STATE OF NEW YORK

3483--A

2023-2024 Regular Sessions

IN ASSEMBLY

February 3, 2023

Introduced by M. of A. L. ROSENTHAL, KELLES, CRUZ, JEAN-PIERRE, GLICK, LUCAS, SEAWRIGHT, REYES, DAVILA, SIMONE, SIMON, RAGA, SHIMSKY, LEVENBERG, 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, in relation to providing breast pumps to certain incarcerated nursing birth parents

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

Section 1. Paragraphs (c), (d) and (e) of subdivision 1 and subdivisions 2 and 4 of section 611 of the correction law, paragraph (c) of subdivision 1 and subdivision 2 as separately amended by chapters 322 and 621 of the laws of 2021, paragraphs (d) and (e) of subdivision 1 as amended by chapter 17 of the laws of 2016 and subdivision 4 as amended by chapter 486 of the laws of 2022, are amended to read as follows:

(c) *i.* No restraints *or force* 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~~] *medical facility* shall be provided to ensure adequate care[~~,~~] *and* custody [~~and control~~] of the [~~woman, except that no correctional~~] *person.*

ii. No correction staff *or volunteers* 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*. [~~The woman~~] *A person who is pregnant and in custody of an institution or local correctional facility*

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

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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 visiting rules of that hospital or medical facility. [~~A~~] Such support person shall not need to have visited the [~~woman~~] person they are supporting at [~~a~~] an institution or local 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~~] Such support person shall be notified immediately after [~~such woman~~] the person they are supporting goes into labor, [~~or immediately after a~~] is scheduled for labor induction or a caesarean 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. In accordance with guidelines from the American Academy of Pediatrics, the opportunity for skin-to-skin contact between the person who gave birth and the child shall be immediately provided. 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 individ-~~

~~ual 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 confined in an institution 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 an institution 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 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.~~

~~(e)~~] 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 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, the type of restraint used and the length of time such restraint was used pursuant to paragraph (b) 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. **(a)** A child so born [~~may~~] **to a person who is incarcerated shall** be returned with its [~~mother~~] **birthing parent** to the [~~correctional~~] institution [~~in which the mother is confined~~] **or local correctional facility** 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~~] **or local correctional facility demonstrates a finding by clear and convincing evidence that such person poses an imminent risk to the health and safety of the child**. A child may remain in the [~~correctional~~] institution **or local correctional facility** with its [~~mother~~] **birthing parent** for such period as seems desirable for the welfare of such child, but not after it is [~~one year~~] **twenty-four months** of age, provided, however, if the [~~mother is in a state reformatory and~~] **birthing parent** is to be [~~paroled~~] **released** shortly after the child becomes [~~one year~~] **twenty-four months** of age, such child may remain at the [~~state reformatory~~] **institution or local correctional facility** until its [~~mother~~] **birthing parent** is [~~paroled~~] **released**, but in no case after the child is [~~eighteen~~] **thirty** months old. If a pregnant [~~woman~~] **person** or [~~mother~~] **postpartum parent** of a child under the age of [~~eighteen~~] **thirty** months is incarcerated at [~~a state~~] **an institution** or local correctional facility, the department shall inform [~~her~~] **such person** of [~~her~~] **their** ability to apply to any nursery program run by the department [~~and~~] **or** the locality. Any [~~woman~~] **person** confined in [~~a state~~] **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 [~~a state~~] **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.

(b) The officer in charge of [~~such~~] **an** institution **or local correctional facility** may cause a child cared for therein with its [~~mother~~] **birth parent** to be removed from the institution **or local correctional facility** at any time before the child is [~~one year~~] **twenty-four months** of age **if, consistent with paragraph (a) of this subdivision, the officer finds that the child's parent is physically unfit to care for their child or if remaining in the institution or local correctional facility is no longer desirable for the welfare of the child**. [~~He or she shall make provision for a child removed from the institution without its mother or a child born to a woman incarcerated individual who is not returned to the institution with its mother as hereinafter provided. He or she~~] **No child shall be removed from the nursery without the express oral and written consent of the person who gave birth or a finding, by clear and convincing evidence, that such person poses an imminent risk to the health and safety of the child and that this risk cannot be mitigated through reasonable efforts on behalf of the institution or local correctional facility. The right to counsel and due process shall be afforded to the incarcerated person as well as to the child prior to, or shortly after, such removal and if the finding above is not sustained, the child shall be immediately returned to the care and custody of the person who is incarcerated. Such officer** may, upon proof being furnished by the [~~father~~] **non-birthing parent** or [~~other~~] relatives of their ability to properly care for and maintain such child, **and with the express written and oral consent of the person who is incarcerated and who gave birth to the child within the previous thirty months,** give the child into the care and custody of such [~~father~~] **non-birthing parent** 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 incarcerated individual 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~~] **person** known to be pregnant, or upon learning of pregnancy **or postpartum** status, the chief medical officer of each **institution or local** correctional facility housing [~~female incarcerated~~] **pregnant or postpartum** individuals **who are incarcerated**, including the medical professional responsible for each **institution or** local correctional facility housing [~~female incarcerated~~] **pregnant or postpartum** individuals **who are incarcerated**, or such officer or professional's designee, shall immediately [~~inform~~] **provide such person with supportive pregnancy or postpartum options counseling consistent with their reproductive rights as outlined in section twenty-five hundred ninety-nine-aa of the public health law, including informing** such

