § 1983 based on conditions in state prisons that violated their federal rights.¹⁰⁶ In effect, this means that prisoners can bring lawsuits in federal court to "challenge the conditions of their confinement in state prisons and jails."¹⁰⁷ These lawsuits commonly cover violations of the constitutional rights to "adequate medical treatment, protection against excessive force by correctional officers or violence by other inmates, due process in disciplinary hearings, and access to law libraries."¹⁰⁸ Prisoners cannot use § 1983 to challenge the reason they were sentenced to jail, to challenge the length of their sentence, or as a way to end their sentence in a shorter amount of time.¹⁰⁹ This avenue of legal recovery is, however, commonly used in cases where pregnant inmates have experienced inadequate healthcare.¹¹⁰

¹⁰² 141 F.3d 1373 (9th Cir. 1998).

¹⁰³ CTR. FOR CONST. RTS., *supra* note 101 (quoting 42 U.S.C. § 1983).

¹⁰⁴ *Id.*

¹⁰⁵ Martin, *supra* note 97, at 434.

¹⁰⁶ Carl T. Drechsler, Annotation, *Relief Under Federal Civil Rights Acts to State Prisoners Complaining of Denial of Medical Care*, 28 A.L.R. Fed. 279 Art. I § 2[a] n.16 (1976) (citing *Cooper v. Pate*, 378 U.S. 546 (1964)).

¹⁰⁷ ROGER A. HANSON & HENRY W.K. DALEY, BUREAU OF JUST. STAT., CHALLENGING THE CONDITIONS OF PRISONS AND JAILS: A REPORT ON SECTION 1983 LITIGATION I (1995), <https://bjs.ojp.gov/content/pub/pdf/ccpjrs831.pdf>; *see also* Martin, *supra* note 97, at 434 (describing the holding of *Wilwording v. Swenson*, 404 U.S. 249 (1971), as: "(1) federal pleadings by state prisoners may state a cause of action under Section 1983 for prison officials' derivation of constitutional rights; (2) such relief claims were not subject to the prerequisite exhaustion of state remedies; (3) Section 1983 remedies are supplementary to state remedies, and state remedies need not be sought and refused before the federal remedy was invoked; and (4) state prisoners are not held to any stricter standards of exhaustion of state remedies than any other civil rights plaintiff").

¹⁰⁸ HANSON & DALEY, *supra* note 107.

¹⁰⁹ CTR. FOR CONST. RTS., *supra* note 101, at 8.

¹¹⁰ *See generally* Wesley Smithart, Note, *Pregnant in Captivity: Analyzing the Treatment of Pregnant Women in American Prisons and Immigration Detention Centers*, 71 ALA. L. REV. 867, 868–70 (2020) (describing legal avenues available to pregnant women in prisons with inadequate healthcare).

B. *Using 42 U.S.C. § 1983 to Recover for Inadequate Healthcare Services Received in Prisons*

Section 1983 lawsuits are common among women who have experienced conditions similar to those in *Laboy v. Semple* because “[t]he legal remedies available to [incarcerated] women . . . who have experienced delayed treatment for their reproductive-health needs are complicated and often inaccessible due to the status of incarcerated women in American society.”¹¹¹ Women in these situations often choose to file civil lawsuits against the prisons where they experienced deprivation of their rights,¹¹² which is the avenue by which Ms. Laboy sought justice. This legal avenue was relatively “dormant” until a string of federal cases established a baseline standard to which prison officials should be held.¹¹³

