STATE OF NEW YORK

616--A

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. L. ROSENTHAL, LUPARDO, SEAWRIGHT, OTIS, JACKSON, GONZALEZ-ROJAS, KELLES -- read once and referred to the Committee on Correction -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the correction law, in relation to the rights of pregnant inmates

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

Section 1. 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 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 at least one support person of her choosing accompany her in the delivery room and when such woman is in labor and recovering after giving birth. A support person shall not need to have visited the woman at a correctional facility prior to serving as a support person. A person may not be denied eligibility to serve as a support person solely on the basis of a past criminal conviction or that such person is on probation, conditional release, parole or post release supervision. Any decision by an**

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

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agency to deny a woman's request to have a specific person serve as a support person shall be made with reasons specified in writing within five days of her request and promptly provided to the woman. A support person shall be notified immediately after such woman goes into labor, or immediately after a caesarean section or termination is scheduled. If available, a doula, midwife or other birthing support specialist may also assist during labor and delivery in addition to at least one support person of the woman's choosing. Any woman confined in a state or local correctional facility shall receive notice in writing in a language and manner understandable to her about the requirements of this section upon her admission to such state or local correctional facility and again when she is known to be pregnant. The superintendent or sheriff shall publish notice of the requirements of this section in prominent locations where medical care is provided. 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 a pregnant woman or mother of a child under the age of eighteen months is incarcerated at a state or local correctional facility, the department shall inform her of her ability to apply to any nursery program run by the department and the locality. Any woman confined in a state or local correctional facility shall receive notice in writing in a language and manner understandable to her about the requirements of this section upon her admission to a state or local correctional facility and again when she is known to be pregnant. The superintendent or sheriff shall publish notice of the

requirements of this section in prominent locations where medical care is provided. 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 **or she** 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 **or she** 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. Upon admitting a woman known to be pregnant, or upon learning of pregnancy status, the chief medical officer of each correctional facility housing female inmates, including the medical professional responsible for each local correctional facility housing female inmates, or such officer or professional's designee, shall immediately inform such woman of the option of participating in pregnancy counseling services and the right to abortion services.

§ 2. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rules or regulations necessary for the implementation 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.