STATE OF NEW YORK

118

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. L. ROSENTHAL, GALEF, ARROYO, JAFFEE, NIOU, RICHARDSON, DICKENS, JEAN-PIERRE, SIMON, SEAWRIGHT, WRIGHT, COOK, HYNDMAN, AUBRY, MOSLEY, LAVINE, BARRON, BLAKE, ORTIZ, CAHILL, COLTON, D'URSO, CRESPO, RIVERA -- Multi-Sponsored by -- M. of A. FERNANDEZ -- read once and referred to the Committee on Correction

AN ACT to amend the public health law, in relation to establishing the women's health education program for correctional facilities and rights of pregnant inmates; to amend the public health law, in relation to requiring certain testing to be offered; to amend the correction law, in relation to providing pregnant inmates with access to prenatal vitamins and a specialized diet; and to require the department of health to collect data on women's health care in prisons and publish a report

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

Section 1. The public health law is amended by adding a new section 207-b to read as follows:

§ 207-b. Women's health education program in state and local correctional facilities. The commissioner, in consultation with the commissioner of corrections and community supervision and the chair of the state commission of correction, shall establish a women's health education program in state and local correctional facilities. Such program shall educate facility medical staff on the special medical needs of women, including training on providing professional, respectful and informed care of women who have been victims of domestic violence or sexual violence.

§ 2. Paragraph (c) of subdivision 1 and subdivision 2 of section 611 of the correction law, paragraph (c) of subdivision 1 as amended by chapter 17 of the laws of 2016 and subdivision 2 as amended by chapter

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

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242 of the laws of 1930, are amended and a new subdivision 4 is added to read as follows:

(c) No restraints of any kind shall be used when such woman is in labor, admitted to a hospital, institution or clinic for delivery, or recovering after giving birth. Any such personnel as may be necessary to supervise the woman during transport to and from and during her stay at the hospital, institution or clinic shall be provided to ensure adequate care, custody and control of the woman, except that no correctional staff shall be present in the delivery room during the birth of a baby unless requested by the medical staff supervising such delivery or by the woman giving birth. **The woman shall be permitted to have one support person of her choosing accompany her into the delivery room during the birth of the child.** The superintendent or sheriff or his or her designee shall cause such woman to be subject to return to such institution or local correctional facility as soon after the birth of her child as the state of her health will permit as determined by the medical professional responsible for the care of such woman. If such woman is confined in a local correctional facility, the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives or from any available funds of the local correctional facility and if not available from such sources, shall be a charge upon the county, city or town in which is located the court from which such inmate was committed to such local correctional facility. If such woman is confined in any institution under the control of the department, the expense of such accommodation, maintenance and medical care shall be paid by such woman or her relatives and if not available from such sources, such maintenance and medical care shall be paid by the state. In cases where payment of such accommodations, maintenance and medical care is assumed by the county, city or town from which such inmate was committed the payor shall make payment by issuing payment instrument in favor of the agency or individual that provided such accommodations and services, after certification has been made by the head of the institution to which the inmate was legally confined, that the charges for such accommodations, maintenance and medical care were necessary and are just, and that the institution has no available funds for such purpose.

2. A child so born may be returned with its mother to the correctional institution in which the mother is confined unless the chief medical officer of the correctional institution shall certify that the mother is physically unfit to care for the child, in which case the statement of the said medical officer shall be final. A child may remain in the correctional institution with its mother for such period as seems desirable for the welfare of such child, but not after it is one year of age, provided, however, if the mother is in a state reformatory and is to be paroled shortly after the child becomes one year of age, such child may remain at the state reformatory until its mother is paroled, but in no case after the child is eighteen months old. **If the mother is an inmate at a state correctional facility, the department shall inform her of her ability to apply to any nursery program run by the department.** The officer in charge of such institution may cause a child cared for therein with its mother to be removed from the institution at any time before the child is one year of age. He shall make provision for a child removed from the institution without its mother or a child born to a woman inmate who is not returned to the institution with its mother as hereinafter provided. He may, upon proof being furnished by the father or other relatives of their ability to properly care for and maintain such child, give the child into the care and custody of such father or

other relatives, who shall thereafter maintain the same at their own expense. If it shall appear that such father or other relatives are unable to properly care for and maintain such child, such officer shall place the child in the care of the commissioner of public welfare or other officer or board exercising in relation to children the power of a commissioner of public welfare of the county from which such inmate was committed as a charge upon such county. The officer in charge of the correctional institution shall send to such commissioner, officer or board a report of all information available in regard to the mother and the child. Such commissioner of public welfare or other officer or board shall care for or place out such child as provided by law in the case of a child becoming dependent upon the county.

