STATE OF NEW YORK

7630

2023-2024 Regular Sessions

IN ASSEMBLY

May 25, 2023

Introduced by M. of A. KELLES -- read once and referred to the Committee on Correction

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; and to repeal section 611 of the correction law relating to births to incarcerated individuals and care of children by incarcerated individuals

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

Section 1. Section 611 of the correction law is REPEALED and a new section 611 is added to read as follows:

§ 611. Pregnant incarcerated individuals. 1. Purpose and findings. Individuals confined in correctional institutions or state or local correctional facilities face unique health risks during pregnancy and childbirth, and lack of appropriate prenatal, obstetric and postpartum medical care can result in serious harm to both the birthing parent and the child. The rights of pregnant individuals and their children may be compromised by the conditions of confinement and the policies and practices of correctional institutions and facilities.

2. Provisions regarding pregnant incarcerated individuals. (a) Pregnant incarcerated individuals shall be provided with comprehensive prenatal care, including all necessary testing, and all necessary treatment, as recommended by the American College of Obstetricians and Gynecologists, the American Medical Association, the American College of Nurse-Midwives, and the Association of Women's Health, Obstetric and Neonatal Nurses.

(b) Pregnant incarcerated individuals shall be provided with appropriate medical care during labor and delivery, which shall include access to qualified medical personnel and necessary medical equipment, as recommended by the American College of Obstetricians and Gynecologists and in conformity with the standards set forth by the American Medical

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

LBD11258-01-3

Association, the American Congress of Obstetricians and Gynecologists, and the American College of Nurse-Midwives.

(c) Pregnant incarcerated individuals shall be provided with opioid use disorder treatment and evidence-based treatment for other substance use disorders as needed.

(d) Pregnant incarcerated individuals shall be provided with psychological and psychiatric therapy and treatment as needed, including consultation regarding psychiatric medications that are safe during pregnancy.

(e) Pregnant incarcerated individuals shall be provided with appropriate hydration and nutrition, in accordance with the guidelines set forth by the American Medical Association and the American College of Obstetricians and Gynecologists. Such hydration and nutrition shall include access to additional portions of food, fresh fruits and vegetables, and to prenatal vitamins.

(f) Pregnant incarcerated individuals shall be provided with safe and appropriate housing and living conditions, including access to adequate bedding, clothing, and personal hygiene supplies, in accordance with the guidelines set forth by the American Medical Association and the American College of Obstetricians and Gynecologists.

(g) Pregnant incarcerated individuals shall be afforded privacy.

(h) Pregnant incarcerated individuals shall be afforded regular access to safe and appropriate exercise facilities.

(i) Pregnant incarcerated individuals shall not be exposed to substances or chemicals that could present a risk of harm to the birthing parent or fetus.

(j) Pregnant incarcerated individuals shall be afforded safety and protection from potential assaults from incarcerated people or correctional officers given their increased vulnerability.

(k) Pregnant incarcerated individuals shall not be subjected to work requirements that could injure or harm them or their fetuses.

(l) Pregnant incarcerated individuals shall be provided with access to counseling regarding all options open to them, including abortion, adoption, and giving birth, including all rights under this law to maintain the care and custody of their children while incarcerated. Pregnant incarcerated individuals shall be provided telephonic, video, or in in-person access to legal counsel of their choice regarding these decisions.

3. Provisions regarding postpartum care. (a) Incarcerated individuals shall have access to appropriate medical care after delivery, including postpartum physical, mental, and reproductive health care, as determined by a licensed health care professional, as recommended by the American College of Obstetricians and Gynecologists.

(b) Incarcerated individuals shall have access to appropriate clothing and appropriate hygiene and self-care supplies after delivery, in accordance with the guidelines set forth by the American Medical Association and the American College of Obstetricians and Gynecologists.

(c) Incarcerated birthing parents of children shall have access to sufficient hydration and nutrition to be able to nurse their children in accordance with the child's nutritional needs.

