PROTECTION OF THE RIGHTS OF PREGNANT WOMEN IN PRISONS AND DETENTION FACILITIES*

Gerald Austin McHugh**

I. INTRODUCTION

As a rule, the particular problems of women prisoners have not been a focus for prison litigation or reform.¹ Their problems have been overlooked by the prisoners' rights movement,² because women prisoners are relatively few in number, are generally less militant than their male counterparts, and are said not to suffer the same brutality as male prisoners. Given this general disinterest, it is not surprising that gender-linked problems of women prisoners have been overlooked.

One such problem is the treatment of pregnant women in prison. Historically, pregnancy could be pleaded by a defendant in a capital case to avoid the death penalty.³ In some countries pregnancy could keep a woman from being imprisoned, and modern practice in some countries is to place pregnant prisoners in special mothers' prisons.⁴ Special concern about pregnant women in prison may perhaps be criticized as

---

* The research and writing of this study were funded in part by the Wiley Rutledge Memorial Fund for the Study of Individual Rights of the University of Pennsylvania Law School.


¹ Haft, Women as Prisoners, in PRISONERS' RIGHTS SOURCEBOOK 341 (M. Hermann & M. Haft eds. 1973).
² Id.
³ R.B. Pugh, IMPRISONMENT IN MEDIEVAL ENGLAND 24 (1968).
dated, Victorian paternalism, reflecting stereotypical ideas about the fragility or dependency of women. On another level, one might inquire why pregnancy, as opposed to some other conditions, or medical care generally, should be the focus of special concern.

It cannot be denied that the treatment of pregnant women raises unique and serious issues. Medically, pregnant women require more protracted, specialized care than most prisoners need. Moreover, pregnancy is a condition, not a disease; it requires not simply isolated treatment in a medical setting, but also day-to-day care in the context of institutional routine, which must be tailored to accommodate the pregnant woman. The emotional and psychological stresses that sometimes accompany pregnancy are exacerbated by the trauma of imprisonment.

Legally, a woman's rights to care for pregnancy is different and arguably stronger than her right to medical care generally, because it involves a fundamental right—procreation. Similarly, since fundamental rights are implicated, and the state's intrusion on liberty may go further than necessary to achieve its goals of punishment and social protection, its treatment of pregnant offenders is cause for special concern.

This article isolates the problems faced by pregnant women in prison, discusses the legal issues raised by their treat-

---

6 See text accompanying notes 39-88 infra.
6 A survey was conducted as a part of this research. Questionnaires seeking information on the care of pregnant women were mailed to all of the institutions for women listed in the American Correctional Association's Directory of Correctional Facilities for 1976. Twenty-six institutions, representing federal and state prisons, local detention facilities, and juvenile homes, responded. Correctional administrators noted the existence of emotional stress due to pregnancy during imprisonment as a serious problem of pregnant offenders. (Hereinafter cited as Survey).
7 See text accompanying notes 128-58 infra.
8 The number of pregnant women in prison is undetermined. The 26 institutions that responded to the survey, reported a sum total of 260 pregnancies in them in the course of a year. Since there are, according to the Women's Prison Association, some 135 sizable institutions for women in the country, the actual number is much higher than this. See Hendrix, A Study in Neglect: A Report on Women Prisoners (1972)(available on request from the Woman's Prison Association, 110 Second Ave., N.Y., N.Y. 10003). An earlier study, E. Zemans, Prison Babies (1950) cited in H.
ment, and suggests possible means for protecting the rights of pregnant prisoners.

II. THE PROBLEMS OF PREGNANT WOMEN IN PRISON

A. Forced Abortions

The most shocking abuse of pregnant women, and the most serious invasion of their rights, is coercion from prison officials to abort. For instance, in *Morales v. Turman,* an important prisoners' rights suit, an inmate testified that when she arrived at Texas' Gainesville School for delinquent girls, she was three months pregnant. On January 24, 1973, she was given ten pills that she was told would start her menstrual cycle. She was warned against taking the pills by other inmates, because other women had lost babies after taking them. Faced with the threat of solitary confinement if she refused, she took the pills and exercised as directed. On February 1, she began bleeding, but was refused medical attention. On February 15, she aborted a three month old fetus. The nature of the pills was never discovered. In a separate incident at the same institution, a woman four months pregnant was also ordered to take ten pills and exercise, or face solitary confinement. Four days later she aborted; for thirty days thereafter she was denied medical care.

At a large Northeastern prison in 1975, prison authorities confronted a pregnant woman with the fact of her pregnancy, and with constant pressure and veiled threats systematically wore down her objections to abortion with arguments that it would be in her and her future child's best interest that she abort. Although it was against her religious convictions, she

---


11 *Id.* However, drugs known as abortifacients can be used to induce abortion. See G. Bourne & D. Danforth, *Pregnancy* 561 (Rev. ed. 1975).

had an abortion, after which she suffered a nervous breakdown.\textsuperscript{13}

This writer, in June, 1977, saw first hand how such pressure is exercised in a case at a large urban detention facility.\textsuperscript{14} The woman in question was an illegal alien charged with murdering one of her other children, and prison social workers and medical staff pressured her to submit to an abortion. She had few contacts in this country, and little understanding of the legal system. She did not know that it was her right to refuse an abortion. She successfully resisted the pressure to abort only because her strong religious convictions overcame her obvious fear of prison officials.\textsuperscript{15}

Thus, it is no accident that the National Prison Project of the American Civil Liberties Union has identified pressure to have an abortion as one of the particular problems with which women prisoners must cope.\textsuperscript{16}

It is impossible to determine the frequency of such incidents. Likewise, because such attempts to influence prisoners are plainly illicit and not openly discussed, it cannot be determined with certainty what motivates the officials involved in such incidents. Possibly among the contributing factors are notions that women in prison would make unworthy mothers;\textsuperscript{17} the belief that it is in the best interest of the child that he/she be aborted rather than be born in prison and subjected to an uncertain future plagued with custody disputes;\textsuperscript{18} impatience with the administrative inconvenience caused by

\textsuperscript{13} Interview with Edward Denion, S.J., prison chaplain, (March 5, 1977).

\textsuperscript{14} The writer encountered this case while working as a consultant to the Criminal Justice Ministry of the Archdiocese of Philadelphia.

\textsuperscript{15} Id.

\textsuperscript{16} PROCEEDING OF THE 106TH ANNUAL CONGRESS OF CORRECTIONS 3 (American Correctional Association 1976).