Although it is now “well established” that “prison walls do not foreclose [a prisoner’s] access to the courts,” the harsh reality is that the United States legal system affords prison officials with a “wide measure of discretion in administering prisons.”¹¹⁴ In effect, this tension makes it so federal courts tend to defer to the judgment of the state and, naturally, are “disinclined” to go against a prison’s internal administration and its policies.¹¹⁵ This “so-called ‘hands-off’ doctrine” is becoming a more outdated notion as the number of these cases rises.¹¹⁶ Bringing suit under § 1983, though, is often considered to be a legal approach that is immune to the “hands-off” doctrine.¹¹⁷ This feature of the statute makes it preferable to prisoners who have received inadequate healthcare while incarcerated or detained at a state prison.¹¹⁸ The Supreme Court’s holding in *Wilwording v. Sweson*¹¹⁹ is largely the reason why § 1983 suits are “relatively immune” to the reach of the “hands-off doctrine” and its implications.¹²⁰ The *Wilwording* decision gave prisoners “more direct access to federal courts” by not requiring plaintiffs to exhaust state remedies before bringing claims under the federal remedy.¹²¹ In effect, this holding made § 1983 cases seem less elusive to prisoners.

¹¹¹ *Id.* at 872.

¹¹² *Id.*

¹¹³ See Parker, *supra* note 13, at 274 (describing the development of case law in this field).

¹¹⁴ Drechsler, *supra* note 106, art. I § 2[a], art. II(A) § 3.

¹¹⁵ *Id.* art. I § 2[a].

¹¹⁶ *Id.* art. I § 2[a]–[b].

¹¹⁷ Martin, *supra* note 97, at 434 (“One of the reasons that prisoners prefer to bring suit under Section 1983 is that the statute is relatively immune to the ‘hands-off’ doctrine, largely due to *Wilwording v. Swenson*.”).

¹¹⁸ *Id.*

¹¹⁹ 404 U.S. 249 (1971); see *supra* note 107 (summarizing the holding).

¹²⁰ Martin, *supra* note 97, at 434.

¹²¹ *Id.*

C. *Stating a Claim Under 42 U.S.C. § 1983*

To state a claim under § 1983, an inmate must prove there was “a violation of a right guaranteed to . . . her in the Constitution.”¹²² Of the tens of thousands of § 1983 cases brought by prisoners against officials of prisons, the suits most commonly cite violations of the First, Eighth, and Fourteenth Amendments to the U.S. Constitution.¹²³ Section 1983 lawsuits can also be used to enforce federal laws or statutes like the ADA.¹²⁴ Only a few federal statutes provide rights to prisoners, however,¹²⁵ so those options are more limited.

Section 1983 cases that allege violations of the Eighth Amendment, which prohibits cruel and unusual punishments,¹²⁶ are common and make up most of the case law involving pregnant women suing state prisons for inadequate healthcare treatment while they were incarcerated. In *Estelle v. Gamble*, the leading Supreme Court case on prisoners’ healthcare rights, the Court reviewed basic notions of the scope of the Eighth Amendment and established “the government’s obligation to provide medical care” to those serving time in prisons.¹²⁷ Included in the Court’s holding was the idea that deliberate indifference to the healthcare and medical needs of incarcerated individuals sufficiently constitutes the “unnecessary and wanton infliction of pain” prohibited by the Eighth Amendment.¹²⁸ Although the requirements for a claimant to successfully challenge a prison’s healthcare provisions have evolved since *Estelle*, this case was important because it pushed correctional facilities in the United States to reform their medical facilities and treatment protocols.¹²⁹

Section 1983 cases alleging violations of the Eighth Amendment in the context of incarcerated women’s healthcare needs have had some success. Several circuit courts “have been sympathetic” to pregnant inmates in cases where the women “made it clear [to prison staff and officials] that they are pregnant” and undergoing “pregnancy-related health issues.”¹³⁰ In *Goebert v. Lee County*,¹³¹ the Eleventh Circuit held that a pregnant pretrial detainee

¹²² Jason Yanofski, *Prisoners v. Prisons: A History of Correctional Mental Health Rights*, 7 PSYCHIATRY 41, 42 (2010).

¹²³ *Id.* at 42–43.

¹²⁴ CTR. FOR CONST. RTS., *supra* note 101.

¹²⁵ *Id.* at 7–8.

¹²⁶ U.S. CONST. amend. VIII.

¹²⁷ Parker, *supra* note 13, at 272 (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)).

