

# 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 -- recommended 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:

1 Section 1. Legislative purpose and findings. People incarcerated in  
2 institutions or local correctional facilities face unique health risks  
3 during pregnancy, childbirth, postpartum, and early childcare. Lack of  
4 appropriate prenatal, obstetric, and postpartum medical care, and appropriate health and safety measures, can result in serious harm to these  
5 incarcerated people and their children. Pregnant and postpartum people  
6 who are incarcerated and such person's young children need prenatal,  
7 obstetric, and pediatric care, as well as developmentally-appropriate  
8 resources provided in a safe, healthy, and nurturing environment. Unless  
9 comprehensive and compassionate laws, policies, and practices are in  
10 place, the rights and care of pregnant and postpartum people who are  
11 incarcerated and such person's young children may be compromised by the  
12 conditions of confinement in correctional institutions or facilities.  
13  
14 § 2. The section heading of section 611 of the correction law, as  
15 amended by chapter 322 of the laws of 2021, is amended to read as  
16 follows:

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

LBD11258-07-4

1 ~~[Births to incarcerated individuals of correctional institutions and~~  
2 ~~care of children of incarcerated individuals of correctional insti-~~  
3 ~~tutions]~~ Rights and care of pregnant and postpartum people who are  
4 incarcerated and such persons' children.

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

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

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

25 (b) medical care during labor and delivery, which shall include care  
26 by qualified medical personnel and necessary medical equipment, includ-  
27 ing full access to pain management medications when safe;

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

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

35 (e) counselling access to influenza and Tdap vaccines;

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

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

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

46 (i) privacy with regard to the care of pregnancy- and postpartum-re-  
47 lated conditions;

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

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

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

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

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

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

4 3. A child [~~so~~] born [~~may~~] to a person who is incarcerated shall be  
5 returned with its [~~mother~~] birthing parent to the [~~correctional~~] insti-  
6 tution [~~in which the mother is confined~~] or local correctional facility  
7 unless the chief medical officer of the [~~correctional~~] institution  
8 [~~shall certify that the mother is physically unfit to care for the~~  
9 ~~child, in which case the statement of the said medical officer shall be~~  
10 ~~final~~] or local correctional facility demonstrates a finding by clear  
11 and convincing evidence that such person poses an imminent risk to the  
12 health and safety of the child. A child [~~may~~] shall have the right to  
13 remain in the [~~correctional~~] institution or local correctional facility  
14 with its [~~mother for such period as seems desirable for the welfare of~~  
15 ~~such child, but not after it is one year of age, provided, however, if~~  
16 ~~the mother is in a state reformatory and is to be paroled shortly after~~  
17 ~~the child becomes one year of age, such child may remain at the state~~  
18 ~~reformatory until its mother is paroled, but in no case after~~] birthing  
19 parent until the child is eighteen months old, however, if the birthing  
20 parent is to be paroled by the time the child becomes twenty-four months  
21 of age, such child may remain at the institution or local correctional  
22 facility until the birthing parent is paroled. If a pregnant [~~woman or~~  
23 ~~mother~~] person or postpartum parent of a child under the age of eighteen  
24 months is incarcerated at [~~a state~~] an institution or local correctional  
25 facility, the department shall inform [~~her~~] such person of [~~her~~] their  
26 ability to apply to any nursery program run by the department and the  
27 locality. Any [~~woman~~] person confined in [~~a state~~] an institution or  
28 local correctional facility shall receive notice in writing in a  
29 language and manner understandable to [~~her~~] them about the requirements  
30 of this section upon [~~her~~] their admission to [~~a state~~] an institution  
31 or local correctional facility and again when [~~she is~~] they are known to  
32 be pregnant. The superintendent or sheriff shall publish notice of the  
33 requirements of this section in prominent locations where medical care  
34 is provided. [~~The officer in charge of such institution may cause a~~  
35 ~~child cared for therein with its mother to be removed from the institu-~~  
36 ~~tion at any time before the child is one year of age. He or she shall~~  
37 ~~make provision for a child removed from the institution without its~~  
38 ~~mother or a child born to a woman incarcerated individual who is not~~  
39 ~~returned to the institution with its mother as hereinafter provided. He~~  
40 ~~or she~~] No child shall be removed from the nursery without the express  
41 oral and written consent of the birthing parent or a finding, by clear  
42 and convincing evidence, that such person poses an imminent risk to the  
43 health and safety of the child and that this risk cannot be mitigated  
44 through reasonable efforts on behalf of the institution or local correc-  
45 tional facility. The right to counsel and due process shall be afforded  
46 to the incarcerated person as well as to the child prior to, or shortly  
47 after, such removal and if the finding above is not sustained, the child  
48 shall be immediately returned to the care and custody of the person who  
49 is incarcerated. The officer in charge of an institution or local  
50 correctional facility may, upon proof being furnished by the [~~father~~]  
51 non-birthing parent or other relatives of [~~their~~] such relatives' abili-  
52 ty to properly care for and maintain such child, and with the express  
53 written and oral consent of the person who is incarcerated and who gave  
54 birth to the child within the previous eighteen months, give the child  
55 into the care and custody of such [~~father~~] non-birthing parent or other  
56 relatives, who shall thereafter maintain the same at their own expense.

