

STATE OF NEW YORK

7630

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to promoting the health, safety, and human rights of incarcerated pregnant individuals, incarcerated birthing parents of children and their children; and to repeal section 611 of the correction law relating to births to incarcerated individuals and care of children by incarcerated individuals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 611 of the correction law is REPEALED and a new section 611 is added to read as follows:

§ 611. Pregnant incarcerated individuals. 1. Purpose and findings. Individuals confined in correctional institutions or state or local correctional facilities face unique health risks during pregnancy and childbirth, and lack of appropriate prenatal, obstetric and postpartum medical care can result in serious harm to both the birthing parent and the child. The rights of pregnant individuals and their children may be compromised by the conditions of confinement and the policies and practices of correctional institutions and facilities.

2. Provisions regarding pregnant incarcerated individuals. (a) Pregnant incarcerated individuals shall be provided with comprehensive prenatal care, including all necessary testing, and all necessary treatment, as recommended by the American College of Obstetricians and Gynecologists, the American Medical Association, the American College of Nurse-Midwives, and the Association of Women's Health, Obstetric and Neonatal Nurses.

(b) Pregnant incarcerated individuals shall be provided with appropriate medical care during labor and delivery, which shall include access to qualified medical personnel and necessary medical equipment, as recommended by the American College of Obstetricians and Gynecologists and in conformity with the standards set forth by the American Medical

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 Association, the American Congress of Obstetricians and Gynecologists,
2 and the American College of Nurse-Midwives.

3 (c) Pregnant incarcerated individuals shall be provided with opioid
4 use disorder treatment and evidence-based treatment for other substance
5 use disorders as needed.

6 (d) Pregnant incarcerated individuals shall be provided with psycho-
7 logical and psychiatric therapy and treatment as needed, including
8 consultation regarding psychiatric medications that are safe during
9 pregnancy.

10 (e) Pregnant incarcerated individuals shall be provided with appropri-
11 ate hydration and nutrition, in accordance with the guidelines set forth
12 by the American Medical Association and the American College of Obstet-
13 ricians and Gynecologists. Such hydration and nutrition shall include
14 access to additional portions of food, fresh fruits and vegetables, and
15 to prenatal vitamins.

16 (f) Pregnant incarcerated individuals shall be provided with safe and
17 appropriate housing and living conditions, including access to adequate
18 bedding, clothing, and personal hygiene supplies, in accordance with the
19 guidelines set forth by the American Medical Association and the Ameri-
20 can College of Obstetricians and Gynecologists.

21 (g) Pregnant incarcerated individuals shall be afforded privacy.

22 (h) Pregnant incarcerated individuals shall be afforded regular access
23 to safe and appropriate exercise facilities.

24 (i) Pregnant incarcerated individuals shall not be exposed to
25 substances or chemicals that could present a risk of harm to the birth-
26 ing parent or fetus.

27 (j) Pregnant incarcerated individuals shall be afforded safety and
28 protection from potential assaults from incarcerated people or correc-
29 tional officers given their increased vulnerability.

30 (k) Pregnant incarcerated individuals shall not be subjected to work
31 requirements that could injure or harm them or their fetuses.

32 (l) Pregnant incarcerated individuals shall be provided with access to
33 counseling regarding all options open to them, including abortion,
34 adoption, and giving birth, including all rights under this law to main-
35 tain the care and custody of their children while incarcerated. Preg-
36 nant incarcerated individuals shall be provided telephonic, video, or in
37 in-person access to legal counsel of their choice regarding these deci-
38 sions.

39 3. Provisions regarding postpartum care. (a) Incarcerated individuals
40 shall have access to appropriate medical care after delivery, including
41 postpartum physical, mental, and reproductive health care, as determined
42 by a licensed health care professional, as recommended by the American
43 College of Obstetricians and Gynecologists.

44 (b) Incarcerated individuals shall have access to appropriate clothing
45 and appropriate hygiene and self-care supplies after delivery, in
46 accordance with the guidelines set forth by the American Medical Associ-
47 ation and the American College of Obstetricians and Gynecologists.

48 (c) Incarcerated birthing parents of children shall have access to
49 sufficient hydration and nutrition to be able to nurse their children in
50 accordance with the child's nutritional needs.

51 (d) Incarcerated birthing parents of children shall have access to
52 lactation consultants and to safe, private, quiet, and hygienic places
53 to nurse their children at all hours. Incarcerated birthing parents
54 shall have the freedom to make the decision of whether to nurse their
55 child and when to wean their child based on the best interest of the
56 child.