\textsuperscript{17} Kennedy, \textit{Women in Prison}, [WOMEN'S RIGHTS LAW REPORTER], 55, 57 (Jul/Aug 1972).

\textsuperscript{18} Imprisonment is one factor relied upon by courts in some states in relieving a mother of custody of her child, and mothers in prison usually experience great difficulty in dealing with family welfare officials. \textit{See generally} Note, \textit{The Prisoner-Mother and Her Child}, 1 \textit{CAP. U.L. REV.} 127 (1972).
pregnant women; or the idea that children born to prisoners will simply be burdens to society who will follow the lead of their mothers in committing crime. In any event, as the next section clearly demonstrates, a prisoner’s pregnancy invokes a negative response from many prison officials.

B. Hostility Toward Pregnant Prisoners from Prison Staff

There is substantial evidence that pregnant women in prison are sometimes special targets for harassment from members of the prison staff. The Colorado Advisory Committee to the United States Commission on Civil Rights, for instance, reported the case of a minority offender at Colorado’s Women’s Correctional Facility, who, despite a history of miscarriages, and a request for lighter work, was forced to assume rigorous janitorial assignments during pregnancy, with the result that her baby was stillborn. In another case at the same institution, a woman required major surgery as a result of an infection that developed after she gave birth. After her operation, when she refused to work until her surgical wounds healed, she was placed in solitary confinement for a week.

These findings of the Colorado Advisory Committee are buttressed by other unofficial accounts of the treatment of pregnant women. The Women’s Rights Law Reporter records the case of a pregnant woman at the Detroit House of Correction, who in her fourth month of pregnancy suffered a kidney problem for which she received outside hospitalization. Upon returning to the prison, she was denied drugs prescribed for her by hospital doctors. In her eighth month she requested a job transfer from arduous janitorial work, including the scrubbing of walls, floors, and trash cans, to some easier job; her request was refused. One month after delivery, she

---

19 See text accompanying notes 32 & 33 infra.
20 See text accompanying notes 134-43 infra.
22 Id. at 82.
23 See Kennedy, supra note 17, at 56.
was assigned to the prison cannery, which involved placing heavy dishpans on a fast conveyor, and lifting one hundred pound bags of sugar into buckets above her head. The prisoner attributed the officials’ unwillingness to accommodate her as their method of expressing disapproval of her pregnancy.\textsuperscript{24}

A frequently cited study of women in prison reports similarly harsh treatment of pregnant women,\textsuperscript{25} including the case of a woman who aborted in her cell, and then received no medical care until the next day. Prison officials would not even agree to release her to the custody of a hospital, until a doctor predicted that she would die without hospitalization.\textsuperscript{26} Likewise, a well-known study of juvenile facilities reports practices such as that of Chicago’s Audy Home, which places girls in solitary confinement as a punishment for pregnancy,\textsuperscript{27} and incidents such as one in Alabama where a matron beat a pregnant girl so severely that she aborted.\textsuperscript{28}

Outside observers have noted the existence of a hostile attitude toward pregnant prisoners. As one parole officer described the medical staff at a Connecticut prison: “there is little sympathy for a pregnant woman among the nurses both before and after she gives birth; they are constantly being bothered by the staff on their limited work assignments because they have less work than other women . . . their medical care (is) hostile, punitive, . . . and consistently degrading.”\textsuperscript{29} Ironically, in a survey of prison administrators conducted for this article,\textsuperscript{30} an official at a large midwestern prison identified pregnant prisoners’ reluctance to work as their chief problem; three other prison administrators mentioned that the reduced workload of pregnant prisoners was of

\begin{itemize}
  \item \textsuperscript{24} Id.
  \item \textsuperscript{25} K. Burkhart, Women in Prison 197 (1973).
  \item \textsuperscript{26} Id.
  \item \textsuperscript{27} See K. Wooden, supra note 10, at 123.
  \item \textsuperscript{28} Id.
  \item \textsuperscript{29} See Alkire, supra note 4, at 23.
  \item \textsuperscript{30} See Survey, supra note 6.
\end{itemize}
concern to them.\(^3\)

From the prisoners' perspective, "... (they) feel that prison authorities do not believe that women in prison are worthy enough to have children and so they work them in contempt for the welfare of mother and baby."\(^3\) The pressure frequently brought to bear on prisoners to give up their children for adoption only confirms inmates' perception that prison officials view them as unworthy of motherhood.\(^3\)

Aside from hostility engendered by staff members' personal disapproval or dislike of pregnant prisoners, there is a certain amount of administrative impatience with their need for special care, occasioned by the additional burden a pregnant woman places on the staff and institution. Five prison administrators' response to the survey indicated problems with staff and budget allocation in trying to meet the needs of pregnant women. As a result, in those instances where a guard must accompany a woman when she is released to a hospital for treatment, the prison is likely to be loathe to authorize such a transfer.\(^4\)

This is not to suggest that there exist official policies condoning the harassment and abuse of pregnant prisoners. Most prisons in fact have no policy toward pregnant women, preferring instead to deal with cases on an individual basis.\(^5\) Moreover, prison administrators, as opposed to "on-the-line" staff such as guards and medical personnel, are more likely to have enlightened attitudes on prisoner care generally.\(^6\) A large part of the problem, however, is that it is the line personnel with whom a prisoner must cope with daily, who exercise real authority over prisoners and make the routine decisions that most affect how the prisoner, as an individual, is treated. For example, decisions such as whether a woman is granted a

\(^{31}\) *Id.*  
\(^{32}\) See Kennedy, *supra* note 17, at 57.  
\(^{34}\) See, e.g., K. Burkhardt, * supra* note 25, at 197.  
work transfer to less rigorous tasks, or whether she is certified as being in need of hospitalization usually rest within the discretion of line personnel, whose accountability to higher officials for such decisions is more real on organization flow charts than it is in practice. Thus, the heart of the problem is that the pregnant prisoner finds herself in a condition that cries out for solicitous care, while held in an institution which by nature is rife with possibilities for abuse via the capricious exercise of authority.

The discretion vested in line staff, coupled with the general lack of established policy, also places the prisoner at a disadvantage when demanding adequate care. Without guidelines, the prisoner has no "official" standard to invoke in support of a right to better care, other than her personal estimate of what care she needs. The decisions of line staff are therefore not likely to be challenged, as the following example illustrates.