[~~woman~~] person of [~~the option of participating in pregnancy counseling services and the right to abortion services~~] their right to receive an abortion and their right to continue their pregnancy free from discrimination. If such person chooses to continue their pregnancy, they shall be informed about the existence of services related to pregnancy and children including pregnancy or postpartum related health care and nursery and parenting programs and shall be referred to the correctional or civilian staff or volunteers who provide such services. If such person chooses to have an abortion or requests information about abortion services, they shall be referred immediately to medical personnel in charge of facilitating those services and, if such person requests, shall have access to an abortion without delay. An institution or local correctional facility shall not impose a deadline for a person to receive an abortion that is contrary to section twenty-five hundred ninety-nine-bb of the public health law and shall not permit delays that interfere with such person's ability to receive an abortion within the timeframe permissible under such law. An institution or local correctional facility shall not coerce or otherwise attempt to influence a person's decisions about receiving an abortion or continuing their pregnancy or impose punishment of any type upon a person for changing their mind about receiving an abortion or continuing their pregnancy.

§ 2. Section 611 of the correction law is amended by adding four new subdivisions 5, 6, 7 and 8 to read as follows:

5. A person who gives birth in a hospital or medical facility while in custody of an institution or local correctional facility shall be located in the same area and provided with the same birthing and post-partum room accommodations as a person who gives birth while living in the community. These accommodations shall include placing such person's newborn in their room for the duration of their post-partum stay consistent with subdivision three of section twenty-five hundred five-a of the public health law, unless such person requests otherwise or hospital or medical facility personnel determine a different placement is necessary for the health of such person or their newborn. Such person shall be permitted to keep all health and newborn related supplies and equipment provided to them by the hospital or medical facility upon their return to the institution or local correctional facility, including but not limited to diapers, breast pump equipment, breastfeeding supplies, breast pads, sanitary napkins, underwear, water bottle, heating pad, perineal squirt bottles, sitz baths, and health creams, ointments, and sprays. Such person and their newborn shall be provided with uninterrupted access to therapeutically equivalent medication as prescribed by medical personnel at the hospital or medical facility for a duration consistent with the timeframe prescribed by such personnel.

6. (a) For purposes of this subdivision, a breastfeeding parent is defined as:

(i) a parent in custody of an institution or local correctional facility who lives with their child pursuant to subdivisions two and three of this section; and

(ii) a parent in custody of an institution or local correctional facility who is able to produce breast milk of any amount and whose child is living in the community and is thirty-six months of age or younger.

(b) (i) A breastfeeding parent as defined in paragraph (a) of this subdivision shall have the right to:

(A) breastfeed their child consistent with the rights enumerated in subdivision three of section twenty-five hundred five-a of the public health law;

(B) breastfeed their child in any location consistent with section seventy-nine-e of the civil rights law or use a breast pump or express breast milk in any location, provided that the institution or local correctional facility has authorized such parent and their child to be in such location;

(C) breastfeed and express breast milk at a frequency determined by such parent;

(D) store breast milk at the institution or local correctional facility in a fashion consistent with the requirements set forth in paragraphs (f) and (g) of this subdivision; and

(E) if such parent is not living with their child, designate an individual in the community to gather breast milk from the institution or local correctional facility for the purpose of delivering the breast milk to their child.

(ii) An institution or local correctional facility shall not require a parent to breastfeed or discriminate against or penalize in any way a parent for their breastfeeding decisions and actions.