1 (e) Incarcerated birthing parents shall have access to reasonably
2 quiet and private sleeping spaces until their child is weaned or their
3 child consistently sleeps through the night, whichever occurs later.
4 Incarcerated birthing parents shall be excused from roll call or other
5 interruptions if necessary to allow for reasonable napping during such
6 time period.

7 (f) Incarcerated birthing parents of children shall have access to
8 reasonable and appropriate opportunities for exercise.

9 (g) Incarcerated birthing parents of children shall be provided with
10 appropriate parenting, self-care, and health education, including educa-
11 tion regarding mental and reproductive health, provided by nonprofit
12 organizations.

13 (h) Incarcerated birthing parents of children shall have access to
14 appropriate peer and social support of other incarcerated birthing
15 parents, whether in person, online, or via videoconference.

16 (i) Incarcerated birthing parents of children shall have access to
17 reasonable technology to take photos of their children and to share such
18 photos with family and friends outside the correctional facility.

19 4. Human rights of incarcerated pregnant individuals and incarcerated
20 birthing parents of children. (a) Segregated confinement of pregnant
21 individuals and of individuals who have given birth within the previous
22 three months shall be strictly forbidden.

23 (b) Shackling of pregnant individuals and individuals who have given
24 birth within the previous three months shall be strictly forbidden.

25 (c) Separation of an incarcerated birthing parent from their child, or
26 threatened separation of a birthing parent from their child, shall not
27 be used as a disciplinary tool or sanction.

28 (d) A child shall not be removed from the care of its incarcerated
29 birthing parent without the birthing parent's express consent unless the
30 birthing parent is found to present a serious and immediate safety risk
31 to their child in violation of state child welfare law.

32 (e) No person shall care for the child without the incarcerated birth-
33 ing parent's express permission.

34 (f) Incarcerated birthing parents of children shall have reasonable
35 rights to privacy, especially when nursing.

36 (g) Incarcerated birthing parents of children shall be given complete
37 and accurate information regarding their legal rights and responsibil-
38 ities vis-a-vis their children.

39 5. Care of children born to incarcerated individuals. (a) Children
40 born to incarcerated individuals shall receive timely and appropriate
41 pediatric care, including all necessary medical and developmental test-
42 ing, as recommended by the American College of Obstetricians and Gyne-
43 cologists, and all necessary treatment, as recommended by the American
44 Medical Association, the American Congress of Obstetricians and Gynecol-
45 ogists, and the Association of Women's Health, Obstetric and Neonatal
46 Nurses. Incarcerated birthing parents of children shall have timely
47 access to consultation with pediatricians, whether in-person or via
48 videoconference or telephone. Incarcerated birthing parents of children
49 shall have timely access to appropriate over-the-counter medications for
50 their children, regardless of whether the birthing parent has consulted
51 with a pediatrician.

52 (b) Children in need of early intervention or other special medical,
53 developmental or educational services shall be given full access to
54 care, via experts within or outside the facility.

55 (c) Children born to incarcerated individuals shall be, at all times,
56 in a clean, safe and nurturing environment for children, which includes

1 safe and appropriate sleeping arrangements, safe and appropriate play-
2 ing, eating, and bathing spaces, and adequate hygiene supplies.

3 (d) Children born to incarcerated individuals shall be provided with
4 full opportunity to bond with their birthing parents, including consist-
5 ent and extensive physical contact and consistent nursing.

6 (e) Children born to incarcerated individuals shall be provided with
7 healthy nutrition, including, if the child's birthing parent so chooses,
8 breast milk that has been pumped, stored, and warmed by the birthing
9 parent in a safe and hygienic location. Children born to incarcerated
10 individuals shall have access to such breast milk, if the birthing
11 parent so chooses, regardless of whether the child remains with the
12 birthing parent in the institution or facility.

13 (f) Children born to incarcerated individuals shall be provided with
14 safe and appropriate clothing and age-appropriate toys and books.

15 (g) Children born to incarcerated individuals shall be protected from
16 violence or recklessness from guards or incarcerated individuals.

17 (h) Children born to incarcerated individuals shall be afforded
18 reasonable visiting hours from family and friends, subject to the birth-
19 ing parent's consent.

20 (i) Children born to incarcerated individuals shall be afforded
21 reasonable time outdoors with their birthing parents.

22 6. Enforcement. The department shall issue uniform minimum standards
23 regarding procedures and the implementation of this section within one
24 hundred eighty days of the effective date of this section.

25 § 2. This act shall take effect immediately.