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Introduced by M. of A. KELLES, GONZALEZ-ROJAS, SIMON, CLARK, LEVENBERG, COLTON, BURDICK, REYES, GALLAGHER, SHRESTHA, EPSTEIN, CRUZ, FORREST, MAMDANI, McMAHON, LUNSFORD, WALKER, CUNNINGHAM, SEAWRIGHT, TAYLOR, SHIMSKY, BICHOTTE HERMELYN, WEPRIN, GIBBS, HEVESI, SEPTIMO, TAPIA, RAGA, BORES, DAVILA, SIMONE, LUCAS, GLICK -- 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

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 appro-
5 priate health and safety measures, can result in serious harm to these
6 birthing parents and their children. Birthing parents and such persons'
7 young children need prenatal, obstetric, and pediatric care, as well as
8 developmentally-appropriate resources provided in a safe, healthy, and
9 nurturing environment. Unless comprehensive and compassionate laws,
10 policies, and practices are in place, the rights and care of birthing
11 parents and such persons' young children may be compromised by the
12 conditions of confinement in correctional institutions or facilities.

13 § 2. Section 611 of the correction law, as amended by chapter 242 of
14 the laws of 1930, the section heading as amended by chapter 322 of the
15 laws of 2021, subdivision 1 as amended by chapter 17 of the laws of
16 2016, paragraph (c) of subdivision 1 and subdivision 2 as separately
17 amended by chapters 322 and 621 of the laws of 2021, and subdivision 4
18 as amended by chapter 486 of the laws of 2022, is amended to read as
19 follows:

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

LBD05763-02-5

1 § 611. [~~Births to incarcerated individuals of correctional insti-~~
2 ~~tutions and care of children of incarcerated individuals of correctional~~
3 ~~institutions~~] Rights and care of birthing parents and such persons'
4 children. 1. For the purposes of this section, the following terms
5 shall have the following meanings:

6 (a) "Birthing parent" means any person who is incarcerated and preg-
7 nant, postpartum, or with custody of a child up to twenty-four months of
8 age.

9 (b) "Prenatal" means the period in which a person becomes pregnant and
10 up until birth or other pregnancy outcome occurs.

11 (c) "Perinatal" means the twelve-week period immediately before birth
12 and the twelve-week period immediately after birth.

13 (d) "Postpartum" means the twelve-week period after giving birth and
14 shall include stillbirth, miscarriage, and neonatal death, in accordance
15 with the American college of obstetricians and gynecologists.

16 (e) "Nursery" means a space where a birthing parent lives with their
17 child and receives services. A nursery shall include, at a minimum, a
18 window for natural light and the equipment and furnishings required by
19 section 7651.17 of title 9 of the codes, rules and regulations of the
20 state of New York.

21 (f) "Timely" means within the timeframe recommended by the treating
22 medical provider, unless otherwise specified in this section.

23 2. (a) If a [~~woman~~] person confined in any institution or local
24 correctional facility be pregnant and about to give birth to a child,
25 the superintendent or sheriff in charge of such institution or facility,
26 a reasonable time before the anticipated birth of such child, shall
27 cause such [~~woman~~] person to be removed from such institution or facili-
28 ty and provided with comfortable accommodations, maintenance and medical
29 care elsewhere, under such supervision and safeguards to prevent [~~her~~]
30 such birthing parent's escape from custody as the superintendent or
31 sheriff or [~~his or her~~] their designee may determine. No restraints of
32 any kind shall be used during transport of such [~~woman~~] birthing parent,
33 a [~~woman~~] person who is known to be pregnant by correctional personnel
34 or personnel providing medical services to the institution or local
35 correctional facility, or a [~~woman~~] birthing parent within eight weeks
36 after delivery or pregnancy outcome, absent extraordinary circumstances
37 in which:

38 i. the superintendent or sheriff or [~~his or her~~] their designee in
39 consultation with the medical professional responsible for the institu-
40 tion has made an individualized determination that restraints are neces-
41 sary to prevent such [~~woman~~] birthing parent from injuring [~~herself~~]
42 themselves or medical or correctional personnel or others and cannot
43 reasonably be restrained by other means, including the use of additional
44 personnel; or

45 ii. the correctional personnel directly responsible for the transport
46 of such a [~~woman~~] birthing parent determine that an emergency has arisen
47 in which restraints are necessary because the [~~woman~~] birthing parent
48 poses an immediate risk of serious injury to [~~herself~~] themselves or
49 medical or correctional personnel or others and cannot reasonably be
50 restrained by other means.