1 If it shall appear that such [~~father~~] non-birthing parent or other rela-  
2 tives are unable to properly care for and maintain such child, such  
3 officer shall place the child in the care of the commissioner of public  
4 welfare or other officer or board exercising in relation to children the  
5 power of a commissioner of public welfare of the county from which such  
6 incarcerated individual was committed as a charge upon such county. The  
7 officer in charge of the correctional institution shall send to such  
8 commissioner, officer or board a report of all information available in  
9 regard to the [~~mother~~] birthing parent and the child. Such commissioner  
10 of public welfare or other officer or board shall care for or place out  
11 such child as provided by law in the case of a child becoming dependent  
12 upon the county. If it is found that the non-birthing parent or rela-  
13 tives are not a suitable placement and the commissioner of public  
14 welfare does not have placement for the child then the child may remain  
15 in the institution or local correctional facility until the child is  
16 thirty months old.

17 [~~3-~~] 4. (a) If any [~~woman~~] person, committed to any such [~~correction-~~  
18 ~~al~~] institution or local correctional facility at the time of such  
19 commitment is the [~~mother~~] postpartum person of a [~~nursing~~]  
20 [~~her~~] such person's care under [~~one-year~~] eighteen months of age, such  
21 child may accompany [~~her~~] such person to such institution if [~~she~~] such  
22 person is physically fit to have the care of such child, subject to the  
23 provisions of subdivision [~~two~~] three of this section. If any [~~woman~~]  
24 person committed to any such institution at the time of such commitment  
25 is the [~~mother~~] birthing parent of, and has under [~~her~~] their exclusive  
26 care, a child more than [~~one-year~~] eighteen months of age the justice or  
27 magistrate committing such [~~woman~~] person shall refer such child to the  
28 commissioner of public welfare or other officer or board exercising in  
29 relation to children the power of a commissioner of public welfare of  
30 the county from which the [~~woman~~] person is committed to be cared for as  
31 provided by law in the case of a child becoming dependent upon the coun-  
32 ty, unless it is found that the non-birthing parent or relatives are not  
33 a suitable placement and the commissioner of public welfare does not  
34 have placement for the child in which case the child may remain in the  
35 institution or local correctional facility until the child is thirty  
36 months old. No child shall be removed from the nursery without the  
37 express oral and written consent of the person who gave birth or a find-  
38 ing, by clear and convincing evidence, that such person poses an immi-  
39 nent risk to the health and safety of the child and that this risk  
40 cannot be mitigated through reasonable efforts on behalf of the correc-  
41 tional institution or facility. The right to counsel and due process  
42 shall be afforded to the incarcerated person as well as to the child  
43 prior to, or shortly after, such removal and if the finding above is not  
44 sustained, the child shall be immediately returned to the care and  
45 custody of the person who is incarcerated. The officer in charge of an  
46 institution or local correctional facility may, upon proof being  
47 furnished by the non-birthing other parent or other relatives of such  
48 parent or other relatives' ability to properly care for and maintain  
49 such child, and with the express written and oral consent of the person  
50 who is incarcerated and who gave birth to the child within the previous  
51 eighteen months, give the child into the care and custody of such non-  
52 birthing parent or other relatives, who shall thereafter maintain the  
53 same at such non-birth parent or other relatives, who shall thereafter  
54 maintain the same at such non-birth parent or other relatives' own  
55 expense.

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

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

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

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

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

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

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

31 [4+] 5. Children born to people who are incarcerated and who are cared  
32 for in the nursery of the institution or local correctional facility  
33 shall have the right to the following:

34 (a) timely and appropriate pediatric care, including all necessary  
35 medical and developmental testing, as recommended by the American acade-  
36 my of pediatrics;

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

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

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

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

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

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

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

1 (i) time outdoors.

2 6. Upon admitting a [~~woman~~] person known to be pregnant, or upon  
3 learning of pregnancy status, the chief medical officer of each institu-  
4 tion or local correctional facility housing [~~female~~] pregnant or post-  
5 partum incarcerated individuals, including the medical professional  
6 responsible for each local correctional facility housing [~~female~~] preg-  
7 nant or postpartum incarcerated individuals, or such officer or profes-  
8 sional's designee, shall immediately inform such [~~woman~~] person of the  
9 option of participating in pregnancy counseling services and the right  
10 to abortion services.

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

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

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

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

32 § 5. This act shall take effect immediately.