

# STATE OF NEW YORK

9816

## IN SENATE

May 31, 2024

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

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:

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

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

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

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

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

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

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

24 (i) No correctional staff shall be present [~~in the delivery room~~]  
25 during the birth of a baby or during counseling and medical care related  
26 to the pregnancy and all pregnancy outcomes including abortion, miscar-  
27 riage, and stillbirth unless requested by the medical staff [~~supervis-~~  
28 ~~ing~~] providing such [~~delivery~~] care or by the [~~woman giving birth~~]  
29 person receiving such care.

30 (ii) The [woman] person shall be permitted to have at least one  
31 support person of [~~her~~] their choosing accompany [~~her in the delivery~~  
32 ~~room and when such woman is in labor and recovering after giving birth~~]  
33 them to a hospital or medical facility for labor, birth, and counseling  
34 and medical care related to pregnancy and all pregnancy outcomes includ-  
35 ing abortion, miscarriage and stillbirth and shall be permitted to  
36 remain with such support person for the duration of their stay in the  
37 hospital or medical facility subject to the visitation rules of that  
38 hospital or medical facility. A support person shall not need to have  
39 visited the [woman] person at a correctional facility prior to serving  
40 as a support person[~~, A person~~] and may not be denied eligibility to  
41 serve as a support person solely on the basis of a past criminal  
42 conviction or that such support person is on probation, conditional  
43 release, parole or post release supervision. Any decision by an [~~agency~~]  
44 institution or local correctional facility to deny a [woman's] request  
45 [~~to have~~] for a specific support person [~~serve as a support person~~]  
46 shall be made with reasons specified in writing within five days of  
47 [~~her~~] the request and promptly provided to the [woman] person making  
48 the request. A support person shall be notified immediately after such  
49 [woman] person goes into labor, [~~or immediately after a cesarean~~] is  
50 scheduled for labor induction or a cesarean section [~~or termination~~], is  
51 identified as having a miscarriage or stillbirth, or is scheduled for  
52 medical care for any pregnancy outcome, including abortion, miscarriage,  
53 and stillbirth. If available, a doula[, ~~midwife~~] or other birthing  
54 support specialist may also assist during labor [~~and~~], delivery [~~in~~  
55 ~~addition to at least one support person of the woman's choosing. Any~~  
56 ~~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 payer 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

1 and the length of time such restraint was used pursuant to paragraph (b)  
2 of this subdivision, but shall exclude individual identifying informa-  
3 tion. The sheriff of each county shall report, in a form and manner  
4 prescribed by the commission, every use of restraints on a [woman]  
5 person under this section, including the reason such restraint was used,  
6 reason such force was used, the type of restraint used and the length of  
7 time such restraint was used pursuant to paragraph (b) of this subdivi-  
8 sion, the type of force used and the length of time such force was used  
9 pursuant to paragraph (e) of this subdivision, annually to the commis-  
10 sion. The commission shall include such information in its annual report  
11 pursuant to section forty-five of this chapter, but shall exclude iden-  
12 tifying information from such report. Reports required by this section  
13 shall be posted on the websites maintained by the department and the  
14 commission.

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

17 § 837-y. Use of restraints on pregnant and post-pregnant persons by  
18 law enforcement. Where a person who is known to be pregnant, in labor  
19 or delivery, or twelve weeks post-pregnancy is in the custody of law  
20 enforcement, subject to custodial interrogation, or has their freedom of  
21 action restricted by law enforcement in any significant way, the use of  
22 restraints of any kind by law enforcement personnel shall be prohibited.  
23 The provisions of this section shall at minimum apply to police  
24 stations, holding facilities for prisoners, prosecutors' offices,  
25 medical areas and hospitals, and any facility where persons are held in  
26 detention in connection with criminal or juvenile delinquency charges  
27 that have been or may be filed against them, as well as during transfer  
28 to and from such locations. A person's disclosure of their status shall  
29 serve as sufficient notice to law enforcement under this provision.

30 § 3. This act shall take effect immediately.