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IN ASSEMBLY

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Introduced by M. of A. ROSENTHAL, KELLES, CRUZ, GLICK, SEAWRIGHT, REYES, DAVILA, LUCAS, SIMON, SHIMSKY, LEVENBERG, TAPIA, SIMONE, RAGA, BURDICK, WEPRIN, LAVINE, GONZALEZ-ROJAS, PAULIN, MEEKS, HEVESI, BURROUGHS, GALLAGHER, OTIS, FORREST, GIBBS -- read once and referred to the Committee on Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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:

1 Section 1. Section 611 of the correction law is amended by adding four
2 new subdivisions 5, 6, 7 and 8 to read as follows:

3 5. A person who gives birth in a hospital or medical facility while in
4 the custody of an institution or local correctional facility shall be
5 permitted to keep all health and newborn related supplies and equipment
6 provided to them by the hospital or medical facility upon their return
7 to the institution or local correctional facility, including but not
8 limited to diapers, breast pump equipment, breastfeeding supplies,
9 breast pads, sanitary napkins, underwear, water bottle, heating pad,
10 perineal squirt bottles, sitz baths, and health creams, ointments, and
11 sprays. Such person and their newborn shall be provided with uninter-
12 rupted access to therapeutically equivalent medication as prescribed by
13 medical personnel at the hospital or medical facility for a duration
14 consistent with the timeframe prescribed by such personnel.

15 6. For purposes of this subdivision, a "breastfeeding parent" shall
16 mean a parent incarcerated in an institution or local correctional
17 facility who is able to produce breast milk of any amount.

18 (a) A breastfeeding parent shall have the right to:

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

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1 (i) breastfeed their child consistent with subdivision three of
2 section twenty-five hundred five-a of the public health law when such
3 child remains in the institution or local correctional facility with the
4 breastfeeding parent;

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

10 (iii) breastfeed and express breast milk at a frequency determined by
11 such parent;

12 (iv) store breast milk at the institution or local correctional facil-
13 ity;

14 (v) personal possession of an electric and manual pump; and

15 (vi) if such parent is not living with their child, designate an indi-
16 vidual in the community to gather breast milk from the institution or
17 local correctional facility for the purpose of delivering the breast
18 milk to their child.

19 (b) A breastfeeding parent shall not be required to breastfeed or
20 shall not be discriminated against or penalized in any way for any
21 breastfeeding decisions and actions consistent with paragraph (a) of
22 this subdivision.

23 (c) A breastfeeding parent participating in jobs and programs shall
24 not be penalized for engaging in activities consistent with section two
25 hundred six-c of the labor law, and shall be provided with the same
26 accommodations as required under such section of the labor law.

27 (d) A breastfeeding parent shall be provided with the following:

28 (i) a personal double electric pump with associated parts including
29 flanges; valves, membranes, connections, tubes, and collection bottles,
30 which the parent shall be permitted to keep upon release or relocation;

31 (ii) a personal manual pump, which the parent shall be permitted to
32 keep upon release or relocation;

33 (iii) a personal breastfeeding cover, personal pillow, and other
34 personal items that allow for comfort and privacy during breastfeeding
35 and expressing breast milk, which the parent shall be permitted to keep
36 upon release or relocation;

37 (iv) comprehensive current information about breastfeeding and lacta-
38 tion that reflects standards of the department of health in a language
39 and manner understandable to such parent; and

40 (v) access to breastfeeding and lactation assistance from personnel
41 with relevant expertise.

42 (e) Restrictions on personal possession of an electric and manual pump
43 shall include:

44 (i) A breastfeeding parent's personal possession of an electric and
45 manual pump may be restricted only in the event that such personal
46 possession would pose a risk of serious bodily harm to themself or
47 others, and provided that such restriction shall be for the shortest
48 duration and the least restrictive means necessary to manage such risk.
49 Notwithstanding any restriction, the breastfeeding parent shall continue
50 to be provided the opportunity to express breast milk at the frequency
51 determined by such breastfeeding parent.

