UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 14 **—Civ—(**14278/ **)**

Jane Doe,

CIV - MARRA

Plaintiff,

vs.

William D. Snyder, in his official capacity as

Sheriff of Martin County, Florida

Defendant.
_____/

VERIFIED COMPLAINT: [REDACTED]

EMERGENCY RELIEF SOUGHT

This is an action brought under 42 U.S.C. § 1983 for declaratory and emergency injunctive relief, alleging that Defendant has violated and continues to violate Plaintiff's Fourteenth Amendment right to an abortion and her Eighth Amendment protections against cruel and unusual punishment. Plaintiff is contemporaneously filing a Motion and Memorandum of Law for Leave to Proceed Under Pseudonym and to Seal Other Identifying Information, and a Motion and Memorandum of Law for Expedited Temporary Restraining Order and Preliminary Injunctive Relief. All facts are supported by Plaintiff's Verification of this Complaint and by her Declaration and its exhibits, appended as Exhibit 1 to the Motion for Emergency Injunctive Relief being contemporaneously filed. This complaint is being filed under seal; a redacted version will be e-filed.

INTRODUCTION

As the United States Supreme Court has made clear, a woman has a fundamental right to decide whether or not to bear a child. This right survives incarceration. A jail may not, therefore, deny an inmate the right to obtain a timely, safe, and legal termination of pregnancy. Additionally, denying an inmate access to medical care for the purpose of terminating her pregnancy constitutes deliberate indifference to an inmate's serious medical needs in violation of the Eighth Amendment's prohibition on cruel and unusual punishment as applied to the States through the Fourteenth Amendment.

Plaintiff is an inmate at the Martin County Jail, and is [redacted] pregnant. Defendant, the Sheriff of Martin County, has repeatedly, since May 5, 2014, denied Plaintiff's multiple requests for a medical furlough to obtain an abortion at a private clinic in Palm Beach County. Because of the delays occasioned by the Defendant's repeated denial of her requests to exercise her constitutional right to an abortion, she is now [redacted] of her pregnancy, and seeks emergency declaratory and injunctive relief to order Defendant to grant her a furlough to obtain an abortion at a clinic [redacted]. As set forth below, the clinic has secured private financing for the procedure.

JURISDICTION AND VENUE

1. Plaintiff's claims arise under the Constitution and laws of the United States. This Court has jurisdiction over these claims under 28 U.S.C. §§ 1331, 1343(a)(3), and authority to grant declaratory and injunctive relief under 28 U.S.C. § 2201-2202 and Fed. R. Civ. P. 57 and 65. The federal rights asserted by Plaintiff are enforceable under 42 U.S.C. § 1983.

2. Venue is proper in this Court under 28 U.S.C. § 1391(e). Plaintiff is confined in the Martin County Jail, in Stuart, Florida, within the Southern District of Florida in the Ft. Pierce

Division, where she is suffering, and continues to suffer the deprivation of her constitutional rights.

PARTIES

3. Plaintiff is an adult inmate in the Martin County Jail, where she has resided at all times material to this action.

4. She is a "Trusty" and poses no flight risk.

5. Plaintiff is, at the time of this filing, [redacted] pregnant and has repeatedly been denied, by Defendant, her constitutional right to choose to terminate her pregnancy. Plaintiff chooses to terminate her pregnancy and has actively sought and been denied medical furloughs for that purpose.

6. Defendant William D. Snyder is the Sheriff of Martin County, and as such, is the Chief Correctional Officer for the County pursuant to Martin Co. Ord. § 127.3, and is the ultimate decision-maker as to matters relating to the operation of the Martin County Jail.

7. At all times material to this action, Defendant Snyder was acting under color of state law and his actions constitute state action. This Complaint and the contemporaneously filed Motion for Emergency Declaratory and Injunctive Relief seek relief against Sheriff Snyder in his official capacity.

FACTS

8. Plaintiff learned she was pregnant on [redacted], four days before her sentencing hearing on [redacted].

9. Upon learning of her pregnancy, Plaintiff immediately went to [redacted] Clinic ("the Clinic") in West Palm Beach to secure [redacted] abortion. However, the Clinic informed her that it was too early for a surgical abortion.

