STATE OF NEW YORK

7132--A

Cal. No. 1272

2023-2024 Regular Sessions

IN SENATE

May 18, 2023

Introduced by Sens. SALAZAR, BAILEY, BRISPORT, BROUK, CLEARE, FERNANDEZ, GONZALEZ, HARCKHAM, JACKSON, LIU, MYRIE, RAMOS, RIVERA, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- recommitted to the Committee on Crime Victims, Crime and Correction in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the correction law, in relation to promoting the health, safety, and human rights of incarcerated pregnant individuals, incarcerated birthing parents of children and their children

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

Section 1. Legislative purpose and findings. People incarcerated in institutions or local correctional facilities face unique health risks during pregnancy, childbirth, postpartum, and early childcare. Lack of appropriate prenatal, obstetric, and postpartum medical care, and appropriate health and safety measures, can result in serious harm to these incarcerated people and their children. Pregnant and postpartum people who are incarcerated and such person's young children need prenatal, obstetric, and pediatric care, as well as developmentally-appropriate resources provided in a safe, healthy, and nurturing environment. Unless comprehensive and compassionate laws, policies, and practices are in place, the rights and care of pregnant and postpartum people who are incarcerated and such person's young children may be compromised by the conditions of confinement in correctional institutions or facilities.

§ 2. The section heading of section 611 of the correction law, as amended by chapter 322 of the laws of 2021, is amended to read as follows:

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

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[~~Births to incarcerated individuals of correctional institutions and care of children of incarcerated individuals of correctional institutions~~] Rights and care of pregnant and postpartum people who are incarcerated and such persons' children.

§ 3. Subdivisions 2, 3 and 4 of section 611 of the correction law, subdivision 2 as separately amended by chapters 322 and 621 of the laws of 2021, subdivision 3 as amended by chapter 242 of the laws of 1930, and subdivision 4 as amended by chapter 486 of the laws of 2022, are amended and a new subdivision 7 is added to read as follows:

2. Pregnant and postpartum people who are incarcerated shall be provided with comprehensive prenatal and perinatal care, including all necessary prenatal screening and diagnostic tests, consultation and treatment, including treatment by specialists, and appropriate medical care after delivery or other pregnancy outcome, including postpartum physical, mental, and reproductive health care, as recommended by the American college of obstetricians and gynecologists. The commissioner may establish rules and regulations relating to conditions in the institution or local correctional facility, treatment and care that shall include, but is not limited to:

(a) regularly scheduled obstetric care, beginning in early pregnancy and continuing through the postpartum period. No correction staff or volunteers shall be present during these examinations unless requested by the pregnant or postpartum person or by the medical staff when the situation poses a clear risk of danger to the medical staff or others;

(b) medical care during labor and delivery, which shall include care by qualified medical personnel and necessary medical equipment, including full access to pain management medications when safe;

(c) screening for and evidence-based treatment and medication for opioid use disorder, smoking cessation, alcohol use disorder and other substance use disorders as needed with prior written and oral informed consent specific to the test;

(d) screening for HIV, hepatitis B, syphilis, chlamydial infection, and Neisseria Gonorrheae, as recommended by the American academy of pediatrics and the American college of obstetricians and gynecologists;

(e) counselling access to influenza and Tdap vaccines;

(f) screening for mental health concerns and psychological and psychiatric therapy and treatment as needed, including consultation regarding psychiatric medications and provision to psychiatric medications that are safe during pregnancy;

(g) appropriate hydration and nutrition. Such hydration and nutrition shall include the provision of additional portions of food, fresh fruits, vegetables, and vitamins in order to safely deliver a child and breast feed them;

(h) safe and appropriate housing and living conditions, including adequate bedding, clothing, and personal hygiene and self-care supplies;

(i) privacy with regard to the care of pregnancy- and postpartum-related conditions;

(j) regular access to safe and appropriate exercise facilities;

(k) prevention from exposure to substances or chemicals that could present a risk of harm to themselves or such person's fetus;

(l) reasonable accommodations for sleep, rest, and work requirements;

(m) freedom from discrimination with respect to access to services, education or programming, including programming related to early release or sentence-shortening options; and

(n) telephonic, video, or in-person consultations with legal counsel of their choice regarding their decisions and appropriate peer and

social support of other incarcerated parents, whether in person, online or via videoconference. Such postpartum people shall also have access to reasonable technology to take and share photos of such person's child.

3. 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~~] shall have the right to remain in the [~~correctional~~] institution or local correctional facility 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~~] birthing parent until the child is eighteen months old, however, if the birthing parent is to be paroled by the time the child becomes twenty-four months of age, such child may remain at the institution or local correctional facility until the birthing parent is paroled. If a pregnant [~~woman or mother~~] person or postpartum parent of a child under the age of eighteen 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 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. [~~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 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 birthing parent 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. The officer in charge of an institution or local correctional facility may, upon proof being furnished by the [~~father~~] non-birthing parent or other relatives of [~~their~~] such relatives' 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 eighteen 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~~] non-birthing parent 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~~] birthing parent 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. If it is found that the non-birthing parent or relatives are not a suitable placement and the commissioner of public welfare does not have placement for the child then the child may remain in the institution or local correctional facility until the child is thirty months old.

