STATE OF NEW YORK

2155--A

2023-2024 Regular Sessions

IN ASSEMBLY

January 23, 2023

Introduced by M. of A. L. ROSENTHAL, FORREST, CRUZ, JEAN-PIERRE, GLICK, LUCAS, SEAWRIGHT, REYES, DAVILA, SIMONE, EPSTEIN, SIMON, RAGA, SHIMSKY, LEVENBERG, FAHY, BURDICK, TAPIA -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law and the executive law, in relation to prohibiting the use of restraints on incarcerated individuals during labor, absent extraordinary circumstances, and on pregnant persons during a custodial interrogation

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

Section 1. Subdivision 1 of section 611 of the correction law, as amended by chapter 17 of the laws of 2016, paragraph (c) as separately amended by chapters 322 and 621 of the laws of 2021, is amended to read as follows:

1. (a) If a [~~woman~~] **person** confined in any institution or local correctional facility [~~be~~] **is** pregnant and about to give birth to a child, the superintendent or sheriff in charge of such institution or facility, a reasonable time before the anticipated birth of such child, shall cause such [~~woman~~] **person** to be removed from such institution or facility and provided with comfortable accommodations, maintenance and medical care elsewhere, under such supervision and safeguards to prevent [~~her~~] **their** escape from custody as the superintendent or sheriff or [~~his or her~~] **their** designee may determine. No restraints of any kind shall be used during transport of such [~~woman~~] **person**, a [~~woman~~] **person** who is known to be pregnant by correctional personnel or personnel providing medical services to the institution or local correctional facility, or a [~~woman~~] **person** within eight weeks after delivery or pregnancy outcome, absent extraordinary circumstances in which[~~:~~

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

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~~i. the superintendent or sheriff or his or her designee in consultation with the medical professional responsible for the institution has made an individualized determination that restraints are necessary to prevent such woman from injuring herself or medical or correctional personnel or others and cannot reasonably be restrained by other means, including the use of additional personnel; or~~

~~ii.~~], during transport the correctional personnel directly responsible for the transport of such a [~~woman~~] person determine that an emergency has arisen in which restraints are necessary because the [~~woman~~] person poses an immediate risk of serious injury to [~~herself~~] themself or medical or correctional personnel or others and cannot reasonably be restrained by other means.

(b) If a determination has been made pursuant to [~~subparagraph i or ii of~~] paragraph (a) of this subdivision that extraordinary circumstances exist then restraints shall be limited to wrist restraints in front of the body. The superintendent or sheriff or [~~his or her~~] their designee [~~pursuant to subparagraph i of paragraph (a) of this subdivision~~] or correctional personnel pursuant to [~~subparagraph ii of~~] paragraph (a) of this subdivision shall document in writing the facts upon which the finding of extraordinary circumstances were based within five days of the use of such restraints and shall also document the type of restraints used and the length of time such restraints were used.

(c) No restraints of any kind shall be used when such [~~woman~~] person is in labor, admitted to a hospital[~~, institution~~] or [~~clinic~~] medical facility for delivery, or recovering after giving birth. Any such personnel as may be necessary to supervise the [~~woman~~] person during transport to and from and during [~~her~~] their stay at the hospital, institution or clinic shall be provided to ensure adequate care[~~,~~] and custody [~~and control~~] of the [~~woman, except that no~~] person.

(i) No correctional staff shall be present [~~in the delivery room~~] during the birth of a baby or during counseling and medical care related to the pregnancy and all pregnancy outcomes including abortion, miscarriage, and stillbirth unless requested by the medical staff [~~supervising~~] providing such [~~delivery~~] care or by the [~~woman giving birth~~] person receiving such care.