¹²⁸ *Id.* (quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976)).

¹²⁹ *Id.* at 272–73.

¹³⁰ Samantha Laufer, Note, *Reproductive Healthcare for Incarcerated Women: From “Rights” to “Dignity”*, 56 AM. CRIM. L. REV. 1785, 1787–88, 1788 n.22 (2019) (first citing *Goebert v. Lee Cnty.*, 510 F.3d 1312, 1326 (11th Cir. 2007); and then citing *Pool v. Sebastian Cnty.*, 418 F.3d 934, 939 (8th Cir. 2005)).

¹³¹ 510 F.3d 1312 (11th Cir. 2007).

could establish a constitutional violation of her Eighth Amendment rights when she informed medical staff at the prison that she was “leaking amniotic fluid,” but the prison staff turned her away and denied her from receiving medical care.¹³² The Eighth Circuit made a similar ruling in *Pool v. Sebastian County*.¹³³ In *Pool*, the Eighth Circuit held that a pregnant inmate who was hemorrhaging had “a viable constitutional claim” after she sought medical assistance but was merely “prescribed . . . bed rest—despite screaming for help from prison staff.”¹³⁴

One major problem for potential plaintiffs considering bringing a § 1983 claim alleging violations of the Eighth Amendment, however, is that there is no clear and definite definition of what constitutes adequate and essential medical care. Although there is a lack of clarity in circuit court cases about what actually constitutes adequate and essential medical care, the Supreme Court’s ruling in *Estelle v. Gamble* provides some guidance. In *Estelle*, the Supreme Court held that there are five issues that are “determinative of prisoners’ right to medical treatment.”¹³⁵ These five issues include: (1) the severity of the prisoner’s need for medical treatment; (2) whether a healthcare professional would consider there to be a true need for medical treatment; (3) whether the prisoner requested medical treatment and, if so, whether they received it; (4) whether the care was adequate, if the prisoner did receive it; and (5) whether there was a “subjective motivation of the responsible prison official for denying or delaying the medical treatment,” if the prisoner did not receive care or received only inadequate treatment.¹³⁶

While Eighth Amendment litigation has been successful in providing relief to incarcerated pregnant women who were deprived of adequate medical and healthcare services while they were in prison, litigation successes have mostly been in cases where actions of prison officials and medical staff were “obvious and egregious” violations of the established law in the field.¹³⁷ When prison officials’ or medical staff members’ actions have been more controversial or less clear, courts have been hesitant to rule in favor of pregnant litigants who received inadequate healthcare while serving time.¹³⁸ One possible explanation for this reality is that the restrictions that prisons put on inmates’ constitutional rights are typically evaluated under the standard set forth in *Turner v. Saffley*.¹³⁹ In *Turner*, the Supreme Court

¹³² Laufer, *supra* note 130, at 1788.

¹³³ 418 F.3d 934 (8th Cir. 2005). For more information on *Pool*, see *supra* text accompanying notes 57–76.

¹³⁴ Laufer, *supra* note 130, at 1788.

¹³⁵ Martin, *supra* note 97, at 433.

¹³⁶ *Estelle v. Gamble*, 429 U.S. 97 (1976).

¹³⁷ Laufer, *supra* note 130, at 1787.

¹³⁸ See *id.* at 1787–90 (describing court cases that have addressed controversial topics in women’s healthcare treatment for inmates who are pregnant).