(c) (i) An institution or local correctional facility shall provide a breastfeeding parent, as defined in paragraph (a) of this subdivision, with adequate time to breastfeed and express and collect breastmilk and shall not penalize them for engaging in these activities consistent with section two hundred six-c of the labor law, including permitting breastfeeding parents to participate in jobs and programs that run simultaneous to breastfeeding related activities.

(ii) The institution or local correctional facility shall also provide such parent with timely access to a room for breastfeeding or expressing breast milk consistent with section two hundred six-c of the labor law, including that the room shall be private, well lit, nearby access to clean running water, equipped with outlets for the use of an electric breast pump and, at a minimum, with a chair and working surface on which breast pump parts can be placed. Such room shall not be a restroom or toilet stall and shall not be used for any other purpose or function while being used for breastfeeding or expressing breast milk.

(d) (i) An institution or local correctional facility shall provide a breastfeeding parent, as defined in paragraph (a) of this subdivision, with the following:

(A) a personal electric pump with associated parts including flanges, valves, membranes, connections, tubes, and collection bottles;

(B) a personal manual pump;

(C) a personal breastfeeding cover, personal pillow, and other personal items that allow for comfort and privacy during breastfeeding and expressing breast milk;

(D) comprehensive current information about breastfeeding and lactation that reflects standards of the department of health in a language and manner understandable to such parent; and

(E) access to breastfeeding and lactation assistance from personnel with relevant expertise and, if available, other individuals incarcerated at the institution or local correctional facility who work in or otherwise support pregnancy or child related programming and are able to provide breastfeeding and lactation support.

(ii) The institution or local correctional facility shall bring such parent these materials upon their request in a timely fashion regardless of where such parent is located in the institution or facility.

(e) Upon such parent's request for infant formula, the institution or local correctional facility shall provide such parent with formula that meet standards and nutrient requirements set forth by the United States food and drug administration. If such parent determines that their infant is intolerant to or otherwise made physically uncomfortable by the formula provided, the institution or local correctional facility shall provide alternate formulas until such parent determines that one is sufficient for their infant. Prior to making their determination, such parent shall be afforded the opportunity to discuss formula related issues with personnel providing lactation care and pediatric care in that institution or local correctional facility.

(f) An institution or local correctional facility shall acquire breast pump parts and breast milk storage devices only from organizations and agencies that are in compliance with section 37-0505 of the environmental conservation law, and shall clean or allow a breastfeeding parent, as defined in paragraph (a) of this subdivision, to clean breast pump parts and breast milk storage devices at a frequency consistent with regulations set forth by the department of health.

(g) An institution or local correctional facility shall store breastmilk safely in a refrigerator or comparable cooling unit consistent with guidelines set forth by the department of health until it is ready for consumption by the child of a breastfeeding parent, as defined in paragraph (a) of this subdivision, or for pick up by a designated individual pursuant to paragraph (b) of this subdivision.

7. (a) The department and commission shall compile data outlined respectively in paragraphs (b) and (c) of this subdivision for an annual report 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 health committee, the chairperson of the senate crime victims, crime and correction committee, the chairperson of the assembly health committee, the chairperson of the assembly correction committee, the chairperson of the legislative women's caucus, and the chairperson of the Black, Puerto Rican, Hispanic and Asian legislative caucus. Such data shall be disaggregated by institution and local correctional facility and reported in a de-identified fashion. Reports issued pursuant to this paragraph shall be posted on the websites maintained by the department and the commission.

(b) Each institution shall work with relevant personnel and contracted external health care providers to collect the following data and provide it in a de-identified fashion to the department for the purpose outlined in paragraph (a) of this subdivision:

(i) the number of individuals known to be pregnant upon admission;

(ii) the number of individuals identified as being pregnant while in custody, including the number participating in a work release program and the number in custody for a parole violation;

(iii) the average daily census of pregnant individuals;

(iv) the number of ectopic pregnancies, molar pregnancies, abortions, miscarriages, stillbirths, vaginal deliveries, and caesarean deliveries;

(v) the number of pregnancies determined by medical personnel to be high risk and the reasons for such determinations;

(vi) for each newborn, the gestational age at delivery, birth weight, and length of stay, if any, in a neonatal intensive care unit;

(vii) for pregnant individuals, their race, ethnicity, gender identity, age, crime of conviction, and county of conviction;