10. Plaintiff anticipated that, based on the representations of her criminal defense counsel, she would be placed under house arrest and be able to obtain an abortion early in her first trimester. However, rather than house arrest, she was sentenced to [redacted] in the County Jail.

11. Her current release date is [redacted], calculated using gain time and other factors. Her due date is [redacted].

12. At her sentencing hearing on [redacted], her defense counsel informed the court that Plaintiff was pregnant and asked the court to delay her surrender so that she could first obtain an abortion before serving her sentence.

13. The Court denied the request for a later surrender date and Plaintiff went directly from her sentencing hearing to the Martin County Jail. Plaintiff was [redacted] pregnant when she entered the Martin County Jail.

14. Although abortions performed by licensed health care providers are safe throughout a pregnancy, the risks and cost increase past the first trimester.

15. On May 18, 2014, Plaintiff requested, in writing, a medical furlough to obtain an abortion. [redacted]. The jail denied the request on the ground that "This has nothing to do with the Medical Department or Martin County Sheriff. You must coordinate a furlough with your attorney." A copy of the request and denial is attached as Exhibit A to Plaintiff's Declaration.

16. Plaintiff asked her defense counsel to represent her in that motion, but could not afford the additional fee he was charging.

17. Plaintiff secured new counsel, who, in early June 2014, filed a motion with the sentencing court for a medical furlough to obtain an abortion.

18. At a hearing that Plaintiff attended, on [redacted], the State Attorney opposed the motion on the ground that she had "waived" her right to a furlough, and the court denied the motion on the ground that during sentencing on [redacted], the court had already denied a delayed surrender for Plaintiff to obtain an abortion.

19. Plaintiff retained the ACLU of Florida and undersigned counsel on July 1, 2014.

20. On July 2, 2014, Plaintiff renewed her request for a medical furlough to obtain an abortion; that request was again denied on the ground that "Medical does not have the authority to grant you a furlough. This must be done by the judge. Medical is here to support you in your decision & give any counseling you may need." A copy of the request and denial is attached as Exhibit B to Plaintiff's Declaration.

21. On July 7, 2014, the lawyer who filed her first motion for furlough filed a second motion for furlough that raised no constitutional arguments even though undersigned counsel had provided him with a memorandum of law briefing the constitutional issues. Instead, the motion merely alleged that "this counsel has been contacted by the ACLU, Sheriff William Schneider [*sic*], and counsel for the jail, Glenn Theobald, Esq., and asked to re-do this emergency motion." The court denied the motion without a hearing on July 9, 2014. A copy of the motion and order are attached as Exhibit D to Plaintiff's Declaration.

22. On July 1 and July 3, 2014, undersigned counsel sent demand letters to Sheriff Snyder and the Martin County Attorney, attempting to resolve this matter without litigation. Redacted copies of those letters and exhibits thereto are attached as Exhibit 1 to this Verified Complaint. In addition, undersigned counsel has attempted to work with Plaintiff's former counsel who filed the motions for furlough.

23. Defendant did not respond until his legal counsel contacted the undersigned on July 1, 2014. Since then, undersigned counsel has continued to attempt to resolve this matter amicably but expeditiously, without litigation, through counsel for Sheriff Snyder, specifically, Chief Glenn Theobald, Esq.

24. Through Chief Theobald, Defendant has asserted that medical furloughs for abortion require a court order from the state court that sentenced Plaintiff, and cited as his only authority §951.24, Fla. Stat. (2014). However, the statute is devoid of any language relating to medical furloughs in general or abortion in particular.

25. Specifically, the statute that the Sheriff is improperly relying on provides, in pertinent part, as follows:

> (2)(a) Whenever punishment by imprisonment in the county jail is prescribed, the sentencing court, in its discretion, may at any time during the sentence consider granting the privilege to the prisoner to leave the confines of the jail or county facility during necessary and reasonable hours, subject to the rules and regulations prescribed by the court, *to work at paid employment, conduct his or her own business or profession, or participate in an educational or vocational training program, while continuing as an inmate of the county facility* in which he or she shall be confined except during the period of his or her authorized release.

§ 951.24, Fla. Stat. (emphasis added).