¹³⁹ 482 U.S. 78 (1987).

ruled that inmates in prisons may have their constitutional rights restricted, so long as those rights “are not inconsistent with [their] status as a prisoner or with the legitimate penological objectives of the corrections system.”¹⁴⁰ With this ruling, prisons are able to restrict an inmate’s constitutional rights so long as the restriction is “reasonably related” to the prison’s interests in running and operating a correctional facility.¹⁴¹ The *Turner* decision outlined four key elements for future courts to consider when evaluating the “reasonableness of a prison regulation,”¹⁴² including:

- (1) whether there is a “valid, rational connection” between the regulation and a “legitimate governmental interest”; (2) “whether there are alternative means” for a prisoner to exercise that right; (3) the impact of accommodating the exercise of the right on guards, inmates, and prison resources; and (4) the absence of any reasonable alternatives to the regulation.¹⁴³

In theory, the *Turner* framework should protect pregnant inmates’ right to obtain medical and healthcare services while pregnant in prisons. But the *Turner* framework has not provided this vulnerable subset of the prison population with a protected right to receive proper and sufficient medical services. While all prisons and jails are required to provide prenatal care under the Eighth Amendment to the Constitution, there are no federal standards in place to ensure that incarcerated pregnant women actually receive the prenatal care they need.¹⁴⁴ Many states also make their Department of Corrections policies unavailable to the public.¹⁴⁵ Even worse, many states do not have any policies governing the care of incarcerated pregnant women at all.¹⁴⁶ Advocacy groups, like the Rebecca Project for Justice and the ACLU, have worked to compile state-by-state guidelines governing the healthcare policies for pregnant women in prisons, but, even with these efforts, there are still significant gaps in the current research about what policies are in place regarding this kind of healthcare.¹⁴⁷ The available data, however, shows that “the lack of codified protocols for the care of pregnant women in state prisons is a widespread issue.”¹⁴⁸ Women’s “unique healthcare needs” are ultimately at “the mercy of inconsistent federal, state, and local law and policies”¹⁴⁹ that leave large gaps in healthcare coverage

¹⁴⁰ *Id.* at 95.

¹⁴¹ *Id.* at 91.

¹⁴² Laufer, *supra* note 130, at 1790.

¹⁴³ *Id.* (quoting *Turner*, 482 U.S. at 89–91).

¹⁴⁴ Daniel, *supra* note 77.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Laufer, *supra* note 130, at 1791.

for pregnant women in need of specific healthcare services while they are in state prisons.

Some plaintiffs may alternatively frame their cases around Fourteenth Amendment violations rather than Eighth Amendment violations. Tianna Laboy framed her case, in part, as a Fourteenth Amendment violation.¹⁵⁰ The § 1983 cases brought by pregnant inmates alleging Fourteenth Amendment violations that make it to the trial level typically hinge on the right to privacy and the right “to be free from state interference,” which includes the right to be pregnant and carry a fetus to term or to have an abortion.¹⁵¹ Since states are limited in how they can regulate a woman’s decision to terminate a pregnancy,¹⁵² the rights available to pregnant prisoners are complicated and do not “translate cleanly” to the prison context.¹⁵³ The limitations on state involvement make it so that state prisons are not obligated to assist pregnant inmates financially or otherwise, which effectively makes many of the women who are pregnant while in prison unable to receive certain procedures or treatment options that are more controversial.¹⁵⁴ In short, relying on § 1983 lawsuits that allege Fourteenth Amendment violations may not be the best approach for pregnant inmates who have experienced a deprivation of adequate healthcare services in prison. There are many dangers in relying on Fourteenth Amendment claims under a § 1983 lawsuit, especially because the current conservative makeup of the Supreme Court may narrow reproductive rights in the future,¹⁵⁵ if reproductive rights are, in fact, narrowed, § 1983 lawsuits brought under the Fourteenth Amendment may become much harder to win.¹⁵⁶

¹⁵⁰ There are other nuances and other legal claims involved in Ms. Laboy’s lawsuit, *see* Redline of Proposed Second Amended Complaint, *supra* note 4, that will not be explored in this Note. Instead, this Note is using Ms. Laboy’s story to highlight a larger point about inadequate healthcare in prisons for pregnant inmates.

¹⁵¹ Lauren Kuhlik, Note, *Pregnancy Behind Bars: The Constitutional Argument for Reproductive Healthcare Access in Prison*, 52 HARV. C.R.-C.L. L. REV. 501, 530 (2017).