51 (b) If a determination has been made pursuant to subparagraph i or ii
52 of paragraph (a) of this subdivision that extraordinary circumstances
53 exist then restraints shall be limited to wrist restraints in front of
54 the body. The superintendent or sheriff or [~~his or her~~] their designee
55 pursuant to subparagraph i of paragraph (a) of this subdivision or
56 correctional personnel pursuant to subparagraph ii of paragraph (a) of

1 this subdivision shall document in writing the facts upon which the
2 finding of extraordinary circumstances were based within five days of
3 the use of such restraints and shall also document the type of
4 restraints used and the length of time such restraints were used.

5 (c) No restraints of any kind shall be used when such ~~[woman]~~ birthing
6 parent is in labor, admitted to a hospital, institution or clinic for
7 delivery, or recovering after giving birth. Any such personnel as may be
8 necessary to supervise the ~~[woman]~~ birthing parent during transport to
9 and from and during ~~[her]~~ their stay at the hospital, institution or
10 clinic shall be provided to ensure adequate care, custody and control of
11 the ~~[woman]~~ birthing parent, except that no correctional staff shall be
12 present in the delivery room during the birth of a baby unless requested
13 by the medical staff supervising such delivery or by the ~~[woman]~~ birth-
14 ing parent giving birth. The ~~[woman]~~ birthing parent shall be permitted
15 to have at least one support person of ~~[her]~~ their choosing accompany
16 ~~[her]~~ them in the delivery room and when such ~~[woman]~~ birthing parent is
17 in labor and recovering after giving birth. A support person shall not
18 need to have visited the ~~[woman]~~ birthing parent at a correctional
19 facility prior to serving as a support person. A person may not be
20 denied eligibility to serve as a support person solely on the basis of a
21 past criminal conviction or that such person is on probation, condi-
22 tional release, parole or post release supervision. Any decision by an
23 agency to deny a ~~[woman's]~~ birthing parent's request to have a specific
24 person serve as a support person shall be made with reasons specified in
25 writing within five days of ~~[her]~~ the request and promptly provided to
26 the ~~[woman]~~ birthing parent. A support person shall be notified imme-
27 diately after such ~~[woman]~~ birthing parent goes into labor, or imme-
28 diately after a caesarean section or termination is scheduled. If avail-
29 able, a doula, midwife or other birthing support specialist may also
30 assist during labor and delivery in addition to at least one support
31 person of the ~~[woman's]~~ birthing parent's choosing. Any ~~[woman]~~ birthing
32 parent confined in a state or local correctional facility shall receive
33 notice in writing in a language and manner understandable to ~~[her]~~ such
34 birthing parent about the requirements of this section upon ~~[her]~~ such
35 birthing parent's admission to such state or local correctional facility
36 and again when ~~[she]~~ the birthing parent is known to be pregnant. The
37 superintendent or sheriff shall publish notice of the requirements of
38 this section in prominent locations where medical care is provided. The
39 superintendent or sheriff or ~~[his or her]~~ their designee shall cause
40 such ~~[woman]~~ birthing parent to be subject to return to such institution
41 or local correctional facility as soon after the birth of ~~[her]~~ such
42 birthing parent's child as the state of ~~[her]~~ such birthing parent's
43 health will permit as determined by the medical professional responsible
44 for the care of such ~~[woman]~~ birthing parent. If such ~~[woman]~~ birthing
45 parent is confined in a local correctional facility, the expense of such
46 accommodation, maintenance and medical care shall be paid by such
47 ~~[woman]~~ birthing parent or ~~[her]~~ their relatives or from any available
48 funds of the local correctional facility and if not available from such
49 sources, shall be a charge upon the county, city or town in which is
50 located the court from which such incarcerated individual was committed
51 to such local correctional facility. If such ~~[woman]~~ birthing parent is
52 confined in any institution under the control of the department, the
53 expense of such accommodation, maintenance and medical care shall be
54 paid by such ~~[woman]~~ birthing parent or ~~[her]~~ their relatives and if not
55 available from such sources, such maintenance and medical care shall be
56 paid by the state. In cases where payment of such accommodations, main-