(ii) The [~~woman~~] person shall be permitted to have at least one support person of [~~her~~] their choosing accompany [~~her in the delivery room and when such woman is in labor and recovering after giving birth~~] them to a hospital or medical facility for labor, birth, and counseling and medical care related to pregnancy and all pregnancy outcomes including abortion, miscarriage and stillbirth and shall be permitted to remain with such support person for the duration of their stay in the hospital or medical facility subject to the visitation rules of that hospital or medical facility. A support person shall not need to have visited the [~~woman~~] person at a correctional facility prior to serving as a support person[~~. A person~~] and may not be denied eligibility to serve as a support person solely on the basis of a past criminal conviction or that such support person is on probation, conditional release, parole or post release supervision. Any decision by an [~~agency~~] institution or local correctional facility to deny a [~~woman's~~] request [~~to have~~] for a specific support person [~~serve as a support person~~] shall be made with reasons specified in writing within five days of [~~her~~] the request and promptly provided to the [~~woman~~] person making the request. A support person shall be notified immediately after such [~~woman~~] person goes into labor, [~~or immediately after a caesarean~~] is scheduled for labor induction or a cesarean section [~~or termination~~], is

identified as having a miscarriage or stillbirth, or is scheduled for medical care for any pregnancy outcome, including abortion, miscarriage, and stillbirth. 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~~], post-partum recovery, and during medical care for and recovery from any other pregnancy outcome including abortion, miscarriage, and stillbirth. The superintendent or sheriff or [~~his or her~~] their designee shall cause such [~~woman~~] person to be subject to return to such institution or local correctional facility as soon after the birth of [~~her~~] their child as the state of [~~her~~] their health will permit as determined by the medical professional responsible for the care of such [~~woman~~] person. [~~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 incarcerated individual 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 incarcerated individual 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 incarcerated individual 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.~~]

(d) Any [~~woman~~] person confined in an institution or local correctional facility shall receive notice in writing in a language and manner understandable to [~~her~~] them about the requirements of this section upon [~~her~~] their admission to an institution or local correctional facility and again when [~~she is~~] they are 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 department and the sheriff shall provide annual training on provisions of this section to all correctional personnel who are involved in the transportation, supervision or medical care of incarcerated [~~women~~] persons.

(e) Force against a pregnant person shall not be used, except as a last resort, and then only in situations in which the staff member reasonably believes that force is necessary to protect themselves, the incarcerated individual, or a use of physical force by the individual that could cause death or serious physical injury. The use of spit masks, chemical agents, tasers, weapons, chokeholds or blows to the body against a pregnant person or any person within eight weeks after delivery or pregnancy outcome shall be strictly prohibited.

(f) The department shall report annually to the governor, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, the minority leader of the assembly, the chairperson of the senate crime victims, crime and correction committee and the chairperson of the assembly correction committee concerning every use of restraints **and force** on a [~~woman~~] **person** under this section, including the reason such restraint was used, the type of restraint used and the length of time such restraint was used pursuant to paragraph (b) of this subdivision, but shall exclude individual identifying information. The sheriff of each county shall report, in a form and manner prescribed by the commission, every use of restraints on a [~~woman~~] **person** under this section, including the reason such restraint was used, **reason such force was used,** the type of restraint used and the length of time such restraint was used pursuant to paragraph (b) of this subdivision, **the type of force used and the length of time such force was used pursuant to paragraph (e) of this subdivision,** annually to the commission. The commission shall include such information in its annual report pursuant to section forty-five of this chapter, but shall exclude identifying information from such report. Reports required by this section shall be posted on the websites maintained by the department and the commission.

§ 2. The executive law is amended by adding a new section 837-y to read as follows:

§ 837-y. Use of restraints on pregnant and post-pregnant persons by law enforcement. Where a person who is known to be pregnant, in labor or delivery, or twelve weeks post-pregnancy is in the custody of law enforcement, subject to custodial interrogation, or has their freedom of action restricted by law enforcement in any significant way, the use of restraints of any kind by law enforcement personnel shall be prohibited. The provisions of this section shall at minimum apply to police stations, holding facilities for prisoners, prosecutors' offices, medical areas and hospitals, and any facility where persons are held in detention in connection with criminal or juvenile delinquency charges that have been or may be filed against them, as well as during transfer to and from such locations. A person's disclosure of their status shall serve as sufficient notice to law enforcement under this provision.

§ 3. This act shall take effect immediately.