(d) Incarcerated birthing parents of children shall have access to lactation consultants and to safe, private, quiet, and hygienic places to nurse their children at all hours. Incarcerated birthing parents shall have the freedom to make the decision of whether to nurse their child and when to wean their child based on the best interest of the child.

(e) Incarcerated birthing parents shall have access to reasonably quiet and private sleeping spaces until their child is weaned or their child consistently sleeps through the night, whichever occurs later. Incarcerated birthing parents shall be excused from roll call or other interruptions if necessary to allow for reasonable napping during such time period.

(f) Incarcerated birthing parents of children shall have access to reasonable and appropriate opportunities for exercise.

(g) Incarcerated birthing parents of children shall be provided with appropriate parenting, self-care, and health education, including education regarding mental and reproductive health, provided by nonprofit organizations.

(h) Incarcerated birthing parents of children shall have access to appropriate peer and social support of other incarcerated birthing parents, whether in person, online, or via videoconference.

(i) Incarcerated birthing parents of children shall have access to reasonable technology to take photos of their children and to share such photos with family and friends outside the correctional facility.

4. Human rights of incarcerated pregnant individuals and incarcerated birthing parents of children. (a) Segregated confinement of pregnant individuals and of individuals who have given birth within the previous three months shall be strictly forbidden.

(b) Shackling of pregnant individuals and individuals who have given birth within the previous three months shall be strictly forbidden.

(c) Separation of an incarcerated birthing parent from their child, or threatened separation of a birthing parent from their child, shall not be used as a disciplinary tool or sanction.

(d) A child shall not be removed from the care of its incarcerated birthing parent without the birthing parent's express consent unless the birthing parent is found to present a serious and immediate safety risk to their child in violation of state child welfare law.

(e) No person shall care for the child without the incarcerated birthing parent's express permission.

(f) Incarcerated birthing parents of children shall have reasonable rights to privacy, especially when nursing.

(g) Incarcerated birthing parents of children shall be given complete and accurate information regarding their legal rights and responsibilities vis-a-vis their children.

5. Care of children born to incarcerated individuals. (a) Children born to incarcerated individuals shall receive timely and appropriate pediatric care, including all necessary medical and developmental testing, as recommended by the American College of Obstetricians and Gynecologists, and all necessary treatment, as recommended by the American Medical Association, the American Congress of Obstetricians and Gynecologists, and the Association of Women's Health, Obstetric and Neonatal Nurses. Incarcerated birthing parents of children shall have timely access to consultation with pediatricians, whether in-person or via videoconference or telephone. Incarcerated birthing parents of children shall have timely access to appropriate over-the-counter medications for their children, regardless of whether the birthing parent has consulted with a pediatrician.

(b) Children in need of early intervention or other special medical, developmental or educational services shall be given full access to care, via experts within or outside the facility.

(c) Children born to incarcerated individuals shall be, at all times, in a clean, safe and nurturing environment for children, which includes

safe and appropriate sleeping arrangements, safe and appropriate playing, eating, and bathing spaces, and adequate hygiene supplies.

(d) Children born to incarcerated individuals shall be provided with full opportunity to bond with their birthing parents, including consistent and extensive physical contact and consistent nursing.

(e) Children born to incarcerated individuals shall be provided with healthy nutrition, including, if the child's birthing parent so chooses, breast milk that has been pumped, stored, and warmed by the birthing parent in a safe and hygienic location. Children born to incarcerated individuals shall have access to such breast milk, if the birthing parent so chooses, regardless of whether the child remains with the birthing parent in the institution or facility.

(f) Children born to incarcerated individuals shall be provided with safe and appropriate clothing and age-appropriate toys and books.

(g) Children born to incarcerated individuals shall be protected from violence or recklessness from guards or incarcerated individuals.

(h) Children born to incarcerated individuals shall be afforded reasonable visiting hours from family and friends, subject to the birthing parent's consent.

(i) Children born to incarcerated individuals shall be afforded reasonable time outdoors with their birthing parents.

6. Enforcement. The department shall issue uniform minimum standards regarding procedures and the implementation of this section within one hundred eighty days of the effective date of this section.

§ 2. This act shall take effect immediately.