In the summer of 1977, a registered nurse and former hospital administrator working in the Philadelphia House of Correction under church auspices appealed to the officer in charge of women prisoners to provide two pregnant women with a more nutritious diet and vitamins. Despite assurances that the recommendations would be followed, the women were provided neither an improved diet nor vitamin supplements. A subsequent appeal to the Superintendent was tersely answered some three months later with a letter asserting that consultation with medical staff revealed no irregularity in the treatment of pregnant women. In the same institution, inmates have reported that a woman in labor was not given a timely transfer from the prison to the outside hospital used for deliveries, and consequently gave birth on the cellblock floor. The inability to effect even moderate reform in prison practice in this instance graphically demonstrates a prison's

---

37 See note 14 supra.
38 Interview, former inmate, Philadelphia House of Correction, (April 17, 1978). The incident was confirmed for this writer by an employee of the Pennsylvania Prison Society.
institutional resistance to change, inasmuch as this was not simply the failure of a lone prisoner seeking better treatment, but that of a qualified outside professional respected by prison authorities.

C. Deficiencies in Medical Care

Medical care generally in prisons leaves much to be desired, and care of pregnant women is no exception to the rule. In the first significant decision on the right of prisoners to medical care, Newman v. Alabama, the court singled out the maltreatment of pregnant women:

an average of 7 or 8 babies are delivered at Tutwiler (prison) each year under conditions which endanger the lives of both mother and infant. The delivery table has no restraints, paint is peeling from the ceiling above it, and large segments of the linoleum floor around the table are missing. There are no facilities to resuscitate the newborn or otherwise provide adequate care should any complications arise during delivery.

Subsequent court decisions have also noted inadequate treatment of ailments related to pregnancy and reproduction. In Morales v. Turman, the court noted the case of a woman who miscarried but was denied medical treatment for two days, as part of its overall finding that women prisoners were denied access to doctors. In Todaro v. Ward, New York's Bedford Hills prison for women was held to constitute cruel and unusual punishment. The court noted the case of a woman who for one month was denied treatment for an infection of the Fallopian tubes, a condition that frequently causes

---

41 Id. at 282-83.
43 Id. at 102.
45 Id. at 1137-38.
permanent sterility. In another case a woman with a tumor of the uterus was denied access to medical treatment for eleven months despite her repeated requests to see a doctor. Tumors such as this can affect other vital organs, and may also result in sterility.

In some cases, on the other hand, the cure is worse than the disease. Inmates at Ohio's Marysville prison complained to the Ohio Advisory Committee of the U.S. Commission on Civil Rights that they were told they needed hysterectomies when they complained of routine gynecological disorders. A hysterectomy is the removal of part or all of the uterus; it constitutes radical surgery that leaves a woman sterile, and thus should be employed only if absolutely necessary. Investigation revealed that seventeen hysterectomies were in fact performed on inmates over a three-year period, at an institution housing only three hundred women. This is an unusually high percentage for an operation of this kind. When requested by the Advisory Committee to do so, prison officials could not certify that the operations were medically necessary, but only that they had been done by competent surgeons whom they presumed would not operate unnecessarily. Although it cannot be proven, it is unlikely that seventeen women at such a small institution actually required hysterectomies. Thus, as these incidents make clear, maltreatment of women prisoners may have long-lasting effects on their very right to procreate.

In addition to "functional" medical problems, pregnant

---

48 See The Book of Health, supra note 46, at 727.
50 See The Book of Health, supra note 46, at 1096.
51 Ohio Advisory Committee Report, supra note 49, at 117.
52 In 1969-70, for instance, the incidence of hysterectomies nationwide was 52 per 10,000 population. Costs, Risks and Benefits of Surgery 100 (J. Bunker, B. Barnes, A. Gittelsohn, F. Mosteller, & J. Wennberg eds. 1977).
women in prison face certain other medical problems because of their condition. Prison diets are typically high in starches and low in protein and vitamins. A pregnant women, however, requires a diet high in protein, vitamins, and other nutrients. Links have been established between nutritional deficiencies during childbearing and a high prenatal mortality rate due to fetal growth retardation, hypertensive disorder, and premature delivery. Nutritional deprivation has been shown to result in cellular damage in the brain of the fetus. Although a child born to a malnourished mother may physically recover, damage to the nervous system may be irreversible, permanently impairing the individual’s intellectual functioning. Thus, medical experts have concluded that nutrition during pregnancy is essential for the long-term development of the child.

Despite the importance of nutrition, an adequate diet is, in many instances, denied to pregnant inmates. Indeed, fourteen out of twenty-six institutions responding to survey questions made no provisions for a special diet or vitamin supplement for pregnant inmates.

Another specialized problem is presented by pregnant women who are drug addicts and subjected to withdrawal programs, or who withdraw without treatment from heroin or a heroin substitute. Large numbers of women in prison are ad-

54 See, e.g., K. Wooden, supra note 10, at 120; R. Burkhart, supra note 25, at 330.
60 See text accompanying notes 35 to 38 supra; K. Burkhart, supra note 25, at 330.
61 Survey, supra note 6.
dicted to drugs when admitted. The use of heroin during pregnancy carries a high risk of repeated infections, foreign body reactions, nutritional deficiencies, and obstetrical problems, including premature labor. Fetuses of addicted mothers in many cases suffer from toxemia, and newborn infants of addicts are often passively drug dependent and in need of withdrawal treatment themselves. Due to the many medical risks and infant drug dependency, morbidity, and mortality rates of infants in this area exceed those in any other high risk maternal or infant population. Yet, ten out of twenty-six institutions responding to the survey indicated neither awareness of the problem nor plans for meeting the needs of the addicted mother and child. In those institutions that recognized the problem, a number responded to it only by notifying the hospital where the baby was to be delivered, without providing special care until the time of delivery. Moreover, few recognized that treatment programs, without psychosocial support services, are unlikely to be successful. At best, therefore, prisons seem to make a de minimis response to this problem.