4. The chief medical officer of each correctional facility housing female inmates or his or her designee shall inform any inmate known to be pregnant of her option of participating in pregnancy counseling services and of her right to abortion services.

§ 3. Subdivision 1 of section 2308-a of the public health law, as amended by section 38 of part E of chapter 56 of the laws of 2013, is amended to read as follows:

1. The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require the staff of such clinic or facility to offer to administer to every resident of the state of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests for the detection of sexually transmitted diseases. **For the purposes of this subdivision, the term "facility" shall include a correctional facility as defined in subdivision four of section two of the correction law.**

§ 4. Subdivision 2 of section 140 of the correction law, as added by chapter 516 of the laws of 1995, is amended to read as follows:

2. Subject to the regulations of the department of health, routine medical, dental and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation **the provision of gynecological services for female inmates,** the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic. Routine mental health treatment shall not include psychiatric administration of medication unless it is part of an ongoing mental health plan or unless it is otherwise authorized by law.

§ 5. Subdivision 2 of section 505 of the correction law, as added by chapter 437 of the laws of 2013, is amended to read as follows:

2. Subject to the regulations of the department of health, routine medical, dental and mental health services and treatment is defined for the purposes of this section to mean any routine diagnosis or treatment, including without limitation **the provision of gynecological services for female inmates,** the administration of medications or nutrition, the extraction of bodily fluids for analysis, and dental care performed with a local anesthetic. Routine mental health treatment shall not include psychiatric administration of medication unless it is part of an ongoing mental health plan or unless it is otherwise authorized by law.

§ 6. The correction law is amended by adding a new section 140-a to read as follows:

§ 140-a. Prenatal care. If a pregnant woman is confined to a state or local correctional facility, she shall be given prenatal care comparable to such care available to women in the community. Such care shall

include regular check-ups throughout the course of her pregnancy and education on healthy lifestyle choices of benefit to the woman and her child. Pregnant women confined to such facilities shall also be given prenatal vitamins and a specialized diet tailored to provide their nutritional needs during pregnancy.

§ 7. The commissioner of corrections and community supervision, in conjunction with the commissioner of health shall promulgate such rules and regulations as may be necessary to effectuate the provisions of section six of this act.

§ 8. 1. The department of health, in cooperation with the department of corrections and community supervision, shall conduct a study of women's health care in prisons. Such study shall:

a. collect all available data relating to women's health care in prisons;

b. determine how often women in prisons are being seen by a medical professional;

c. determine how long it takes for women in prisons to be seen by a medical professional;

d. identify what issues women in prisons are most often being seen for;

e. determine the outcomes of women in prisons being seen by a medical professional; and

f. investigate anything deemed relevant by the commissioner of health or the commissioner of corrections and community supervision for the purposes of this study.

2. Upon completion of the study required by subdivision one of this section, the commissioner of health, or his or her designee, shall prepare a report to be given to the governor and the legislature which shall include the findings of such study. Such report shall be filed within one year of the effective date of this act, unless the commissioner of health requests in writing, an extension of time.

3. All other departments or agencies of the state or subdivisions thereof, and local governments shall, at the request of the commissioner of health or the commissioner of corrections and community supervision, provide expertise, assistance, and data that will enable such commissioner to carry out his or her powers and duties.

§ 9. This act shall take effect immediately; provided however, that:

1. Section two of this act shall take effect on the one hundred twentieth day after it shall have become a law; provided however that, effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation of section two of this act on its effective date are authorized to be made by the department of corrections and community supervision in consultation with the department of health on or before such effective date; and

2. Section six of this act shall take effect on the one hundred eightieth day after it shall have become a law.