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I N S E N A T E

February 5, 2016

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the correction law, in relation to the restraint of pregnant female prisoners during childbirth; and to amend a chapter of the laws of 2015 amending the correction law relating to the restraint of female prisoners during childbirth, as proposed in legislative bills numbers A.6430-A and S.983-A

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 611 of the correction law, as
2 amended by a chapter of the laws of 2015 amending the correction law
3 relating to the restraint of pregnant female prisoners during child-
4 birth, as proposed in legislative bills numbers A. 6430-A and S. 983-A,
5 is amended to read as follows:
6 1. (a) If a woman confined in any institution or local correctional
7 facility be pregnant and about to give birth to a child, the superinten-
8 dent or sheriff in charge of such institution or facility, a reasonable
9 time before the anticipated birth of such child, shall cause such woman
10 to be removed from such institution or facility and provided with
11 comfortable accommodations, maintenance and medical care elsewhere,
12 under such supervision and safeguards to prevent her escape from custody
13 as the superintendent or sheriff or his or her designee may determine.
14 No restraints of any kind shall be used during transport of such woman,
15 a woman who is known to be pregnant BY CORRECTIONAL PERSONNEL OR PERSON-
16 NEL PROVIDING MEDICAL SERVICES TO THE INSTITUTION OR LOCAL CORRECTIONAL
17 FACILITY, or a woman within eight weeks after delivery or pregnancy
18 outcome [receives care], absent extraordinary circumstances in which:
19 I. the superintendent or sheriff or his or her designee in consulta-
20 tion with the [chief medical officer] MEDICAL PROFESSIONAL RESPONSIBLE
21 FOR THE INSTITUTION has made an individualized determination that
22 restraints are necessary to prevent such woman from injuring herself or
23 medical or correctional personnel or others and cannot reasonably be
24 restrained by other means, including the use of additional personnel[.];
25 OR

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

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1 II. THE CORRECTIONAL PERSONNEL DIRECTLY RESPONSIBLE FOR THE TRANSPORT
2 OF SUCH A WOMAN DETERMINE THAT AN EMERGENCY HAS ARISEN IN WHICH
3 RESTRAINTS ARE NECESSARY BECAUSE THE WOMAN POSES AN IMMEDIATE RISK OF
4 SERIOUS INJURY TO HERSELF OR MEDICAL OR CORRECTIONAL PERSONNEL OR OTHERS
5 AND CANNOT REASONABLY BE RESTRAINED BY OTHER MEANS.

6 (B) If a determination has been made PURSUANT TO SUBPARAGRAPH I OR II
7 OF PARAGRAPH (A) OF THIS SUBDIVISION that extraordinary circumstances
8 exist then restraints shall be limited to [handcuffs] WRIST RESTRAINTS
9 in front of the body. The superintendent or sheriff or his or her desig-
10 nee PURSUANT TO SUBPARAGRAPH I OF PARAGRAPH (A) OF THIS SUBDIVISION OR
11 CORRECTIONAL PERSONNEL PURSUANT TO SUBPARAGRAPH II OF PARAGRAPH (A) OF
12 THIS SUBDIVISION shall document IN WRITING the facts upon which the
13 finding of extraordinary circumstances were based within five days of
14 the use of such restraints and shall also document the type of
15 restraints used and the length of time such restraints were used.