1 tenance and medical care is assumed by the county, city or town from
2 which such incarcerated individual was committed the payor shall make
3 payment by issuing payment instrument in favor of the agency or individ-
4 ual that provided such accommodations and services, after certification
5 has been made by the head of the institution to which the incarcerated
6 individual was legally confined, that the charges for such accommo-
7 dations, maintenance and medical care were necessary and are just, and
8 that the institution has no available funds for such purpose.

9 (d) Any [~~woman~~] birthing parent confined in an institution or local
10 correctional facility shall receive notice in writing in a language and
11 manner understandable to [~~her~~] such birthing parent about the require-
12 ments of this section upon [~~her~~] such birthing parent's admission to an
13 institution or local correctional facility and again when [~~she~~] such
14 birthing parent is known to be pregnant. The superintendent or sheriff
15 shall publish notice of the requirements of this section in prominent
16 locations where medical care is provided. The department and the sheriff
17 shall provide annual training on provisions of this section to all
18 correctional personnel who are involved in the transportation, super-
19 vision or medical care of incarcerated [~~women~~] individuals.

20 (e) The department shall report annually to the governor, the tempo-
21 rary president of the senate, the minority leader of the senate, the
22 speaker of the assembly, the minority leader of the assembly, the chair-
23 person of the senate crime victims, crime and correction committee and
24 the chairperson of the assembly correction committee concerning every
25 use of restraints on a [~~woman~~] birthing parent under this section,
26 including the reason such restraint was used, the type of restraint used
27 and the length of time such restraint was used pursuant to paragraph (b)
28 of this subdivision, but shall exclude individual identifying informa-
29 tion. The sheriff of each county shall report, in a form and manner
30 prescribed by the commission, every use of restraints on a [~~woman~~]
31 birthing parent under this section, including the reason such restraint
32 was used, the type of restraint used and the length of time such
33 restraint was used pursuant to paragraph (b) of this subdivision, annu-
34 ally to the commission. The commission shall include such information in
35 its annual report pursuant to section forty-five of this chapter, but
36 shall exclude identifying information from such report. Reports required
37 by this section shall be posted on the websites maintained by the
38 department and the commission.

39 [~~2-~~] 3. Birthing parents shall be provided with comprehensive and
40 uninterrupted access to prenatal, perinatal, and postpartum care,
41 including all necessary prenatal screening and diagnostic tests, medica-
42 tion as prescribed by medical personnel, consultation and treatment,
43 including treatment by specialists, and appropriate medical care after
44 delivery or other pregnancy outcomes, including postpartum physical,
45 mental, and reproductive health care, as recommended by the American
46 college of obstetricians and gynecologists. The commissioner shall
47 establish rules and regulations relating to conditions in the institu-
48 tion or local correctional facility, treatment and care that shall
49 include, but is not limited to:

50 (a) Regularly scheduled obstetric care appointments with a medical
51 practitioner, beginning in early pregnancy, within one week of the
52 institution or local correctional facility learning an individual is
53 pregnant, and continuing as recommended by medical personnel through the
54 postpartum period;

55 (b) The appointment within the first week of the institution or local
56 correctional facility upon learning an individual is pregnant shall

1 include a comprehensive prenatal examination appropriate to the trimes-
2 ter and health of such individual as recommended by the American college
3 of obstetricians and gynecologists. If the medical practitioner is not a
4 high-risk obstetrician and determines that a referral to a high-risk
5 obstetrician is necessary, such individual shall be referred to a high-
6 risk obstetrician without delay;