52 (ii) In the event that a determination is made to restrict a breast-
53 feeding parent's personal possession of an electric and/or manual pump
54 pursuant to subparagraph (i) of this paragraph, correctional personnel
55 shall contemporaneously document in writing the facts on which the
56 determination was based. This documentation shall include, to the extent

1 practicable, the means by which personal possession of pumping equipment
2 was restricted, what efforts were made to mitigate the risk of harm, the
3 duration of the restriction, and what alternative arrangements were made
4 to facilitate expression of breast milk while the restriction was in
5 effect.

6 (iii) The department shall report annually to the governor, the tempo-
7 rary president of the senate, and the speaker of the assembly on the
8 actions taken pursuant to subparagraph (ii) of this paragraph, includ-
9 ing, but not limited to, the number of times a breastfeeding parent's
10 personal possession of an electric and/or manual pump was restricted.

11 (f) A pregnant person or breastfeeding parent may explicitly inform
12 medical personnel that they do not wish to receive any or all of the
13 items to which they are entitled under subparagraphs (i), (ii) and (iii)
14 of paragraph (d) of this subdivision, provided, however, that such
15 parent may, at any point, change their mind and request such items, and
16 they shall be provided.

17 (g) Upon the request of a parent in custody who lives with their child
18 pursuant to subdivision two or three of this section, such parent shall
19 be provided infant formula that meets standards and nutrient require-
20 ments set forth by the United States food and drug administration. If
21 such parent determines that their infant is intolerant to or otherwise
22 made physically uncomfortable by the formula provided, an alternate
23 formula shall be provided and an opportunity to discuss formula related
24 issues with personnel providing lactation care and pediatric care shall
25 be made available.

26 (h) Only organizations and agencies that are in compliance with
27 section 37-0505 of the environmental conservation law shall be eligible
28 suppliers of breast pump parts and breast milk storage devices.

29 (i) Breast pump parts and breast milk storage devices shall be cleaned
30 at a frequency consistent with regulations set forth by the department
31 of health.

32 (j) An institution or local correctional facility shall promptly
33 collect, label, safely handle, and store breast milk in a refrigerator
34 or comparable cooling unit consistent with milk storage guidelines set
35 forth by the American Academy of Pediatrics until it is ready for
36 consumption by the child of a breastfeeding parent or for pick-up by a
37 designated individual pursuant to paragraph (a) of this subdivision.
38 The collection, storage, and pick-up of breast milk shall be logged,
39 including date and time, by the institution or local correctional facil-
40 ity. The chief administrative officer, in consultation with the chief
41 medical officer of each institution or local correctional facility shall
42 develop and implement written policies and procedures for the safe
43 handling and storage of breast milk consistent with the requirements of
44 this section.

45 7. (a) The department and commission shall compile data outlined in
46 paragraph (b) of this subdivision for an annual report to the governor,
47 the temporary president of the senate, the minority leader of the
48 senate, the speaker of the assembly, the minority leader of the assem-
49 bly, the chairperson of the senate health committee, the chairperson of
50 the senate crime victims, crime and correction committee, the chair-
51 person of the assembly health committee, the chairperson of the assembly
52 correction committee, the chairperson of the legislative women's caucus,
53 and the chairperson of the Black, Puerto Rican, Hispanic and Asian
54 legislative caucus. Data compiled pursuant to subparagraphs (i) through
55 (viii) of paragraph (b) of this subdivision shall be disaggregated by
56 institution and local correctional facility and shall not include

1 personally identifiable information. Data compiled pursuant to subpara-
2 graphs (ix) through (xix) of paragraph (b) of this subdivision shall be
3 reported in the aggregate across all local correctional facilities and
4 across all institutions and shall not include personally identifiable
5 information. Reports issued pursuant to this paragraph shall be posted
6 on the websites maintained by the department and the commission.