Withdrawal treatment programs also present complications. Expert witnesses in Garnes v. Taylor, a suit brought to challenge medical treatment in the District of Columbia jail, testified that when pregnant women are withdrawn from methadone, a routine practice in many institutions, they will abort their fetuses. Even if it did not result in spontaneous

---

62 Female Offenders: Problems and Programs, Female Resource Center, American Bar Association 7-9 (1976).
64 Finnegan, Narcotics Dependence in Pregnancy, 7 J. PSYCHEDELIC DRUGS 299 (1975).
65 Id. at 309. See Davis & Chappel, supra note 63.
66 Survey supra note 6.
69 See note 16 supra.
abortion, uncontrolled withdrawal from methadone may prove deleterious to the fetus, for methadone has proven to be a highly effective method of sustaining narcotics addicts during pregnancy.\textsuperscript{70} Similarly, the physical trauma attendant to a "cold turkey" withdrawal may injure the fetus, especially if it coincides with or stimulates labor.\textsuperscript{71}

Another problem faced by pregnant women is the indiscriminate dispensing of drugs that may cause complications when taken during pregnancy. Many prisons liberally administer tranquilizing and mood-elevating drugs as a convenient means of controlling the inmate population.\textsuperscript{72} A recent Law Enforcement Assistance Agency funded a study of women's institutions by the California Youth Authority uncovered extensive use of the tranquilizers Librium and Valium, to calm prisoners, and mood elevators Triavil, Elavil, Stelazine, and Mellaril to counteract depression.\textsuperscript{73} Thorazine, a drug used to combat psychoses, is also frequently administered to prisoners.\textsuperscript{74} Generally, drug use during pregnancy is inadvisable if it can possibly be avoided, and none of these widely used drugs have been established as safe for use during pregnancy.\textsuperscript{75}

In spite of the danger posed by the use of such drugs, six out of twenty-six institutions surveyed do not test for pregnancy before the drugs are administered.\textsuperscript{76} Of those institutions that claim they do test, it is not clear whether such a

\textsuperscript{71} See Finnegan, supra note 64 at 301.
\textsuperscript{72} R. Glick & V. Neto, National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U.S. Dep't of Justice, National Study of Women's Correctional Programs (June 1977).
\textsuperscript{73} Id.
\textsuperscript{75} See L. Govoni & J. Hayes, Drugs and Nursing Implications, 26, 117, 127, 194, 725, 703, (3rd ed. 1978). Concededly, it is possible that these drugs might be used safely during pregnancy in controlled amounts under medical supervision. See G. Bourne & D. Danforth, supra note 11 at 241-46. The point, however, is that the indiscriminate dispensing of drugs as a means of inmate control, without careful supervision, presents pronounced risks.
\textsuperscript{76} Id.
test would be performed only if ordered by a doctor in the course of formal medical treatment, or if it would be done even before the routine dispensing of drugs. Since drugs are widely used and often administered by paramedical personnel,\textsuperscript{77} it is doubtful that in a majority of cases pregnancy tests would be performed before potentially harmful drugs are ingested.

The survey revealed other problems and potential dangers. Only eight of twenty-six institutions had medical personnel on the premises twenty-four hours a day.\textsuperscript{78} Yet, four institutions without medical staff available on a twenty-four hour basis had no contingency plans for handling emergencies.\textsuperscript{79} Of the institutions without full-time medical care, many had drastically limited coverage, as in the case of one large state institution that had medical personnel only one day per week.\textsuperscript{80} Five institutions did not provide for prenatal examinations by an obstetrician.\textsuperscript{81} Most lacked facilities for delivery, and therefore needed to transfer prisoners to outside institutions. Fourteen institutions waited until labor had begun before initiating the transfer process.\textsuperscript{82} In one striking case, the responding prison noted a long trip to its liaison hospital, and lack of facilities for handling emergencies which might arise during childbirth, and still did not transfer pregnant prisoners until labor had begun.\textsuperscript{83} Although outside of prison women frequently do not enter the hospital until labor begins, significant delays are caused by the red tape and security clearance needed to transfer a prisoner, coupled with the need to have available security personnel to effect the transfer.\textsuperscript{84} This is illustrated as in the case of the woman who gave birth

\textsuperscript{78} Survey, \textit{supra} note 6.  
\textsuperscript{79} \textit{Id.}  
\textsuperscript{80} \textit{Id.}  
\textsuperscript{81} \textit{Id.}  
\textsuperscript{82} \textit{Id.}  
\textsuperscript{83} \textit{Id.}  
\textsuperscript{84} \textit{Id.} See K. Burkhart, \textit{supra} note 25, at 196-97.}
on a cellblock floor.\textsuperscript{85}

Transfering women back to prison after they have given birth can also present problems. On the average, a woman is transferred back after only four days and spends little if any time with her child. Normal prison policy of subjecting incoming women to vaginal searches is sometimes not suspended with respect to post parturient women. This results in subjecting them to painful, degrading, and dangerous searches shortly after giving birth.\textsuperscript{86} Such searches create a risk of dislodging stitches when an episiotomy has been performed\textsuperscript{87} or a risk of severe infection.\textsuperscript{88}

It is clear that pregnant prisoners experience a wide range of particular problems that are not experienced by inmates generally. Although imprisonment is, by its very nature, a difficult experience for most inmates, pregnant women are in some ways particularly vulnerable to abuse. It is impossible to know to what extent these problems exist. It is evident, however, that significant problems are prevalent and that the potential for abuse is immense. This is largely due to the fact that the problems of women prisoners are widely ignored and prisons are so inaccessible to the public. The remainder of this article discusses the means for eliminating this potential for abuse and improving the care of pregnant women in prison.

III. Standards for the Care of Pregnant Prisoners

There are numerous sets of standards pertaining to the treatment of prisoners. Most of these briefly mention the care of pregnant women, but are rather vague. The most influential

\textsuperscript{85} See text accompanying notes 36 to 37 supra.

\textsuperscript{86} See K. Burkhart, supra note 25, at 343.

\textsuperscript{87} An episiotomy is surgical incision of the perineal skin, to enlarge the vagina and make delivery easier. It is not an uncommon procedure in pregnancy. See M. Miller & D. Brooten, supra note 55, at 218-20.

\textsuperscript{88} K. Burkhart, supra note 25, at 343, reports the case of a women who suffered a severe infection as a result of such a search, which ultimately required surgical treatment.
sett of standards for correctional facilities, those set by the American Correctional Association, (ACA), make but passing reference to the needs of pregnant women in prison. They provide that “prenatal” care should be provided for pregnant women and that deliveries should be made in community hospitals whenever possible. If the newborn infant is to return to the prison with the mother, the standards suggest that a nursery facility be available. The Manual of Standards for Adult Detention Facilities, published by an ACA affiliate, is even more cursory. It does not specifically mention pregnancy, but mandates screening for health problems “specific to women.”