7 (c) Prenatal appointments with a medical practitioner pursuant to this
8 paragraph at a frequency of, at a minimum, once per month during the
9 first six months of pregnancy, twice per month during the seventh and
10 eighth months of pregnancy, and weekly during the last month of pregnan-
11 cy if such individual does not have a high-risk pregnancy;

12 (d) Fetal ultrasound imaging conducted by a sonographer who is certi-
13 fied in or who has received a degree in sonography from a national
14 certifying or degree-granting body at a frequency determined by the
15 medical practitioner caring for such individual, including, at a mini-
16 imum: one dating ultrasound if such individual is in their first trimes-
17 ter or has not yet had or does not have records of a prior such ultra-
18 sound; one ultrasound to assess fetal anatomy between eighteen and
19 twenty-two weeks of pregnancy if such individual has not yet reached
20 twenty-two weeks of pregnancy; and within two weeks of entering custody
21 in an institution or local correctional facility if such individual
22 enters custody past twenty-two weeks of pregnancy. Such individual shall
23 be permitted to view their ultrasound imaging during the procedure and
24 shall be provided with physical images from the ultrasound to keep at
25 the institution or local correctional facility and an additional copy
26 for a person of the individual's choosing if such images are capable of
27 being generated and if such individual wants such images;

28 (e) For individuals with a high-risk pregnancy, the frequency of
29 prenatal appointments shall be determined by the high-risk obstetrician
30 caring for such individuals in line with recommendations by the American
31 college of obstetricians and gynecologists;

32 (f) Emergency access to a medical practitioner pursuant to this para-
33 graph for twenty-four hours per day seven days per week. If emergency
34 access is needed, such individuals shall be permitted to speak with such
35 practitioners directly;

36 (g) No correction staff or volunteers shall be present during these
37 examinations unless requested by the birthing parent or by the medical
38 staff when the situation poses a clear risk of danger to the medical
39 staff or others;

40 (h) At least once each trimester, a consultation with a nutritionist
41 or dietician about pregnancy appropriate nutrition and physical activ-
42 ity;

43 (i) Access to a dentist within one month of the institution or local
44 correctional facility learning such individual is pregnant. Such dentist
45 shall offer such individual a comprehensive exam, cleaning, and timely
46 referral to dental specialists if necessary, pursuant to the recommenda-
47 tions by the American college of obstetricians and gynecologists;

48 (j) At least one consultation prior to the birth between such individ-
49 ual and such individual's medical practitioner, midwife, and/or doula,
50 to discuss anticipatory guidance related to the birth and establish a
51 birth plan, including but not limited to:

52 (i) modes of delivery, possible interventions and guidance regarding
53 medical testing and fetal monitoring;

54 (ii) medication that may be employed during birth and the possible
55 side effects of such medication on such individual and their newborn

1 consistent with section twenty-five hundred three of the public health
2 law;

3 (iii) preferences for newborn feeding and care, including circumcision
4 if applicable;

5 (iv) information for maternity patients as required by section twen-
6 ty-eight hundred three-j of the public health law;

7 (v) information regarding the length of hospital stay for maternity
8 patients contained in section twenty-eight hundred three-n of the public
9 health law; and

10 (vi) a comprehensive postpartum appointment schedule with a medical
11 practitioner pursuant to this paragraph at a frequency determined by
12 such practitioner based on the health of such individual and any compli-
13 cations related to birth, including one appointment three weeks after a
14 vaginal birth and two weeks after a cesarean section, and another
15 appointment twelve weeks after birth, in accordance with recommendations
16 from the American college of obstetricians and gynecologists;

17 (k) Perinatal vitamins that meet the standards of the United States
18 Food and Drug Administration and that include key vitamins and minerals
19 as recommended by the American college of obstetricians and gynecolo-
20 gists in order to safely deliver a child and breast feed them;