7 (b) Each institution and local correctional facility shall work with
8 relevant personnel and contracted external health care providers to
9 collect and record the following data and provide it in a manner that
10 does not include personally identifiable information to the department
11 and the commission for the purpose outlined in paragraph (a) of this
12 subdivision. Each institution and local correctional facility shall
13 maintain data collected pursuant to this section for at least ten years
14 in an easily retrievable and searchable format, which shall include:

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

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

19 (iii) the average daily census of pregnant individuals;

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

22 (v) the length of time between each nursery application and decision,
23 the length of time between each decision and the birth of the child, and
24 if admission is granted, the length of time between the decision and
25 placement of the individual in the nursery;

26 (vi) the specific and detailed reasons for nursery application
27 denials, including how they may relate to the crime of conviction, crim-
28 inal record, custodial history, history of violence, history of involve-
29 ment with child protective services, or history of substance use of the
30 individual, the mental or physical health conditions of the individual
31 or child, or the safety of the individual, child, or others in the nurs-
32 ery;

33 (vii) the number of individuals removed from the nursery;

34 (viii) the specific and detailed reasons for removals from the nurs-
35 ery, including how they may relate to the crime of conviction, criminal
36 record, custodial history, history of violence, history of involvement
37 with child protective services, or history of substance use of the indi-
38 vidual, the mental or physical health conditions of the individual or
39 child, and the safety of the individual, child, or others in the nurs-
40 ery;

41 (ix) the number of individuals who apply for a nursery program, disag-
42 gregated by race, ethnicity, gender identity, age, crime of conviction,
43 and county of conviction;

44 (x) the number of individuals whose applications to a nursery program
45 are denied, disaggregated by race, ethnicity, gender identity, age,
46 crime of conviction, and county of conviction;

47 (xi) the number of individuals who are removed from a nursery program,
48 disaggregated by race, ethnicity, gender identity, age, crime of
49 conviction, and county of conviction;

50 (xii) the number of babies who return to an institution with their
51 parent, disaggregated by the race of the birthing parent;

52 (xiii) the number of babies who do not return to an institution with
53 their parent and where those babies are placed, including non-kinship
54 foster care, kinship foster care, with the other parent, with a friend,
55 and with a family member not in foster care;

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

5 (xv) the number of babies who return to the community with their
6 parent after being in a nursery program and the length of time spent in
7 the nursery;

8 (xvi) the number of pregnant individuals, disaggregated by race,
9 ethnicity, gender identity, age, crime of conviction, and county of
10 conviction;

11 (xvii) the number of ectopic pregnancies, molar pregnancies,
12 abortions, miscarriages, stillbirths, vaginal deliveries, and caesarean
13 deliveries;

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

16 (xix) the gestational ages at delivery of all newborns, birth weights
17 of all newborns, and durations of all stays in a neonatal intensive care
18 unit.

19 8. Any person confined in an institution or local correctional facili-
20 ty that houses pregnant or postpartum individuals or individuals who may
21 become pregnant shall receive notice in writing in a language and manner
22 understandable to them about the requirements contained in each subdivi-
23 sion of this section upon their admission, regardless of the institution
24 or local correctional facility in which they are housed, if they are
25 known to be pregnant or to be a breastfeeding parent, or to be eligible
26 for their child to join them in an institution or local correctional
27 facility pursuant to subdivisions two and three of this section. The
28 superintendent or sheriff shall publish notice of the requirements
29 contained in each subdivision of this section in prominent locations
30 where pregnancy related care and child related care are provided. The
31 department and the sheriff shall provide annual training on the
32 provisions contained in each subdivision of this section for all correc-
33 tional, civilian and volunteer personnel who are involved in the trans-
34 portation, supervision or care of pregnant people or breastfeeding
35 parents, as defined in subdivision six of this section, or parents
36 eligible for their child to join them in an institution or local correc-
37 tional facility pursuant to subdivisions two and three of this section.

38 § 2. This act shall take effect immediately.