The American Public Health Association’s Standards for Health Services in Correctional Institutions are somewhat more detailed. They begin with the premise that pregnant women should be free to choose abortion, but that if they do not so choose they should be accorded the same prenatal care offered to civilian women. Specifically, the standards require that women be tested for pregnancy, that they be given prenatal medical exams and treatment, and a program of special housing, diet, vitamin supplements, and exercise.

The United Nations Minimum Rules for the Treatment of Prisoners prescribe no specific measures for the care of pregnant inmates, but generally require that special accommodations be made to meet their needs. One unique aspect of the United Nations Rules, however, is that they prohibit prison officials from subjecting any prisoner to discipline that

---

80 Id. at 568.
81 Id. at 567.
82 Id.
84 Id. at 33.
86 Id. at 9, 22, 23.
87 Document ST/SOA/SD/31/Rev. 1: Rule 33.(a).
might affect her unborn or nursing child,\textsuperscript{98} thus, implicitly recognizing that prisoners are affected by more than just the quality of medical care, and that the treatment of pregnant prisoners affects not simply them, but their children as well. For whatever reason, the impact of abuse of pregnant women on the innocent third party—the child—is not emphasized in America’s treatment of the problem.

Perhaps the most detailed standards for the care of pregnant prisoners are the oldest—those proposed by the Committee on the Care & Training of Delinquent Women and Girls of the National Commission on Prisons and Prison Labor, in 1931. In condensed form, the Committee recommended the following:

—The correctional institution should undertake a thorough casework study—physical and psychiatric—to determine whether the woman might beneficially keep her child;
—A suspended sentence, probation, or parole should be granted her if at all possible;
—The birth of the child should take place outside the institution and care should be taken to safeguard the child from the stigma of illegitimacy or prison birth;
—The institution must provide facilities for postnatal recuperation commensurate with those in a hospital outside;
—Prenatal, obstetrical, postnatal, and infant care should be provided;
—All precautions shall be taken to safeguard the health of the mother;
—The staff of a prison should include at least one individual trained in the placement of mothers and babies.\textsuperscript{99}

Ironically, such standards have existed since 1931, without any measurable impact on the treatment of pregnant prisoners. This is evidence of the general impotence of standards in effecting institutional change. Standards for the civilized treatment of prisoners generally have existed since 1870, with

\textsuperscript{98} Id. Rule 40. (d).
little impact on the actual care provided in prisons.\textsuperscript{100} Perhaps this explains why only five out of twenty-six administrators in the survey saw a need for standards for the care of pregnant women.\textsuperscript{101} One administrator explicitly noted that the formulation of standards may even be counterproductive in improving conditions.\textsuperscript{102}

Although standards do provide some objective measure of the quality of services in a prison, without enforcement they accomplish little. Prison standards are of course wholly advisory; prisons and detention facilities continue to operate regardless of whether they meet the criteria prescribed by professional and “watchdog” organizations. Incorporation of such standards into state law has been urged,\textsuperscript{103} but there is no apparent movement by states in this direction. Although courts may consult such standards in litigation, even flagrant violations of them will not lead some courts to find that prisons are operating unconstitutionally.\textsuperscript{104} Standards, therefore, though scarcely useless, are at best a limited tool in attacking prison conditions. Their greatest utility is that they provide an objective basis against which to compare actual conditions. Given that existing standards are largely ignored, however, it is clear that mere promulgation of further standards would not provide any meaningful answer to the problems of pregnant prisoners.

IV. LEGAL STANDARDS AND THE CARE OF PREGNANT PRISONERS

As will be demonstrated below, in its worst aspects the care of pregnant women plainly rises to the level of a constitutional deprivation. Furthermore, even in the absence of atroci-

\textsuperscript{100} J. Mitford, \textit{Kind and Usual Punishment} 30 (1973).
\textsuperscript{101} Survey, \textit{supra} note 6.
\textsuperscript{102} \textit{Id.}
\textsuperscript{104} \textit{See}, \textit{e.g.}, Palmigiano v. Garrahy, 443 F. Supp. 956 (D.R.I. 1977).
ties, the inherently coercive atmosphere of the prison creates a threat of interference with the right of procreation. This section discusses constitutional principles on two levels: in pristine form, as they apply in theory to the treatment of pregnant prisoners, and on a practical level, as they might actually influence the care of pregnant offenders in the context of litigation.

A. *Cruel and Unusual Punishment*

Mistreatment of pregnant prisoners may constitute cruel and unusual punishment in three ways: first, if prison officials show "deliberate indifference to serious medical needs" of pregnant women; or, second, if their care is "incompatible with the evolving standards of decency that mark the progress of a maturing society;" or, third, if it involves the "unnecessary and wanton infliction of pain."

The last two standards, relating specifically to medical care, were articulated by the Supreme Court in *Estelle v. Gamble*, in which an inmate sued Texas correctional authorities and medical personnel alleging that he had received inadequate treatment for a back injury, and thus had been subjected to cruel and unusual punishment. The Court noted that the state has an obligation to provide medical care for those whom it incarcerates. It also noted, however, that mere negligence or malpractice by a prison physician does not rise to the level of a constitutional violation; accidental or inadvertent mistreatment is not sufficient to trigger eighth amendment protections. Rather, a plaintiff must show that prison officials were deliberately indifferent to his/her serious medical needs. The Court cited as illustrations of deliberate

---

109 Id. at 103.
110 Id. at 105.
111 Id. at 106.
indifference the refusal of treatment by prison doctors;\textsuperscript{112} the choice of a treatment program for reasons of convenience rather than on the basis of professional judgment;\textsuperscript{113} the denial of access to care by prison guards;\textsuperscript{114} and interference with treatment once it has been prescribed.\textsuperscript{115}

Estelle is largely an outgrowth of the law on medical care in prisons as it had been developed by the circuit courts up to the time it was decided.\textsuperscript{116} Until Estelle, however, the courts were divided on how inadequate the state's medical care program must be in order to justify judicial intervention. Most courts required not simply that there be indifference to a prisoner's medical condition, but also that the state's treatment be shocking or barbarous.\textsuperscript{117} Some circuits, however, placed a higher duty on the state and required that it must provide reasonable medical care.\textsuperscript{118} Estelle appears to have resolved this conflict by sanctioning use of the eighth amendment so long as "serious" medical needs are at issue.