¹⁵² *See id.* (“Outside of prison, state regulations limiting access to abortion are assessed under the “undue” burden standard announced in *Planned Parenthood of Southeastern Pennsylvania v. Casey* and explicated more fully in *Whole Woman’s Health v. Hellerstedt* Notably, the right limiting state interference with abortion access does not require any affirmative act by the state. The state is not required to pay for elective abortions and indeed, the state is not required to provide actual access at all.” (footnotes omitted)).

¹⁵³ *Id.* (“Because the right limits state interference, rather than providing an actual ‘right to abortion,’ it does not translate cleanly to the prison context since incarceration necessarily requires prisoners to surrender many of their privacy rights.”).

¹⁵⁴ *Id.* Most § 1983 lawsuits alleging Fourteenth Amendment violations do concern pregnant inmates’ right to an abortion. The healthcare implications of abortions and related procedures are not discussed in this Note. Rather, this Note provides an overview of the shortcomings in the availability of healthcare services for pregnant inmates and the shortcomings of the legal system in compensating these women for inadequate healthcare services available to them.

¹⁵⁵ *Id.* at 530–31.

¹⁵⁶ *Id.*

D. *Effectiveness of 42 U.S.C. § 1983 Lawsuits*

Section 1983 cases alleging constitutional violations are certainly available to women who suffered a deprivation of adequate and proper healthcare while pregnant in state prisons, but these cases are difficult to craft and even more difficult to win. To bring a successful § 1983 lawsuit alleging violations of the Eighth Amendment, a prisoner must show that she suffered harm and that the harm was “caused by an act or omission on the part of an individual agent acting on the state’s behalf.”¹⁵⁷ Meeting this burden is difficult, however, when each state prison follows different standards. With no clear federal mandate on how prisons should be developing their healthcare policies for pregnant inmates, state prisons have some flexibility in designing these healthcare policies. This reality makes it difficult to establish a clear path for a potential plaintiff to formulate a case that can be analogized to those in other states supporting its own case theory. Further, for the prisons and states that do not publicize their policies,¹⁵⁸ it is hard to know whether there has been an actual act or omission in violation of a policy or law. Prisoners filing suit over inadequate healthcare during their pregnancies have no clear roadmap for success.

Although women can succeed in cases against state prisons that deprived them of adequate healthcare while they were incarcerated and pregnant, the “reality of securing medical care while detained is incredibly fraught, and there are no national standards for the oversight of healthcare in prisons and jails.”¹⁵⁹ Consider the state of New York, where the State Commission of Correction supervises state prisons and establishes “minimum standards for health care” in them.¹⁶⁰ Though these standards exist, they do not have any language about when to take a woman who is in labor to the hospital and they lack sufficient specificity to properly address female health needs.¹⁶¹ With such insufficient standards, it is challenging for potential litigants to argue that their rights have been deprived.

Laboy v. Semple highlights the reality that even § 1983 lawsuits, which are one of the only ways pregnant inmates can receive compensation for the conditions they are often forced to endure without medical assistance, are not always effective in restoring justice. For example, prisons can threaten to take a portion of a prisoner’s jury award if a case were to go to trial and a

¹⁵⁷ Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881, 937 (2009).

¹⁵⁸ *State Standards for Pregnancy-Related Health Care in Prison*, ACLU, <https://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-0> (last visited Apr. 3, 2021).

¹⁵⁹ Joella Adia Jones, Note, *The Failure to Protect Pregnant Pretrial Detainees: The Possibility of Constitutional Relief in the Second Circuit Under a Fourteenth Amendment Analysis*, 10 COLUM. J. RACE & L. 139, 166–67 (2020).

¹⁶⁰ *Id.* at 167.