16 (C) No restraints of any kind shall be used when such woman is in
17 labor, admitted to a hospital, institution or clinic for delivery, or
18 recovering after giving birth. Any such personnel as may be necessary to
19 supervise the woman during transport to and from and during her stay at
20 the hospital, institution or clinic shall be provided to ensure adequate
21 care, custody and control of the woman, except that no correctional
22 staff shall be present in the delivery room during the birth of a baby
23 unless requested by the medical staff supervising such delivery or by
24 the woman giving birth. The superintendent or sheriff or his or her
25 designee shall cause such woman to be subject to return to such institu-
26 tion or local correctional facility as soon after the birth of her child
27 as the state of her health will permit as determined by the medical
28 professional responsible for the care of such woman. If such woman is
29 confined in a local correctional facility, the expense of such accommo-
30 dation, maintenance and medical care shall be paid by such woman or her
31 relatives or from any available funds of the local correctional facility
32 and if not available from such sources, shall be a charge upon the coun-
33 ty, city or town in which is located the court from which such inmate
34 was committed to such local correctional facility. If such woman is
35 confined in any institution under the control of the department, the
36 expense of such accommodation, maintenance and medical care shall be
37 paid by such woman or her relatives and if not available from such
38 sources, such maintenance and medical care shall be paid by the state.
39 In cases where payment of such accommodations, maintenance and medical
40 care is assumed by the county, city or town from which such inmate was
41 committed the payor shall make payment by issuing payment instrument in
42 favor of the agency or individual that provided such accommodations and
43 services, after certification has been made by the head of the institu-
44 tion to which the inmate was legally confined, that the charges for such
45 accommodations, maintenance and medical care were necessary and are
46 just, and that the institution has no available funds for such purpose.

47 [(b)] (D) Any woman confined in an institution or local correctional
48 facility shall receive notice in writing in a language and manner under-
49 standable to her about the requirements of this section upon her admis-
50 sion to an institution or local correctional facility and again when she
51 is known to be pregnant. The superintendent or sheriff shall publish
52 notice of the requirements of this section in prominent locations where
53 medical care is provided. The department and the sheriff shall provide
54 annual training on provisions of this section to all correctional
55 personnel who are involved in the transportation, supervision or medical
56 care of incarcerated women.

1 [(c)] (E) The department [and sheriff] shall report annually to the
2 governor, the temporary president of the senate, the minority leader of
3 the senate, the speaker of the assembly, the minority leader of the
4 assembly, the chairperson of the senate crime victims, crime and
5 correction committee and the chairperson of the assembly correction
6 committee concerning every use of restraints on a woman under this
7 section, INCLUDING THE REASON SUCH RESTRAINT WAS USED, THE TYPE OF
8 RESTRAINT USED AND THE LENGTH OF TIME SUCH RESTRAINT WAS USED PURSUANT
9 TO PARAGRAPH (B) OF THIS SUBDIVISION, but shall exclude individual iden-
10 tifying information. THE SHERIFF OF EACH COUNTY SHALL REPORT, IN A FORM
11 AND MANNER PRESCRIBED BY THE COMMISSION, EVERY USE OF RESTRAINTS ON A
12 WOMAN UNDER THIS SECTION, INCLUDING THE REASON SUCH RESTRAINT WAS USED,
13 THE TYPE OF RESTRAINT USED AND THE LENGTH OF TIME SUCH RESTRAINT WAS
14 USED PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, ANNUALLY TO THE
15 COMMISSION. THE COMMISSION SHALL INCLUDE SUCH INFORMATION IN ITS ANNUAL
16 REPORT PURSUANT TO SECTION FORTY-FIVE OF THIS CHAPTER, BUT SHALL EXCLUDE
17 IDENTIFYING INFORMATION FROM SUCH REPORT. REPORTS REQUIRED BY THIS
18 SECTION SHALL BE POSTED ON THE WEBSITES MAINTAINED BY THE DEPARTMENT AND
19 THE COMMISSION.

20 S 2. Section 2 of a chapter of the laws of 2015 amending the
21 correction law relating to the restraint of pregnant female prisoners
22 during childbirth, as proposed in legislative bills numbers A. 6430-A
23 and S. 983-A, is amended to read as follows:

24 S 2. This act shall take effect [immediately] ON THE SIXTIETH DAY
25 AFTER IT SHALL HAVE BECOME A LAW.

26 S 3. This act shall take effect immediately; provided, however, that
27 section one of this act shall take effect on the same date and in the
28 same manner as a chapter of the laws of 2015 amending the correction law
29 relating to the restraint of pregnant female prisoners during child-
30 birth, as proposed in legislative bills numbers A. 6430-A and S. 983-A,
31 takes effect.