21 (l) Evidence-based treatment and medication for opioid use disorder,
22 smoking cessation, alcohol use disorder and other substance use disor-
23 ders shall not be denied on account of pregnancy;

24 (m) Screening for HIV, hepatitis B, syphilis, chlamydial infection,
25 and Neisseria Gonorrhoeae, as recommended by the American academy of
26 pediatrics and the American college of obstetricians and gynecologists
27 with prior written and oral informed consent specific to the test;

28 (n) Consultation access to influenza and Tdap vaccines;

29 (o) Screening for mental health concerns and psychological and psychi-
30 atric therapy and treatment as needed, including consultation regarding
31 psychiatric medications and provision to psychiatric medications that
32 are safe during pregnancy;

33 (p) Medical care during labor and delivery, which shall include care
34 by qualified medical personnel, such as someone who has been certified
35 in obstetrics by the American board of medical specialties or a compara-
36 ble national certifying board or a midwife licensed to practice midwif-
37 ery pursuant to article one hundred forty of the education law provided
38 that such a midwife is available and such individual requests midwifery
39 care and necessary medical equipment, including full access to pain
40 management medications when safe. A birthing parent shall remain at the
41 hospital and in care by qualified medical personnel for forty-eight
42 hours after vaginal birth and ninety-six hours after cesarean birth in
43 accordance with recommendations from the American college of obstetri-
44 cians and gynecologists. Prior to release from the hospital, the birth-
45 ing parent shall receive consultations from qualified practitioners to
46 include but not be limited to:

47 (i) a certified dietician and/or nutritionist for postpartum physical
48 activity recommendations appropriate to labor and delivery outcomes of
49 the birthing parent; and

50 (ii) a certified lactation consultant to assess, diagnose, and treat
51 any breastfeeding issues such as nipple soreness, cracking or blister-
52 ing, and to provide education on proper latching, positioning, milk
53 supply management, and common breastfeeding considerations, including
54 but not limited to, challenges expressing breast milk, proper breast
55 pump and storage techniques, and dietary considerations and medications
56 that may impact breastfeeding;

1 (q) Timely access to medications, vaccines, and prenatal, perinatal,
2 postpartum, and fetal tests as recommended by the medical practitioner
3 caring for such individual and timely access to results of such tests,
4 including tests identifying the sex of the fetus, if such individual
5 confirms they want this information;

6 (r) Appropriate hydration and nutrition. Such hydration shall include
7 distilled water for bottles and bottled filtered water for drinking.
8 Such nutrition shall include the provision of additional portions of
9 nutritious food, fresh fruits and vegetables that are safe to consume
10 during the prenatal, perinatal and postpartum periods, including breast-
11 feeding-related nutritional recommendations of the American college of
12 obstetricians and gynecologists and the American academy of pediatrics.
13 These individuals may request an additional tray of food, milk, and
14 hydration to bring back to their living area during the prenatal, peri-
15 natal and postpartum periods and while breastfeeding;

16 (s) Regular access to safe and appropriate exercise facilities for at
17 least one hour per day during the prenatal, perinatal and postpartum
18 periods as appropriate to their physical health and birth outcome, as
19 well as trips outside the institution or local correctional facility
20 guided by correctional officers for birthing parents;

21 (t) Reasonable accommodations for sleep, rest, and work requirements
22 for the prenatal, perinatal and postpartum periods and the entire period
23 the child remains with birthing parent. Reprieve from daily activities,
24 such as repeatedly climbing stairs and lifting heavy items, if the
25 medical practitioner providing care to such individual determines that
26 such activities present a risk of harm to such individual;

27 (u) Access to seating with back support in situations that require
28 sitting, including waiting for an appointment and participating in
29 programs or work duties;

30 (v) Privacy with regard to the care of prenatal, perinatal, and post-
31 partum conditions. Breastfeeding birthing parents shall have access to a
32 nursing cover;

33 (w) Prevention from exposure to substances or chemicals that could
34 present a risk of harm to the birthing parent during the prenatal, peri-
35 natal and postpartum periods or such person's fetus or infant;