(viii) for individuals who apply for a nursery program, their race, ethnicity, gender identity, age, crime of conviction, and county of conviction, whether those individuals were approved or denied for the program, along with specific and detailed reasons for denials, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, or the safety of the individual, child, or others in the nursery;

(ix) the number of babies who do not return to an institution with their parent and the reasons, including denial for a nursery program, and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care;

(x) for institutions with a nursery program, the number of nursery beds available and the number of beds utilized each month;

(xi) the length of time between each nursery application and decision, the length of time between each decision and the birth of the child, and if admission is granted, the length of time between the decision and placement of the individual in the nursery;

(xii) the number of individuals participating in the nursery program;

(xiii) the number of children who enter a nursery from the community;

(xiv) the number of individuals removed from the nursery disaggregated by race, ethnicity, gender identity, age, crime of conviction, county of conviction, and length of nursery stay, along with specific and detailed reasons for removals, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, and the safety of the individual, child, or others in the nursery;

(xv) the number of babies removed from a nursery program and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care; and

(xvi) the number of babies who return to the community with their parent after being in a nursery program and the length of time spent in the nursery.

(c) Each local correctional facility shall work with relevant personnel and contracted external health care providers to collect the following data and provide it in a de-identified fashion to the commission for the purpose outlined in paragraph (a) of this subdivision:

(i) the number of individuals known to be pregnant upon admission;

(ii) the number of individuals identified as being pregnant while in custody and the under custody status of each pregnant individual, including whether the individual is detained or sentenced;

(iii) the average daily census of pregnant individuals;

(iv) the number of ectopic pregnancies, molar pregnancies, abortions, miscarriages, still births, vaginal deliveries, and caesarean deliveries;

(v) the number of pregnancies determined by medical personnel to be high risk and the reasons for such determinations;

(vi) for each newborn, the gestational age at delivery, birth weight, and length of stay, if any, in a neonatal intensive care unit;

(vii) for pregnant individuals, their race, ethnicity, gender identity, age, crime of conviction, and county of conviction;

(viii) for individuals who apply for a nursery program, their race, ethnicity, gender identity, age, crime of conviction, county of conviction, and under custody status, including whether the individual is detained or sentenced, whether those individuals were approved or denied for the program, along with specific and detailed reasons for denials, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, or the safety of the individual, child, or others in the nursery;

(ix) the number of babies who do not return to a local correctional facility with their parent and the reasons, including denial for a nursery program, and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care;

(x) for local correctional facilities with a nursery program, the number of nursery beds available and the number of beds utilized each month;

(xi) the length of time between each nursery application and decision, the length of time between each decision and the birth of the child, and if admission is granted, the length of time between the decision and placement of the individual in the nursery;

(xii) the number of individuals participating in the nursery program;

(xiii) the number of children who enter a nursery from the community;

(xiv) the number of individuals removed from the nursery disaggregated by race, ethnicity, gender identity, age, crime of conviction, county of conviction, and length of nursery stay, along with specific and detailed reasons for removals, including how they may relate to the crime of conviction, criminal record, custodial history, history of violence, history of involvement with child protective services, or history of substance use of the individual, the mental or physical health conditions of the individual or child, and the safety of the individual, child, or others in the nursery;

(xv) the number of babies removed from a nursery program and where those babies are placed, including non-kinship foster care, kinship foster care, with the other parent, with a friend, and with a family member not in foster care; and

(xvi) the number of babies who return to the community with their parent after being in a nursery program and the length of time spent in the nursery.

8. Any person confined in an institution or local correctional facility that houses pregnant or postpartum individuals or individuals who may become pregnant shall receive notice in writing in a language and manner understandable to them about the requirements contained in each subdivision of this section upon their admission and again, regardless of the institution or local correctional facility in which they are housed, if they are known to be pregnant or to be a breastfeeding parent, as defined in paragraph (a) of subdivision six this section, or to be eligible for their child to join them in an institution or local correctional facility pursuant to subdivisions two and three of this section. The superintendent or sheriff shall publish notice of the requirements contained in each subdivision of this section in prominent locations where pregnancy related care and child related care are provided. The department and the sheriff shall provide annual training on the provisions contained in each subdivision of this section for all correc-

tional, civilian and volunteer personnel who are involved in the transportation, supervision or care of pregnant people or breastfeeding parents, as defined in paragraph (a) of subdivision six this section, or parents eligible for their child to join them in an institution or local correctional facility pursuant to subdivisions two and three of this section.

§ 3. This act shall take effect immediately.