26. The remaining portions of the statute deal with work-release of county prisoners, and how their wages or salary will be applied to the costs of their incarceration. Nothing in the statute requires Plaintiff to obtain a court order for a medical furlough for an abortion.

27. Despite the inapplicability of section 951.24, on each occasion that Plaintiff requested a medical furlough, she was informed that an order from the sentencing judge was necessary and that she had to obtain one through a lawyer.

28. Each denied request and each unsuccessful attempt to secure an unnecessary court order has subjected Plaintiff to delay, [redacted].

29. Upon information and belief, during both the sentencing hearing and the hearing on the first motion for furlough, the state court heard no constitutional arguments. In the second motion for furlough, Plaintiff's counsel raised no constitutional arguments even though undersigned counsel had provided those to him.

30. Defendant has unnecessarily and unlawfully required Plaintiff to secure legal counsel to pursue a state court order for a medical furlough, when no such order was necessary. Plaintiff has, to date, paid her prior counsel $500.00 to pursue a state court order for a medical furlough, when no such order was necessary.

31. Plaintiff has a constitutional right to access safe, timely, and legal abortion services.

32. Defendant's denial of Plaintiff's repeated requests for a medical furlough to obtain a safe, timely, and legal abortion are not reasonably related to legitimate penological interests.

33. The sole justification offered for denial of Plaintiff's repeated requests for a medical furlough is Defendant's mistaken reliance on section 951.24; Defendant has cited no security or other concerns about allowing Plaintiff a medical furlough.

34. [redacted] Clinic ("Clinic"), in Palm Beach County is licensed to perform [redacted]. The Clinic performs [redacted]. However, [redacted].

35. Had Defendant granted Plaintiff's May 18 request for a furlough to obtain an abortion, [redacted]. Had Defendant granted Plaintiff's July 1 request for a furlough to obtain an abortion, [redacted].

36. However, although Plaintiff can lawfully obtain [redacted]. In the interim, even though the medical staff at the Martin County Jail is aware of Plaintiff's requests for a medical furlough to obtain an abortion, during Plaintiff's medical examinations within the jail, when an ultrasound is performed she is ordered to view the monitor screen and to listen to the medical personnel's description of the sex, hear detailed descriptions of its development and movements. Forcing Plaintiff to observe the monitor and hear the technician's detailed descriptions is cruel and serves no legitimate medical or penological interest.

37. The Clinic has secured private financing for Plaintiff's abortion, and Plaintiff has transportation available to her at no public expense.

CLAIMS FOR RELIEF

EIGHTH AMENDMENT VIOLATION: 42 U.S.C. § 1983

38. Plaintiff incorporates, by reference, all previous allegations in this Complaint.

39. Procedures to terminate pregnancy are a serious medical need, and prison officials display deliberate indifference when they prevent an inmate from obtaining medical services to terminate her pregnancy.

40. Defendant's repeated denials of Plaintiff's requests for a medical furlough to obtain a safe, legal and timely termination of her pregnancy constitute deliberate indifference to her serious medical needs.

41. The delay itself caused by Defendant's repeated denials of Plaintiff's requests for a furlough amount to deliberate indifference to a serious medical need.

42. While medical services to terminate a pregnancy at the Clinic remain safe throughout pregnancy, delay significantly increases the risks to Plaintiff.

43. Defendant's reliance on §951.24, Fla. Stat. and his requirement that Plaintiff retain counsel to pursue a court order for a medical furlough to obtain an abortion has unnecessarily delayed a safe, legal and timely abortion.

FOURTEENTH AMENDMENT VIOLATION: 42 U.S.C. § 1983

44. Plaintiff incorporates, by reference, all previous allegations in this Complaint.

45. A state actor may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.

46. Plaintiff's pregnancy is at [redacted], well before Florida's statutory definition of viability as "the stage of fetal development when the life of a fetus is sustainable outside the womb through standard medical measures." § 390.011(12), Fla. Stat. (2014).

47. By preventing Plaintiff from obtaining medical services to terminate her pregnancy, Defendant, who is a state actor, is permanently depriving Plaintiff of her constitutional rights guaranteed under the Fourteenth Amendment of the U.S. Constitution.