36 (x) Safe and appropriate housing and living conditions, including
37 adequate bedding, clothing, and personal hygiene and self-care supplies
38 during prenatal, perinatal and postpartum periods and during the entire
39 period the child remains with the birthing parent. Bedding includes
40 additional mattresses, pillows, blankets, and sheets;

41 (y) In-person consultations with legal counsel of their choice regard-
42 ing their postpartum decisions related to the short term and long term
43 care of the child, or by telephone or video if necessary, and appropri-
44 ate peer and social support of other incarcerated parents in person or
45 online or via videoconference if necessary. Such postpartum individuals
46 shall also have access to reasonable technology to take and share photos
47 of such person's child;

48 (z) Authority to make decisions regarding their child's daily life
49 including feeding, dressing, sleeping, and hygiene, provided that such
50 decisions do not present a significant risk to the health of the child
51 or the safety and security of the institution or local correctional
52 facility; and

53 (aa) Freedom from discrimination with respect to access to services,
54 education or programming, including programming related to early release
55 or sentence-shortening options.

1 4. (a) A child ~~[so born may be returned with its mother to the correc-~~
2 ~~tional institution in which the mother is confined]~~ shall have the right
3 to return with their birthing parent and remain in the institution or
4 local correctional facility with their birthing parent:

5 (i) until the child is eighteen months old; provided, however, that if
6 the birthing parent is to be paroled by the time the child becomes twen-
7 ty-four months of age, such child may remain at the institution or
8 local correctional facility until the birthing parent is paroled. If a
9 birthing parent of a child under the age of eighteen months is incarcer-
10 ated at an institution or local correctional facility, such child may
11 accompany such person to such institution or facility if such person is
12 physically fit to have the care of such child, subject to the provisions
13 of this section. If any person committed to any such institution or
14 facility at the time of such commitment is the birthing parent of, and
15 has under their exclusive care, a child more than eighteen months of
16 age, the justice or magistrate committing such person shall refer such
17 child to the commissioner of public welfare or other officer or board
18 exercising in relation to children the power of a commissioner of public
19 welfare of the county from which the person is committed to be cared for
20 as provided by law in the case of a child becoming dependent upon the
21 county.

22 (ii) unless the chief medical officer of the [correctional] institu-
23 tion ~~[shall certify that the mother is physically unfit to care for the~~
24 ~~child, in which case the statement of the said medical officer shall be~~
25 ~~final. A child may remain in the correctional institution with its~~
26 ~~mother for such period as seems desirable for the welfare of such child,~~
27 ~~but not after it is one year of age, provided, however, if the mother is~~
28 ~~in a state reformatory and is to be paroled shortly after the child~~
29 ~~becomes one year of age, such child may remain at the state reformatory~~
30 ~~until its mother is paroled, but in no case after the child is eighteen~~
31 ~~months old. If a pregnant woman or mother of a child under the age of~~
32 ~~eighteen months is incarcerated at a state or local correctional facili-~~
33 ~~ty, the department shall inform her of her ability to apply to any nurs-~~
34 ~~ery program run by the department and the locality]~~ or local correction-
35 al facility demonstrates a finding by clear and convincing evidence that
36 such person poses an imminent risk to the health and safety of the
37 child.

38 (b) Any [woman] person confined in [~~a state~~] an institution or local
39 correctional facility shall receive notice in writing in a language and
40 manner understandable to [~~her~~] them about [~~the requirements of~~] their
41 rights under this section upon [~~her~~] their admission to [~~a state~~] an
42 institution or local correctional facility and again when [~~she is~~] they
43 are known to be pregnant. The superintendent or sheriff shall publish
44 notice of [~~the requirements of this section~~] such rights in prominent
45 locations where medical care is provided. [~~The officer in charge of such~~
46 ~~institution may cause a child cared for therein with its mother to be~~
47 ~~removed from the institution at any time before the child is one year of~~
48 ~~age. He or she shall make provision for a child removed from the insti-~~
49 ~~tution without its mother or a child born to a woman incarcerated indi-~~
50 ~~vidual who is not returned to the institution with its mother as herein-~~
51 ~~after provided. He or she]~~