¹⁶¹ *Id.*

jury returned a verdict in favor of the plaintiff. The rationale is that, whenever a prisoner owes the state a financial sum for “the cost[] of [her] incarceration,” the state claims a lien on any lawsuit judgment award amount.¹⁶² These incarceration liens have priority over all other claims, and the proceeds go directly to the state.¹⁶³ In the case of *Laboy*, York incurred costs in Ms. Laboy’s incarceration for her food, medical care (however inadequate), and other expenses. To be specific, York “charges a lien of \$180 or so a day” per inmate for their incarceration.¹⁶⁴

These liens pose a massive threat to the effectiveness of § 1983 cases because if a litigant pursues one of these cases and wins at the trial level, then the state can essentially collect the entire award. This issue leaves potential litigants with a “Hobbesian choice” when it comes to taking their case to trial or not.¹⁶⁵ A pregnant woman who has suffered while incarcerated at a state prison could potentially risk losing her entire jury award, even if a jury decides in her favor and awards financial compensation for her experiences.¹⁶⁶ If this money award can be stripped away from her entirely, why would she go through the financial and emotional toll of a trial? What is the motivation to pursue one of these cases if the entire end goal can be taken away by the very institution that is the subject of the litigation? This relationship does not promote justice and does not provide these women with proper avenues of recovery.

IV. DEVELOPING BETTER HEALTHCARE SYSTEMS FOR PREGNANT WOMEN IN STATE PRISONS

Laboy v. Semple clearly demonstrates a lack of adequate prenatal healthcare in Connecticut state prisons, but similar trends are happening at state prisons across the country. Since bringing suit under § 1983 poses the problems described above for potential litigants, there must be widespread change and sweeping improvements in the way state prisons deliver healthcare to pregnant inmates in order to provide them with true access to justice. Implementing a better healthcare system for pregnant inmates, however, will require substantial legislative or state intervention since “[n]o one strategy can work as a complete solution” to remedying this problem.¹⁶⁷

¹⁶² CHRISTOPHER REINHART, INMATES PAYING FOR COSTS OF THEIR INCARCERATION, OLR RESEARCH REPORT 2006-R-0231 (2006).

¹⁶³ *Id.*

¹⁶⁴ Lyons & Carlesso, *supra* note 8.

¹⁶⁵ *Id.*

¹⁶⁶ *See id.* (describing the unsettled nature of the law and the unfortunate reality that states have a lien on jury awards).

¹⁶⁷ Parker, *supra* note 13, at 278.

Constructive and meaningful change can likely be achieved through a combination of “litigation, legislation, and creative programs.”¹⁶⁸

As evidenced in this Note, attempts to remedy this problem through litigation do not guarantee improvements in the healthcare services available to incarcerated pregnant women. Legislative change, therefore, offers perhaps the greatest potential for creating lasting, substantial, and real change in the quality of healthcare services available to incarcerated pregnant women at state prisons. Lawmakers possess the greatest likelihood of success in actually changing state policies and guidelines to reform state prison regulations,¹⁶⁹ but relying on legislators to remedy this problem is “somewhat limited by the exigencies of election politics”¹⁷⁰ and requires the right group of elected officials to initiate meaningful change. The probability that future makeups of state legislatures can enact comprehensive healthcare reform in prisons seems promising, since voters are supporting more progressive policies and plans.¹⁷¹

As one scholar recommends, perhaps the most effective way to improve healthcare services and access for pregnant women at state prisons is to create national standards governing their care and treatment.¹⁷² While a 1988 consent decree from the Justice Department requiring state correction departments to have medical care programs for pregnant women remains in effect today,¹⁷³ more substantial and more specific requirements about what those medical programs should entail is necessary to protect women’s rights to healthcare while in prison. Although this may seem like a massive undertaking, there are actually many promulgated standards and recommendations available for legislators to consider when drafting new rules and regulations. For example, the American College of Obstetricians and Gynecologists has set forth a list of recommendations for prison administrators and legislators to consider in creating more expansive and adequate healthcare protocols and policies for the treatment of incarcerated pregnant women.¹⁷⁴ One of its major recommendations is to require prison administrators, staff, and medical personnel to “work inside prisons” and then provide “consultation and training to other clinicians in these settings and correctional officers to ensure that reproductive health and pregnancy

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 294.