48. Defendant is outright obstructing and preventing Plaintiff from exercising her constitutional right, under the Fourteenth Amendment, to terminate her pregnancy.

RELIEF REQUESTED

Wherefore, Plaintiffs request the following relief:

a. A declaration that Defendant's repeated denials of Plaintiff's requests for a medical furlough to obtain a privately-funded abortion violate the Eighth Amendment to the

U.S. Constitution, as the denials amount to deliberate indifference to a serious medical need;

b. A declaration that Defendant's repeated denials of Plaintiff's requests for a medical furlough to obtain a privately-funded abortion violate the Fourteenth Amendment to the U.S. Constitution, as the denials violate her constitutionally protected right to terminate her pregnancy;

c. An emergency injunction, a motion for which is being contemporaneously filed, enjoining Defendant from denying Plaintiff's requests for a medical furlough for an abortion and ordering Defendant to grant Plaintiff's request immediately, without requiring her to first seek and obtain an order from the sentencing judge in Circuit Court in Martin County, Florida;

d. Damages, to be determined;

e. An award to Plaintiff of attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and

f. Such other and further relief as this Court deems appropriate.

Dated: July 11, 2014

Respectfully submitted,

/s/ Shalini Goel Agarwal
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sagarwal@aclufl.org
Maria Kayanan
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ACLU Foundation of Florida, Inc.
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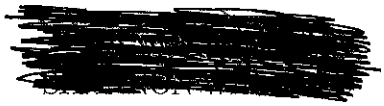
PLAINTIFF'S VERIFICATION OF FACTUAL ALLEGATIONS

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED IN STUART, FLORIDA THIS 9 DAY OF JULY, 2014.



Maria Kayanan
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Via Fax and U.S. Mail
Sheriff William D. Snyder
800 SE Monterey Road
Stuart, FL 34994
(772)220-7043 (Fax)

Michael Durham, Esq.
County Attorney, Martin County
2401 SE Monterey Road
Stuart, FL 34996
(772) 288-5439 (Fax)

July 1, 2014

CONFIDENTIAL

Re: Urgent Inmate Request ([redacted]) for Medical Furlough for Termination of Pregnancy

Dear Sheriff Snyder and Mr. Durham:

Please be advised that the ACLU of Florida represents [redacted] Inmate No. [redacted], currently incarcerated at the Martin County Jail, in connection with her request to obtain a medical furlough for a termination of pregnancy. [redacted] previously requested a furlough, was incorrectly advised that a court order was necessary, and is renewing her request raising constitutional grounds.

We are advising you that by denying her request for a furlough and requiring her to seek a court-ordered furlough, you have violated, and continue to violate [redacted] rights under the United States and Florida Constitutions.

We recognize that the County is not responsible for payment for the medical procedure. However, the County cannot, consistent with settled law and the Florida Department of

EXHIBIT 1 TO VERIFIED COMPLAINT

Corrections' precedent, deny [redacted] timely access to an abortion. [redacted] in West Palm Beach is ready, willing, and able to arrange and pay for the procedure, and is licensed [redacted]. I understand that the precise date cannot be revealed to [redacted] in advance, for security reasons, **but time is of the essence**, [redacted] is keeping an appointment open for her [redacted]. Transportation and appropriate security measures would have to be arranged.

Summary of Pertinent Law

I. [redacted] Retains Her Constitutional Right to Terminate Her Pregnancy.

"A woman's fundamental right to choose abortion is both time-bound and procedure-specific." *Monmouth County Correctional Institutional Inmates v. Lanzaro,* 834 F.2d 326, 339 (3d Cir. 1987); thus, "time is likely to be of the essence in an abortion decision." *H.L. v. Matheson,* 450 U.S. 398 (1981).

The Florida Department of Corrections has long recognized the law in this area; a woman does not lose her right to a timely and safe abortion simply because she is incarcerated. *See* April 11, 2006 and May 14, 2003 Memoranda from Rosa Carson, Office of the General Counsel, Florida Department of Corrections, to DOC Secretary James V. Crosby (attached as Exs. A and B), and cases cited therein. *See also Roe v. Crawford,* 514 F.3d 789 (8th Cir. 2008); *Monmouth,* 834 F.2d 326.