[~~3.~~] 4. (a) If any [~~woman~~] person, committed to any such [~~correctional~~] institution or local correctional facility at the time of such commitment is the [~~mother~~] postpartum person of a [~~nursing~~] child in [~~her~~] such person's care under [~~one year~~] eighteen months of age, such child may accompany [~~her~~] such person to such institution if [~~she~~] such person is physically fit to have the care of such child, subject to the provisions of subdivision [~~two~~] three of this section. If any [~~woman~~] person committed to any such institution at the time of such commitment is the [~~mother~~] birthing parent of, and has under [~~her~~] their exclusive care, a child more than [~~one year~~] eighteen months of age the justice or magistrate committing such [~~woman~~] person shall refer such child to 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 the [~~woman~~] person is committed to be cared for as provided by law in the case of a child becoming dependent upon the county, unless it is found that the non-birthing parent or relatives are not a suitable placement and the commissioner of public welfare does not have placement for the child in which case the child may remain in the institution or local correctional facility until the child is thirty months old. 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 correctional institution or 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. The officer in charge of an institution or local correctional facility may, upon proof being furnished by the non-birthing other parent or other relatives of such parent or other relatives' 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 eighteen months, give the child into the care and custody of such non-birthing parent or other relatives, who shall thereafter maintain the same at such non-birth parent or other relatives, who shall thereafter maintain the same at such non-birth parent or other relatives' own expense.

(b) Separation or the threat of separation of an incarcerated person who is caring for such person's child under the age of eighteen months in the nursery of the institution or local correctional facility shall never be used as a disciplinary tool or sanction.

(c) No person shall care for the child without the express permission of the person who is incarcerated and who gave birth to the child.

(d) People who are incarcerated and who are caring for such person's child in the nursery while incarcerated shall have quiet and private sleeping spaces until such person's child is weaned or such child consistently sleeps through the night, whichever occurs later.

(e) People who are incarcerated and who have given birth and who are caring for such person's child in the nursery of the institution or local correctional facility shall have timely consultations with pediatricians, including in-person consultations.

(f) People who are incarcerated and who have given birth and who are caring for such person's child in the nursery of the institution or local correctional facility shall be provided with appropriate over-the-counter medications for such person's child, regardless of whether the birthing parent has consulted with a pediatrician.

(g) People who are incarcerated and who have given birth within the previous eighteen months shall be provided with counseling regarding all options open to them, including all rights under this law to postpartum care, to maintain the care and custody of such person's child while incarcerated, all rights of such child to receive pediatric care and a safe, nurturing and developmentally appropriate environment, and alternative care arrangements for such person's child.

(h) Under no circumstances shall a person who has given birth within the prior eighteen months and who is caring for such person's child while incarcerated be subjected to isolation or segregated confinement, with or without such person's child.

[~~4.~~] 5. Children born to people who are incarcerated and who are cared for in the nursery of the institution or local correctional facility shall have the right to the following:

(a) timely and appropriate pediatric care, including all necessary medical and developmental testing, as recommended by the American academy of pediatrics;

(b) early intervention or other special medical, developmental or educational services when needed, via experts within or outside the facility;

(c) a clean, safe and nurturing environment for children, which includes safe and appropriate sleeping arrangements that reduce the risk of sudden infant death syndrome, safe and appropriate playing, eating, and bathing spaces, adequate hygiene and personal care supplies, adequate over-the-counter medication for common conditions such as colds, teething pain, and diaper rash, and daily access to natural light, quiet, and music;

(d) full opportunity to bond with such child's birthing parents, including consistent and extensive physical skin-to-skin contact from the moment of birth;

(e) healthy nutrition, including, breastfeeding or breast milk that has been pumped, stored and warmed, if such incarcerated person who gave birth so chooses;

(f) safe and appropriate clothing and age-appropriate toys and books;

(g) a safe place separated from the general incarcerated population;

(h) reasonable visiting hours from family and friends, subject to the consent of such person who gave birth; and

(i) time outdoors.

6. Upon admitting a [~~woman~~] **person** known to be pregnant, or upon learning of pregnancy status, the chief medical officer of each **institution or local** correctional facility housing [~~female~~] **pregnant or postpartum** incarcerated individuals, including the medical professional responsible for each local correctional facility housing [~~female~~] **pregnant or postpartum** incarcerated individuals, or such officer or professional's designee, shall immediately inform such [~~woman~~] **person** of the option of participating in pregnancy counseling services and the right to abortion services.

7. Enforcement. (a) The department or the commission shall issue uniform minimum standards regarding procedures and the implementation of this section within one hundred eighty days of the effective date of the chapter of the laws of two thousand twenty-four that amended this section.

(b) If an individual who is incarcerated claims that either they or the child in their care have suffered as a result of conduct prohibited under this section or have been denied the rights provided in this section, the provisions of this section shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

§ 4. Subdivision 33 of section 2 of the correction law, as added by chapter 93 of the laws of 2021, is amended to read as follows:

33. "Special populations" means any person: (a) twenty-one years of age or younger; (b) fifty-five years of age or older; (c) with a disability as defined in paragraph (a) of subdivision twenty-one of section two hundred ninety-two of the executive law; or (d) who is pregnant, in the first [~~eight weeks~~] **three months** of the post-partum recovery period after giving birth, or caring for a child in a correctional institution pursuant to [~~subdivisions two or three of~~] section six hundred eleven of this chapter.

§ 5. This act shall take effect immediately.