52 (c) No child shall be removed from the nursery without the express
53 oral and written consent of the birthing parent or a finding, by clear
54 and convincing evidence, that the birthing parent poses an imminent risk
55 to the health and safety of the child and that this risk cannot be miti-
56 gated through reasonable efforts on behalf of the institution or local

1 correctional facility. The right to counsel and due process shall be
2 afforded to the birthing parent as well as to the child prior to, or
3 shortly after, such removal and if the finding above is not sustained,
4 the child shall be immediately returned to the care and custody of the
5 birthing parent. The officer in charge of an institution or local
6 correctional facility may, upon proof being furnished by the [~~father~~]
7 non-birthing parent or other relatives of [~~their~~] such relatives' ability
8 to properly care for and maintain such child, and with the express
9 written and oral consent of the birthing parent who gave birth to the
10 child within the previous eighteen months, give the child into the care
11 and custody of such [~~father~~] non-birthing parent or other relatives, who
12 shall thereafter maintain the same at their own expense. If it shall
13 appear that such [~~father~~] non-birthing parent or other relatives are
14 unable to properly care for and maintain such child, such officer shall
15 place the child in the care of the commissioner of public welfare or
16 other officer or board exercising in relation to children the power of a
17 commissioner of public welfare of the county from which such [~~incarcer-~~
18 ~~ated individual~~] birthing parent was committed as a charge upon such
19 county. The officer in charge of the correctional institution shall send
20 to such commissioner, officer or board a report of all information
21 available in regard to the [~~mother~~] birthing parent and the child. Such
22 commissioner of public welfare or other officer or board shall care for
23 or place out such child as provided by law in the case of a child becom-
24 ing dependent upon the county.

25 ~~[3. If any woman, committed to any such correctional institution at~~
26 ~~the time of such commitment is the mother of a nursing child in her care~~
27 ~~under one year of age, such child may accompany her to such institution~~
28 ~~if she is physically fit to have the care of such child, subject to the~~
29 ~~provisions of subdivision two of this section. If any woman committed to~~
30 ~~any such institution at the time of such commitment is the mother of and~~
31 ~~has under her exclusive care a child more than one year of age the~~
32 ~~justice or magistrate committing such woman shall refer such child to~~
33 ~~the commissioner of public welfare or other officer or board exercising~~
34 ~~in relation to children the power of a commissioner of public welfare of~~
35 ~~the county from which the woman is committed to be cared for as provided~~
36 ~~by law in the case of a child becoming dependent upon the county.~~

37 4.] 5. The birthing parent and their child in the nursery of the
38 correctional institution or local correctional facility shall be enti-
39 tled to the following rights and conditions:

40 (a) Separation or the threat of separation of a birthing parent who is
41 caring for their child in the nursery of the institution or local
42 correctional facility shall never be used as a disciplinary tool or
43 sanction.

44 (b) No person shall care for the child without the express permission
45 of the birthing parent.

46 (c) Birthing parents who are caring for their child in the nursery
47 while incarcerated shall have quiet and private sleeping spaces until
48 their child is weaned or such child consistently sleeps through the
49 night, whichever occurs later.

50 (d) Birthing parents who are caring for their child in the nursery of
51 the institution or local correctional facility shall have timely consul-
52 tations with pediatricians, including in-person consultations. These
53 appointments shall be conducted after birth, at one month, two months,
54 four months, six months, nine months, one year, fifteen months, eighteen
55 months, and twenty-four months, according to the American academy of
56 pediatrics.

1 (e) Birthing parents who are caring for their child in the nursery of
2 the institution or local correctional facility shall be provided with
3 appropriate over-the-counter medications for their child, regardless of
4 whether the birthing parent has consulted with a pediatrician.