Although it may be relatively easy to identify a serious medical need, through the use of expert medical testimony, an obvious point that invites dispute after Estelle is what constitutes "deliberate indifference". On the one hand, Estelle did not hold that prison officials must be motivated by malice in withholding care, or that they must intend to cause the infliction of pain by their actions. On the other hand, it did not rule that deprivation of care alone presents a cause of action. It would seem then that the "deliberate indifference" standard falls somewhere between the two extremes: a type of \textit{sciente} requirement whereby officials become liable for refusing to respond once they have some knowledge of a prisoner's or a group of prisoners' serious medical needs.

\textsuperscript{113} E.g., Williams v. Vincent, 508 F.2d 541 (2d Cir. 1974).
\textsuperscript{114} E.g., Westlake v. Lucas, 537 F.2d 857 (6th Cir. 1976).
\textsuperscript{115} E.g., Wilbron v. Hutto, 509 F.2d 621 (8th Cir. 1975).
\textsuperscript{117} E.g., Starz v. Cullen, 468 F.2d 560 (2d Cir. 1972).
\textsuperscript{118} E.g., Blanks v. Cunningham, 409 F.2d 220 (4th Cir. 1969).
Clearly in many of the instances reviewed in preceding sections, prison officials have shown deliberate indifference to the medical needs of pregnant prisoners. The lack of appropriate prenatal and emergency care, lack of adequate diet and exercise, denial of treatment for ailments related to reproduction and for miscarriages, and the like, can only be attributed to indifference to prisoners' needs. The source of this indifference seems to vary, from hostility to apathy to limited administrative resources and imagination. The cause of correctional administrators' indifference, however, is not of any legal significance so long as identified needs are ignored.

Hence, while care obviously varies immensely from institution to institution, there would seem to be a serious problem posed by the treatment of pregnant offenders. This is so regardless of whether many prisoners are affected or only one at any given institution. Although the doctrine of cruel and unusual punishment is usually invoked to remedy institutional patterns of abuse, it is clear that it also operates to forbid the mistreatment of even a single individual. It follows that when any female prisoner experiences "deliberate indifference" to her serious medical needs, the Constitution is being violated, and she should have recourse to an appropriate remedy.

The doctrine of cruel and unusual punishment is, of course, not limited to mistreatment of prisoners only as it involves their medical needs. Treatment that results in "unnecessary and wanton infliction of pain" or that is incompatible with fundamental notions of decency is also constitutionally barred. This standard clearly forbids physical abuse of pregnant women. Furthermore, because most members of the community would concur that abuse of preg-

---

119 See text accompanying notes 20-38 supra.
122 Gregg v. Georgia, supra note 107.
123 Trop v. Dulles, supra note 106.
nant women is abhorrent in whatever form, one might also argue that eighth amendment notions of fundamental decency prohibit the subjection of pregnant women to solitary confinement under most circumstances, or to assignment to particularly arduous jobs. This argument would have even greater force if one could demonstrate a high probability that such measures were imposed as a punishment for pregnancy. Clearly such "retaliation" by prison authorities serves no legitimate penal interest.

Similarly, the practice of subjecting pregnant women to vaginal searches upon return to prison arguably violates the eighth amendment because it too offends basic notions of decency. One district court has ruled that vaginal searches of pregnant women in the contest of arrest violates due process because they offend human dignity and pose a threat of infection to the mother. The same analysis should obtain in the prison context, both when pregnant women are transferred before giving birth, and particularly upon recommittment to prison just after delivering. It is inconceivable that a woman who has just given birth would attempt to transport contraband into prison in this way.

In short, to the extent that prison officials either single out pregnant offenders for harsh or punitive treatment, or unnecessarily subject them to pain or degradation, such practices would seem to be actionable under the eighth amendment as much as a denial of needed medical care.

---

125 As a rule, members of the public are horrified when they are apprised of prison conditions. RESOURCE CENTER ON CORRECTIONAL LAW AND LEGAL SERVICES, AMERICAN BAR ASSOCIATION, AFTER DECISION: IMPLEMENTATION OF JUDICIAL DECREES IN THE CORRECTIONAL SETTING 7-9 (1976).

126 See text accompanying notes 21-36 supra.

127 Whether a particular practice serves a valid penological interest was held to be a relevant factor in determining if the practice constitutes cruel and unusual punishment in Gregg v. Georgia. 428 U.S. 153; 172-73 (1976)(joint opinion).

B. Interference with Procreation

Pregnancy is distinguishable from other medical conditions, and pregnant women are arguably entitled to more protection, because pregnancy involves procreation, a well-established fundamental right. The treatment of pregnant prisoners constitutes interference with procreation on three levels: direct interference with the right to procreate, as in the case of forced abortions; indirect interference with procreation, in the form of maltreatment of medical conditions that may result in miscarriage or sterility; and interference with the privacy right to make decisions regarding procreation.

In *Skinner v. Oklahoma*, procreation was declared by the Supreme Court to be one of the "basic civil rights of man . . . fundamental to the very existence and survival of the race." Accordingly, state actions affecting procreation are subjected to the strictest judicial scrutiny.

No complicated legal analysis is necessary to reach the conclusion that the cases involving drug-induced abortion, or prisoners coerced into having abortions, constitute a gross violation of individual rights; the state simply has no sufficiently compelling interest to justify such interference. On the contrary, one is suspicious that correctional officials involved in such incidents are pursuing impermissible goals—invidious discrimination against prisoners generally, and especially against the members of racial and economic minorities who comprise the bulk of convicted felons. In *Skinner*, Justice Douglas noted that the statute under attack, which provided for the sterilization of certain thrice-convicted felons, posed a threat that "unwittingly or otherwise, invidi-

---

129 *Id.* at 539, 540.
131 *Id.*
132 See text accompanying notes 9-16 *supra*.
133 *Id.*
ous discriminations" would occur, because the power to sterilize could cause races of types, which are inimical to the dominant group, to disappear.

Historically, a belief that crime is genetically linked has at various times led to pressure for crime control programs such as that legislated by Oklahoma in *Skinner*. Such movements are of the same ilk as proposals to solve social problems like poverty by sterilization or abortion. Because of the possibility for abuse, such programs are always cause for strict judicial scrutiny. In the case of prisoners, however, who are at the mercy of the state by virtue of their captivity, suspicion of state activity that interferes with procreation is especially well-founded: prejudices against inmate mothers, cultural myths that suggest criminal tendencies pass from generation to generation, and widespread societal bias against minorities who typically populate prisons, all within the context of a closed institution like the prison, create a situation in which the larger society must be particularly vigilant if it is committed to the protection of fundamental rights from state interference.