II. There Can Be No Denial of an Abortion Based on Transportation Costs

Although the State has no affirmative duty to perform or pay for an abortion for an inmate, neither can it deny her access to such medical services. Here, payment for the procedure will be covered by private sources, through national organizations that provide emergency funding to those women who need it. Even in the unlikely scenario where no private funding was available, a jail or prison cannot condition access to abortion on prepayment of transportation costs. *See Doe v. Arpaio,* 150 P.3d 1258 (Ariz. Ct. App. 2007).

III. There Can Be No Requirement for a Court Order for an Abortion or Transport

Moreover, the jail cannot require the inmate to obtain counsel and a court order to secure a furlough for an abortion. *See Roe v. Crawford,* 514 F.3d 789 (8th Cir. 2008); *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326 (3d Cir. 1987); *Doe v. Barron*, 92 F. Supp. 2d 694 (S.D. Ohio 1999); *Doe v. Arpaio*. Such requirements result in delay—as demonstrated by the history of [redacted] attempts to obtain a furlough—and needlessly invoke a court's jurisdiction over the inmate's choice of a constitutionally protected and private medical procedure.

Delayed access to a safe abortion will jeopardize [redacted] health, and constitute a continuing denial of her constitutional right to terminate her pregnancy. The ACLU of Florida is prepared to litigate this matter in the United States District Court for the Southern District of Florida. However, we hope to avoid litigation, and resolve this matter as expeditiously as possible.

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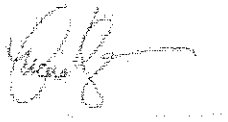
Please contact me at your earliest convenience to (1) confirm receipt of this letter and (2) advise of the status of [redacted] request. Please feel free to contact me directly at [redacted], or at mkayanan@aclufl.org.

Thank you in advance for your prompt attention to this confidential medical and legal matter.

Sincerely yours,



Maria Kayanan
Associate Legal Director, ACLU Foundation of Florida
Fla. Bar No. 305601

Exhibits A & B attached

EXHIBIT 1 TO VERIFIED COMPLAINT

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

OFFICE OF THE GENERAL COUNSEL

MEMO TO: James McDonough, Secretary

FROM: Rosa Carson

DATE: April 11, 2006

SUBJECT: **Inmate Request To Be Allowed To Terminate Pregnancy**

The Department has received a request from an inmate that she be allowed to terminate her pregnancy. It is our understanding that the inmate is in her 8th week of pregnancy. The Office of General Counsel has been asked to render an opinion as to the legal requirements applicable to this situation. Based on our review of current case law, it is our opinion that the inmate has a right to choose to terminate her pregnancy without undue interference from the Department. The inmate's right to choose can be restricted only so far as required by legitimate penological interests. This opinion is based on the following United States Supreme Court rulings:

> A woman has the constitutional right to choose to have an abortion without undue interference from the state before the viability of the fetus. Stenberg v. Carhart, 530 U.S. 914 (2000); Planned Parenthood of Southeastern Pennsylvania. v. Casey, 505 U.S. 833 (1992).
>
> A law, regulation or restriction, that imposes an undue burden on the woman's decision to terminate her pregnancy before fetal viability, is unconstitutional. Stenberg v. Carhart, at 921.

Even where incarcerated, a woman still has the right to choose to terminate her pregnancy. And while the right to choose can be restricted due to penological interests, any state law or prison regulation or policy that impinges on this right must be reasonably related to a legitimate penological interest. See Turner v. Safley, 482 U.S. 78 (1987). See also, Victoria W. v. Larpenter, 2001 WL 263080 (E.D.La.); Victoria W. v. Larpenter, 369 F.3d 475 (5th Cir. 2004). Under this caselaw, the Department can have procedures and policies governing inmate non-therapeutic (not medically necessary) abortions where such procedures and policies are reasonably related to penological interests.

The Florida Supreme Court has held that the right of privacy in the Florida Constitution protects a woman's right to choose to terminate her pregnancy. Renee B. v. Florida Agency for Health Care Administration, 790 So.2d 1036 (Fla. 2001).