5 (f) Birthing parents who have given birth within the previous eighteen
6 months shall be provided with counseling regarding all options open to
7 them, including all rights under this section to postpartum care, to
8 maintain the care and custody of their child while incarcerated, all
9 rights of such child to receive pediatric care and a safe, nurturing and
10 developmentally appropriate environment, and alternative care arrange-
11 ments for their child.

12 (g) Under no circumstances shall a birthing parent who has given birth
13 within the prior eighteen months and who is caring for their child while
14 incarcerated be subjected to isolation or segregated confinement, used
15 as a disciplinary tool or sanction, with or without their child.

16 6. Children born to birthing parents and who are cared for in the
17 nursery of the institution or local correctional facility shall have the
18 right to the following:

19 (a) in addition to the requirements of section 7651.17 of title 9 of
20 the codes, rules and regulations of the state of New York, appropriate
21 pediatric care, including all necessary medical and developmental test-
22 ing, as recommended by the American academy of pediatrics;

23 (b) an appointment for such child with a physician, physician assist-
24 ant, or nurse practitioner who is certified by a national certifying
25 board to provide pediatric care at the next medically appropriate point
26 after leaving the hospital in which the child was born, along with
27 appointments with such a practitioner at regular intervals as recom-
28 ended by the American academy of pediatrics and timely access to pedia-
29 triac specialists as recommended by such a practitioner. Such appoint-
30 ments shall be conducted after birth, one month, two months, four
31 months, six months, nine months, one year, fifteen months, eighteen
32 months, and twenty-four months;

33 (c) emergency access to a physician, physician assistant, or nurse
34 practitioner who is certified by a national certifying board to provide
35 pediatric care twenty-four hours per day, seven days per week. Such
36 emergency access shall include medical care for infants within two hours
37 of infant distress. A telehealth option shall be available when neces-
38 sary as a last resort;

39 (d) access to all relevant features of early intervention or other
40 special medical or developmental services when needed as determined by
41 an assessment, via experts within or outside the facility as stated in
42 article twenty-five of the public health law;

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

50 (f) access to nonprescription pediatric medications, creams, oint-
51 ments, and sprays approved by the United States Food and Drug Adminis-
52 tration upon the birthing parent's request;

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

1 (h) healthy nutrition, including breastfeeding or breast milk that has
2 been pumped, stored and warmed, if such birthing parent so chooses;

3 (i) adequate quantities of age-appropriate diapers, baby clothes, baby
4 blankets, burp cloths, bibs, baby bathing equipment, and developmentally
5 appropriate toys;

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

7 (k) reasonable visiting hours from family and friends, subject to the
8 consent of the birthing parent; and

9 (l) time outdoors with their birthing parent for at least one hour per
10 day.

11 7. Upon admitting a [~~woman~~] person known to be pregnant, or upon
12 learning of pregnancy status, the chief medical officer of each institu-
13 tion or local correctional facility housing [~~female incarcerated indi-~~
14 ~~viduals~~] birthing parents, including the medical professional responsi-
15 ble for each local correctional facility housing [~~female incarcerated~~
16 ~~individuals~~] birthing parents, or such officer or professional's desig-
17 nee, shall immediately inform such [~~woman~~] birthing parent of [~~the~~
18 ~~option of participating in~~] their right to comprehensive pregnancy coun-
19 seling services and the right to abortion services.

20 8. Enforcement. (a) The department or the commission shall promulgate
21 rules and regulations necessary for the implementation of this section
22 within one hundred eighty days of the effective date of this subdivi-
23 sion.

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

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

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

39 § 4. Severability. If any word, phrase, clause, sentence, paragraph,
40 section, or part of this act shall be adjudged by any court of competent
41 jurisdiction to be invalid, such judgment shall not affect, impair, or
42 invalidate the remainder thereof, but shall be confined in its operation
43 to the word, phrase, clause, sentence, paragraph, section, or part ther-
44 eof directly involved in the controversy in which such judgment shall
45 have been rendered.

46 § 5. This act shall take effect on the one hundred eightieth day after
47 it shall have become a law.