Indirect interference with procreation, though less likely to be the product of intentionally discriminatory attitudes, is no less harmful to pregnant inmates. Failure to give adequate

---

135 316 U.S. 539 (1942).
136 Id.
137 See J. Mitford, supra note 100, at 46-57.
141 See text accompanying notes 9-16 supra.
142 See J. Mitford, supra note 100, at 46-57.
143 Id.
prenatal care, in all its varied forms, failure to treat conditions that cause sterility or miscarriage, improper use of complicating drugs, and inadequate narcotics addiction treatment programs all in some way affect the process of procreation. The most serious cases, in which inadequate care leads to sterility or miscarriage, and completely halts procreation, would plainly seem to fall within the protected area created by Skinner. Even though the Court in Skinner dealt only with a direct program of sterilization, it is unlikely that courts today would ignore such drastic interference with procreation when it is easily within the state's power to prevent it; notwithstanding that it is an indirect product of inadequate care and not the result of an intentional program. One might even extend Skinner further, and argue that in light of its emphasis on the importance of procreation, and subsequent cases prohibiting interference with decision-making related to procreation, that any prison practice that unjustifiably threatens the health of mother or child is an interference with the process of procreation, and therefore impermissible. Although such indirect interference is de facto, rather than de jure, and arguably less suspect for that reason, indirect interference is equally harmful from the mother's perspective, and certainly serves no legitimate state purpose.

Finally, pregnant women in prison are frequently denied their fundamental privacy right to make decisions regarding procreation without governmental interference. First, there are the obvious cases of interference where women desiring an abortion are forbidden from having one by prison officials.

---

145 See text accompanying notes 39-61 supra.
146 See text accompanying notes 42-52 supra.
147 See text accompanying notes 72-78 supra.
148 See text accompanying notes 62-70 supra.
149 316 U.S. at 539.
151 One presumes that this is the rationale behind Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252 (1977), and similar decisions.
153 See Prisoners' Rights Sourcebook, supra note 1, at 346.
Although the scope of prisoner's rights to an abortion may have been curtailed by recent developments in the law on abortion, if the right to choose abortion is fundamental outside of prison, logic dictates that it remain fundamental inside. This does not mean that prison authorities cannot curtail the right, but that they must advance a compelling reason why the realities of imprisonment should prevent women from choosing abortions. Courts have routinely rejected the most compelling arguments states can muster to justify limitation of abortion. The most likely reason prison officials would have for limiting abortion—some concept of its immorality—would scarcely be accepted by courts as sufficient to subordinate the individual's privacy right.

At the opposite end of the spectrum of protected decision-making is a woman's right to choose childbirth. While *Roe v. Wade* and its progeny specifically protect the right to choose abortion, conversely they protect the right not to abort by couching their analysis in broad terms of privacy and the right to procreate. Although the initial privacy decisions barred only formal interference with decision-making, such as criminal penalties, later opinions made clear that courts will not brook interference even if it assumes more subtle forms. It follows that pressure to abort from prison officials, whether from intentional psychological coercion or threats of reprisal, constitutes interference with a woman's privacy right to make decisions about procreation. Once again, unless prison officials have a compelling reason to pressure for abortion, the right to make such a decision should not be denied simply because a woman is in prison. Such pressure would in fact be

154 Specifically, federal and state laws curtailing the spending of state funds to pay for medically unnecessary abortions, may be invoked to deny abortions to prisoners. See, e.g., Planned Parenthood of Central Missouri v. Danforth, 478 U.S. 52 (1976).

155 *Roe v. Wade*, supra note 150, at 126.


unconstitutional.

C. The Practical Implications of the Constitutional Principles

Although it is relatively easy to isolate the problems of pregnant women, and apply legal principles to them in the abstract, it is an entirely different matter to vindicate the rights of prisoners in litigation. Some advocates feel that litigation significantly improves prison conditions. There is reason to question this presumption, however, for noteworthy victories at the liability stage often prove to be difficult to implement when it comes to remedies.

Choosing the treatment of pregnant women as a special focus for litigation raises several problems. In many institutions, especially local detention facilities, the number of pregnant women held at any one time may be slight. An individual prisoner suing in her own right will give birth before her case is ever heard, or, in a case where pressure to abort is being brought to bear the harm will have been done before a court can even act. Thus, injunctive relief is unavailable to the individual prisoner prospectively, and she is limited to seeking damages for deprivation of her rights in a Title 42 U.S.C. § 1983 action.

Such damage actions are not without problems. There is a certain amount of judicial hostility toward damage actions by prisoners. There are also also significant problems in plac-
ing a dollar value on the loss of a constitutional right. To a certain extent, at least in a suit involving denial of medical care, damages approximate traditional malpractice tort damages, including pain and suffering. Most important of all, it is not clear that damage actions are a sufficient deterrent to lead to institutional change. Post facto damage awards are a prisoner's second best choice—a substitute for the adequate care she seeks in the first place. Unless they operate to reduce the odds of maltreatment, their ultimate utility is questionable.

To obtain injunctive relief, a class action would seem to be necessary (presuming that there are sufficient numbers of pregnant women who pass through a given institution to constitute a class). Deliberate indifference to the medical needs of pregnant women as a class can be established by demonstrating a pattern of inadequate medical care, or, a pattern of denial of access to it, or, it can be shown by establishing that such inadequate medical facilities exist that suffering is inevitable. Presumably a pattern of interference with procreation would be necessary to mandate class-wide relief in that area as well. At the least, those aspects of women's medical care that involve pregnancy, and that implicate procreation, should be singled out and emphasized in suits aimed at medical care for women prisoners.

Assuming that a successful action for injunctive relief is brought, however, it is still far from clear that the rights of pregnant women will be protected. Courts may be well-situated to order the solution of certain problems that can be easily monitored—such as the purchase of certain equipment, the hiring of additional medical staff, and anything objective that the court can ascertain has or has not been done. In situations involving the exercise of discretion, it is far more doubtful

---


166 Id.

167 Bishop v. Stoneman, 508 F.2d 1224 (2d Cir. 1974).
that court intervention is effective. An order to provide an adequate diet is useless if trustees simply do not bother to prepare special food. An order not to subject women to hazardous work assignments is of limited use when the matron in charge certifies that a given job is not strenuous, and orders a prisoner to undertake it or suffer disciplinary sanctions. By the time the court becomes aware that its order is being ignored, if in fact it does, the prisoner in question is likely to be gone, the facts forgotten, and the violation ignored. The judicial process simply does not respond quickly enough to situations to be an effective check, since the abuses complained of usually involve a wide variety of subjective decisions that affect pregnant women in quite subtle ways. This is not to say that prison officials always ignore court orders. Plainly, however, they resist their implementation. This is not to say that litigation is fruitless; plainly it exerts some pressure on prison officials and informs the public of the mistreatment of prisoners, often provoking public pressure for change. On the other hand, obtaining a court order is far from a guarantee that the practices and conditions complained of will cease to exist.