¹⁷⁰ *Id.* at 287.

¹⁷¹ See Astead W. Herndon, *Progressive Ideas Remain Popular. Progressive Presidential Candidates Are Losing. Why?*, N.Y. TIMES, <https://www.nytimes.com/2020/03/18/us/politics/bernie-sanders-progressives-elizabeth-warren.html> (Apr. 15, 2020) (describing that voters across the country are supporting more progressive policies and ideas, despite progressive candidates not having much success in national elections).

¹⁷² Parker, *supra* note 13, at 290.

¹⁷³ Collins, *supra* note 48.

¹⁷⁴ See AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 12, at e24–25 (describing the committee’s opinions and recommendations regarding the proper healthcare of pregnant incarcerated women).

needs are being appropriately addressed.”¹⁷⁵ These educational efforts can give individuals who interact with pregnant inmates more information about signs, symptoms, and conditions that may be affecting this subset of the prison population. Providing medical personnel and other prison staffers with an increased awareness and sensitivity to some of the experiences of pregnant inmates could allow them to spot warning signs of certain conditions earlier. Trainings of this nature would have been helpful for the staff of York Correctional Institution when various personnel consistently turned Ms. Laboy away from medical services while she was experiencing pre-term labor.¹⁷⁶

If no comprehensive mandate is possible, legislatures could offer incentives for prisons to adopt policies on their own that promote and protect the healthcare of pregnant inmates. Scholars have suggested that state legislative bodies could adopt policies that encourage state prisons to implement better healthcare services and treatment by promising increased state funding, tax breaks, or other benefits.¹⁷⁷ This option may be particularly successful since, as one scholar notes:

The prison-warden defendants would certainly prefer to run institutions that are not overcrowded, that have adequate ventilation, adequate nutrition, and enough security[,] . . . but they often lack adequate funding to do so, and so are delighted if a court requires the legislature to increase their budgets. . . . [They] generally would be pleased to address prisoners’ requests.¹⁷⁸

An incentives system could therefore be an effective way to provide prison officials with the resources and tools they need to enact better policies to ensure quality healthcare for some of the prison’s most vulnerable populations, namely pregnant inmates. This sort of legislative action could also save the state money, since the goal is for these prisons to have better healthcare and, therefore, fewer lawsuits like *Laboy v. Semple*.¹⁷⁹

One scholar opines that, although comprehensive national standards outline specific steps prisons and states should adopt to improve healthcare available to pregnant inmates, a larger solution would be to reform the criminal justice system in a way that would “reduce the ‘number of women’”

¹⁷⁵ *Id.* at e24.

¹⁷⁶ For further discussion, see *supra* Part I.A.

¹⁷⁷ See Parker, *supra* note 13, at 287 (“Furthermore, legislation can create an atmosphere for encouraging correctional facilities—by providing funding, indicating concern through hearings, and so forth—to take proactive steps to improve conditions for pregnant women.”).

¹⁷⁸ *Id.* at 287–88 (quoting Susan N. Herman, *Slashing and Burning Prisoners’ Rights: Congress and the Supreme Court in Dialogue*, 77 OR. L. REV. 1229, 1287 (1998)).

¹⁷⁹ See *id.* at 287 (“Action by state legislatures would probably save money drawn from state coffers to wage costly litigation battles by directly addressing problems that some corrections officials seem to favor managing in court.”).

in prison who are subject to the prison's healthcare services.¹⁸⁰ Legal experts and commentators agree that there are a variety of ways to accomplish this goal of reforming the criminal justice system. Existing literature suggests the most effective methods of reform include "sentencing reform to reduce mandatory-minimum sentences" and the "implementation of alternatives to prison time through specialized courts such as drug, mental health, and veteran courts."¹⁸¹ By implementing these measures, prisons can lower population numbers and preemptively decrease the scope of some of these problems.

