

# STATE OF NEW YORK

3126

2019-2020 Regular Sessions

## IN SENATE

February 4, 2019

Introduced by Sen. BIAGGI -- read twice and ordered printed, and when printed to be committed to the Committee on Women's Issues

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:

1 Section 1. The public health law is amended by adding a new section  
2 207-b to read as follows:

3 § 207-b. Women's health education program in state and local correc-  
4 tional facilities. The commissioner, in consultation with the commis-  
5 sioner of corrections and community supervision and the chair of the  
6 state commission of correction, shall establish a women's health educa-  
7 tion program in state and local correctional facilities. Such program  
8 shall educate facility medical staff on the special medical needs of  
9 women, including training on providing professional, respectful and  
10 informed care of women who have been victims of domestic violence or  
11 sexual violence.

12 § 2. Paragraph (c) of subdivision 1 and subdivision 2 of section 611  
13 of the correction law, paragraph (c) of subdivision 1 as amended by  
14 chapter 17 of the laws of 2016 and subdivision 2 as amended by chapter  
15 242 of the laws of 1930, are amended and a new subdivision 4 is added to  
16 read as follows:

17 (c) No restraints of any kind shall be used when such woman is in  
18 labor, admitted to a hospital, institution or clinic for delivery, or  
19 recovering after giving birth. Any such personnel as may be necessary to

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

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1 supervise the woman during transport to and from and during her stay at  
2 the hospital, institution or clinic shall be provided to ensure adequate  
3 care, custody and control of the woman, except that no correctional  
4 staff shall be present in the delivery room during the birth of a baby  
5 unless requested by the medical staff supervising such delivery or by  
6 the woman giving birth. The woman shall be permitted to have one support  
7 person of her choosing accompany her into the delivery room during the  
8 birth of the child. The superintendent or sheriff or his or her designee  
9 shall cause such woman to be subject to return to such institution or  
10 local correctional facility as soon after the birth of her child as the  
11 state of her health will permit as determined by the medical profes-  
12 sional responsible for the care of such woman. If such woman is confined  
13 in a local correctional facility, the expense of such accommodation,  
14 maintenance and medical care shall be paid by such woman or her rela-  
15 tives or from any available funds of the local correctional facility and  
16 if not available from such sources, shall be a charge upon the county,  
17 city or town in which is located the court from which such inmate was  
18 committed to such local correctional facility. If such woman is confined  
19 in any institution under the control of the department, the expense of  
20 such accommodation, maintenance and medical care shall be paid by such  
21 woman or her relatives and if not available from such sources, such  
22 maintenance and medical care shall be paid by the state. In cases where  
23 payment of such accommodations, maintenance and medical care is assumed  
24 by the county, city or town from which such inmate was committed the  
25 payor shall make payment by issuing payment instrument in favor of the  
26 agency or individual that provided such accommodations and services,  
27 after certification has been made by the head of the institution to  
28 which the inmate was legally confined, that the charges for such accom-  
29 modations, maintenance and medical care were necessary and are just, and  
30 that the institution has no available funds for such purpose.

31 2. A child so born may be returned with its mother to the correctional  
32 institution in which the mother is confined unless the chief medical  
33 officer of the correctional institution shall certify that the mother is  
34 physically unfit to care for the child, in which case the statement of  
35 the said medical officer shall be final. A child may remain in the  
36 correctional institution with its mother for such period as seems desir-  
37 able for the welfare of such child, but not after it is one year of age,  
38 provided, however, if the mother is in a state reformatory and is to be  
39 paroled shortly after the child becomes one year of age, such child may  
40 remain at the state reformatory until its mother is paroled, but in no  
41 case after the child is eighteen months old. If the mother is an inmate  
42 at a state correctional facility, the department shall inform her of her  
43 ability to apply to any nursery program run by the department. The offi-  
44 cer in charge of such institution may cause a child cared for therein  
45 with its mother to be removed from the institution at any time before  
46 the child is one year of age. He shall make provision for a child  
47 removed from the institution without its mother or a child born to a  
48 woman inmate who is not returned to the institution with its mother as  
49 hereinafter provided. He may, upon proof being furnished by the father  
50 or other relatives of their ability to properly care for and maintain  
51 such child, give the child into the care and custody of such father or  
52 other relatives, who shall thereafter maintain the same at their own  
53 expense. If it shall appear that such father or other relatives are  
54 unable to properly care for and maintain such child, such officer shall  
55 place the child in the care of the commissioner of public welfare or  
56 other officer or board exercising in relation to children the power of a

1 commissioner of public welfare of the county from which such inmate was  
2 committed as a charge upon such county. The officer in charge of the  
3 correctional institution shall send to such commissioner, officer or  
4 board a report of all information available in regard to the mother and  
5 the child. Such commissioner of public welfare or other officer or board  
6 shall care for or place out such child as provided by law in the case of  
7 a child becoming dependent upon the county.

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

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

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

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

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

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

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

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

49 § 140-a. Prenatal care. If a pregnant woman is confined to a state or  
50 local correctional facility, she shall be given prenatal care comparable  
51 to such care available to women in the community. Such care shall  
52 include regular check-ups throughout the course of her pregnancy and  
53 education on healthy lifestyle choices of benefit to the woman and her  
54 child. Pregnant women confined to such facilities shall also be given  
55 prenatal vitamins and a specialized diet tailored to provide their  
56 nutritional needs during pregnancy.

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

5 § 8. 1. The department of health, in cooperation with the department  
6 of corrections and community supervision, shall conduct a study of  
7 women's health care in prisons. Such study shall:

8 a. collect all available data relating to women's health care in pris-  
9 ons;

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

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

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

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

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

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

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

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

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

40 2. Section six of this act shall take effect on the one hundred eight-  
41 ieth day after it shall have become a law.