V. BEYOND LITIGATION—ALTERNATIVES FOR THE CARE OF PREGNANT OFFENDERS

The crux of the problem as far as pregnant prisoners are concerned is that prison is no place to carry or give birth to a baby. Reforms may marginally improve prisons, but the essentially coercive atmosphere and harsh treatment that are characteristic of prisons will not disappear. The ideal solution then would be to approach the care of pregnant offenders as an issue of social policy, requiring the establishment of alternatives to imprisonment via legislation.

---

168 See Comment, supra note 159.
169 See Koren, supra note 39, at 176-77.
170 Resource Center on Correctional Law and Legal Services, supra note 125, at 23-25.
171 Id.
Some countries have solved the problem by the creation of special mothers' prisons, in which pregnant women or women with very young children are interred.\textsuperscript{172} One notable example is West Germany, which has established \textit{Kinderheims}, or "children's homes" in separate facilities on the grounds of or near regular women's prisons.\textsuperscript{173} The major advantage to such institutions is that they would foster a different institutional environment, and presumably attract staff genuinely interested in the well-being of both mother and child. Such institutions would only be feasible in areas where there are large concentrations of women offenders.

In an age dominated by political and fiscal conservatism, there is little chance that mothers' prisons would be constructed in the United States. Even if public attention were to be focused on the problems of pregnant women in prison, their relatively small number, coupled with an apparent general unwillingness to expand social programs, would inhibit any movement toward such facilities. Such comparisons are most noteworthy because they show the contrast between American treatment of pregnant women and that of European nations.

More workable solutions are readily available. The easiest solution is simply to decrease the number of pregnant women who are incarcerated. With respect to detention facilities, a simple reform would be to dispense with bail when the defendant is pregnant, except in the most serious cases. Unsentenced women in detention facilities are usually there because they cannot afford to raise bail.\textsuperscript{174} By releasing pregnant women on their own recognizance most detention facilities would then hold far fewer pregnant women in the course of a year.

Obviously, there is some risk in releasing certain defendants on their own recognizance. Moreover, some defendants, particularly poor women, or those without any home, might

\textsuperscript{172} See Alkire, \textit{supra} note 4, at 10.
\textsuperscript{174} See generally R. Goldfarb, \textit{Jail—The Ultimate Ghetto} 33 (1975).
actually prefer the relative safety of a jail over a return to the streets. These women can probably be accommodated by other social service agencies, or can refuse to accept responsibility for their appearance at trial, thus forcing a court to commit them. With respect to the risk that some defendants will become fugitives upon release, the short answer to this concern is that such a risk is the price that must be paid to meet the needs of pregnant offenders in a civilized way. Achieving a decent standard of care outweighs the problems caused by the relatively few fugitives that would result.

At the sentencing stage, similar logic calls for probation as the preferred disposition whenever possible. As long as there is no pronounced threat to the community at large, an interest in promoting decent treatment would seem to outweigh the state's interest in imprisonment as the form of punishment imposed by the court. Alternatively, the court could defer sentencing until a woman gives birth, or combine a suspended sentence with a closely supervised probation.

Defense counsel can plainly urge these alternative sentences upon a court whenever it is appropriate. Ideally, such standards should be legislated\(^{175}\) to ensure that courts, which might share the same prejudices that sometimes affect the decisions of prison authorities, are bound to consider alternatives to imprisonment along specified lines.

Another alternative is either to furlough or temporarily parole women when they are bearing a child. The survey indicated that a number of juvenile facilities parole girls as a matter of course who are within three months of their projected delivery date to enable them to give birth in a normal community setting.\(^{176}\) Similarly, the state of Georgia follows a general policy of paroling pregnant women for a period of time to allow them to give birth and make arrangements for the care of their child before returning to prison to serve the remainder

\(^{175}\) See Kastenmeier, The Legislator and the Legislature: Their Roles in Prison Reform, in Prisoners' Rights Sourcebook, supra note 1, at 455-98.

\(^{176}\) Survey, supra note 6. Four institutions followed such a policy.
of their sentence. While this entails obvious emotional stress for the mother, it seems a more preferable and humane mode of treatment rather than imprisonment for the entire period she is carrying her child. During imprisonment, the baby is taken from the mother without any chance for her to become personally involved in planning its subsequent care.

In cases where imprisonment is deemed necessary, adoption of a clear standard for the treatment of pregnant women, of which prisoners are apprised, would be a positive step toward improving their care. The Federal Correctional Institution at Alderson, West Virginia, has adopted such a strong policy statement to be followed by its staff. It explains in detail the rights of pregnant women and the procedures to be followed for their care. Such policies should have some effect in developing constructive attitudes among staff members and encouraging pregnant women to assert their rights. On the other hand, it would be preferable for state legislatures to explicitly adopt such standards in statutes providing for the care of pregnant women at major correctional institutions within their state.

VI. CONCLUSION

In the final analysis the care of pregnant women will be determined by the community. To the extent that prisoners' rights groups, women's groups, or even respect for life groups become concerned about the treatment of pregnant women and provoke outrage at their treatment, then legislators, judges, and prison officials are likely to make some kind of response. Litigation, though useful, and a catalyst in molding public opinion, will not necessarily provide lasting solutions since the answer seems to lie not so much in trying to make prison fit for expectant mothers, but rather in finding

177 Letter to the author from Paul K. Vestal, Superintendent, Georgia Women's Correctional Institution (July 8, 1977).
178 Policy Statement, No. ALD 7300.28 Ch.1, Federal Correctional Institution, Alderson, West Virignia 24910 (6/1/77).
179 See J. Mitford, supra note 100, at 270-97.
alternatives to sending pregnant women there in the first place. Whether individuals are truly concerned with how we as a society treat pregnant offenders, only time will tell.