The above recommendations are just starting points when it comes to available options for remedying the problem of the inadequacy of healthcare services available to pregnant inmates. No matter what measures are implemented, change is long overdue. While policy implications are indeed helpful, the key to enacting meaningful change will be combating the "enforcement gaps" and making it easier for states to have a clear sense of the law.¹⁸² Remedial measures involving "explicit standards of care,"¹⁸³ legislative change, or national regulations will likely be the strongest starting point to creating lasting and substantial change at state prisons concerning healthcare. Overall, one thing is clear: prison healthcare policies regarding pregnant inmates need to be reformed in order to protect this vulnerable population's right to receive adequate healthcare services.

CONCLUSION

Incarcerated pregnant women have been deprived of adequate healthcare for far too long in the United States. Pregnant inmates are a group of women that require "highly specific care."¹⁸⁴ A woman's incarcerated status should not jeopardize her right to receive pregnancy-specific healthcare. Since the "wellbeing of a woman's baby is also contingent on the quality of care the mother receives,"¹⁸⁵ this issue affects not only an existing vulnerable population, but also future generations. Women deserve to feel safe while they are pregnant, wherever they are.¹⁸⁶ Incarceration should not mean that women must forfeit the ability to receive proper and adequate healthcare.

One of the most serious implications of this problem is that the prison systems in the United States disproportionately incarcerate black women.¹⁸⁷ As one scholar notes, "[t]he challenges that pregnant [inmates or] pretrial

¹⁸⁰ Smithart, *supra* note 110, at 890.

¹⁸¹ *Id.*

¹⁸² Daniel, *supra* note 77.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ Parker, *supra* note 13, at 294.

¹⁸⁶ Jones, *supra* note 159, at 141.

¹⁸⁷ *Id.* at 141–43.

detainees face reflect broader systems of racial and social hierarchy that operate to incarcerate women—in particular women of color.”¹⁸⁸ This reality is particularly frightening, considering the fact that Black women are more than three times more likely to die from pregnancy complications than non-Hispanic white women.¹⁸⁹ Many of these pregnancy-related complications, including hypertension and pre-eclampsia,¹⁹⁰ are preventable with proper treatment and medical supervision.¹⁹¹ Therefore, in state prisons with inadequate healthcare services for pregnant inmates, “health inequities are irrefutably compounded” for pregnant Black women who are incarcerated.¹⁹² In a society where Black women are imprisoned at twice the rate of white women,¹⁹³ the inadequate healthcare available to pregnant women in prisons is likely affecting Black women at a disproportionate rate.

In *Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions*, Lauren Kuhlik and Carolyn Sufrin write, “State control over reproduction in institutions of incarceration demonstrates a society that has taken the opacity of prison walls to mean that we can systematically disregard the health, value, and flourishing of certain lives.”¹⁹⁴ The way states are currently managing healthcare for pregnant inmates in state prisons is by preventing them from obtaining the medical services they need in order to take proper care of their bodies and their fetuses. But it gets worse: The structure of our legal system and the existing case precedent on this matter make it so that women who have been deprived of adequate healthcare do not have an easy route to legal recovery. Not only are § 1983 lawsuits difficult to craft, but the law on this topic is controversial and inconsistent. There is no prevailing train of legal thought, making it difficult for potential litigants to evaluate their chances of success in court. For the women who are able to win a case in court, prisons can assert a right to recover the plaintiff’s jury award. In short, this system not only deprives pregnant women of adequate healthcare, but it also deprives them of an adequate legal recovery for the injustice they suffer in state prisons. The time for change is now.

¹⁸⁸ *Id.* at 164.

¹⁸⁹ *Id.* at 141–42.

¹⁹⁰ *Id.* at 181.

¹⁹¹ *Id.* at 142.

¹⁹² *Id.*

¹⁹³ Lauren Kuhlik & Carolyn Sufrin, *Pregnancy, Systematic Disregard and Degradation, and Carceral Institutions*, 14 HARV. L. & POL’Y REV. 417, 422 (2020).

¹⁹⁴ *Id.* at 454.