Presently, the Department has no established policy on handling requests to terminate pregnancies. It does have policies governing the release on furlough for medical treatment or

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procedures. Rule 33-601.603, Florida Administrative Code, provides that inmates who meet specified criteria are eligible for furloughs for specified purposes and under certain conditions. Type A Furloughs are granted for specified purposes, including to visit a dying relative, attend a funeral of a relative and "[f]or any other reasons deemed consistent with the public interest, including medical or mental health treatment, attendance at a civil hearings, or to otherwise aid in the rehabilitation of the inmate." See 33-601.603(6), Fla. Admin. Code. An elective medical procedure where the inmate has a constitutional right to choose to have the procedure would come within the stated purpose of a Type A Furlough.

The Department would not have to pay for non-therapeutic abortions and an inmate would only be allowed to have a non-therapeutic abortion if she could pay for costs associated with the abortion. See Beal v. Doe, 432 U.S. 438 (1977); Hope Medical Group v. Edwards, 63 F.3d 418 (5th Cir.1995); Renee B. v. Florida Agency for Health Care Administration, 790 So.2d 1036 (Fla. 2001).

Recommendation: In the present case, the inmate is minimum security, has been found to be eligible for a Type A Furlough, and will pay for the procedure. Under these circumstances, federal and state case law requires that the Department allow the inmate to terminate her pregnancy.

Assistant General Counsel

cc: Laura Bedard, Ph.D., Deputy Secretary
Patrick Brown, M.D., Director for Heath Services
Louis A. Vargas, General Counsel

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
OFFICE OF THE GENERAL COUNSEL

MEMO TO: James V. Crosby, Jr., Secretary

FROM: Rosa Carson

DATE: May 14, 2003

SUBJECT: **Inmate Request To Be Allowed To Terminate Pregnancy**

The Department has received a request from an inmate that she be allowed to terminate her pregnancy. It is our understanding that the inmate, who was recently received by the Department, is in her 11th week of pregnancy. The Office of General Counsel has been asked to render an opinion as to the legal requirements applicable to this situation. Based on our review of current case law, it is our opinion that the inmate has a right to choose to terminate her pregnancy without undue interference from the Department. The inmate's right to choose can be restricted only so far as required by legitimate penological interests. This opinion is based on the following United States Supreme Court rulings:

> A woman has the constitutional right to choose to have an abortion without undue interference from the state before the viability of the fetus. Stenberg v. Carhart, 530 U.S. 914 (2002); Planned Parenthood of SE PA. v. Casey, 505 U.S. 833 (1992).
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Even where incarcerated, a woman still has the right to choose to terminate her pregnancy. And while the right to choose can be restricted due to penological interests, any state law or prison regulation or policy that impinges on this right must be reasonably related to a legitimate penological interest. See Turner v. Safley, 482 U.S. 78 (1987). See also, Victoria W. v. Larpenter, 2001 WL 263080 (E.D.La.); Victoria W. v. Larpenter, 205 F.Supp. 580 (E.D. La. 2002). Under this caselaw, the Department can have procedures and policies governing inmate non-therapeutic (not medically necessary) abortions where such procedures and policies are reasonably related to penological interests.

The Florida Supreme Court has held that the right of privacy in the Florida Constitution protects a woman's right to choose to terminate her pregnancy. Renee B. v. Florida Agency for Health Care Administration, 790 So.2d 1036 (Fla. 2001).

Presently, the Department has no established policy on handling requests to terminate pregnancies. It does have policies governing the release on furlough for medical treatment or

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The Department would not have to pay for non-therapeutic abortions and an inmate would only be allowed to have a non-therapeutic abortion if she could pay for costs associated with the abortion. See Beal v. Doe, 432 U.S. 438 (1977); Hope Medical Group v. Edwards, 63 F.3d 418 (5th Cir.1995); Renee B. v. Florida Agency for Health Care Administration, 790 So.2d 1036 (Fla. 2001).

Recommendation: In the present case, the inmate is minimum security, has been found to be eligible for a Type A Furlough, and will pay for the procedure. Under these circumstances, federal and state case law requires that the Department allow the inmate to terminate her pregnancy.

Assistant General Counsel

cc: C. George Denman, Deputy Secretary
Dianne Rechtine, M.D., Acting Director for Heath Services
Louis A. Vargas, General Counsel

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