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Senate Bill 830 (as introduced 3-12-20)
Sponsor: Senator Erika Geiss
Committee: Judiciary and Public Safety

Date Completed: 9-28-20

CONTENT

The bill would amend the Corrections Code to the do the flowing:

- **Prohibit a Michigan Department of Corrections (MDOC) employee from restraining an incarcerated individual who was pregnant or within a postpartum period (had given birth within the previous 12 weeks), except under certain circumstances.**
- **Prohibit an MDOC employee from placing an incarcerated individual who was pregnant or within in a postpartum period in segregation or isolating conditions.**
- **Require a correctional facility employee to document in writing certain specific information if restraints were used on an incarcerated individual who was pregnant or within a postpartum period.**
- **Require each incoming female incarcerated individual who was 50 years of age or younger to be offered a pregnancy test upon arrival at a designated reception center.**
- **Require the MDOC to allow a pregnant incarcerated individual to develop a birth plan with the assistance of a board-certified obstetrician-gynecologist, a certified nurse midwife, or a doula.**
- **Require the MDOC to ensure that every incarcerated individual who had given birth within the last 12 months had an opportunity to breastfeed the individual's infant child and to express breast milk for the child, and to provide the individual with necessary supplies, including a breast pump.**
- **Require the MDOC to provide frequent visitation for a female incarcerated individual who was breastfeeding a child who was less than 37 months old.**
- **Require a correctional facility employee who could have contact with incarcerated individuals who were pregnant or within a postpartum period and were incarcerated in the facility to receive annual training on the bill's provisions.**
- **Allow an incarcerated individual who was pregnant to designate a person to receive updates about the individual's medical condition, and require the MDOC to notify that person when the incarcerated individual was being transported to a medical appointment or to a hospital, began labor, or delivered her child.**
- **Prohibit the MDOC from limiting the visitation of an incarcerated individual with her child during the 72 hours after delivery, any medical emergency experienced by the child, and admission of the child into a neonatal intensive care unit.**
- **Require the Department to provide certain quarterly reports to the Legislature regarding incarcerated individuals in correctional facilities.**

The bill would take effect 90 days after its enactment.

The bill would prohibit an MDOC employee from restraining an incarcerated individual who was known to be pregnant or was within a postpartum period unless the employee made an individualized determination, with explicit permission from a ranking prison administrator, that restraints were necessary for legitimate safety and security needs of the individual, correctional facility employee, other incarcerated individuals, or the public, and the treating medical provider explicitly approved the use of restraints. If restraints were determined to be necessary, they would have to be the least restrictive available and the most reasonable under the circumstances.

"Postpartum" would mean the 12 weeks following childbirth. "Treating medical care provider" would mean a licensed physician who had a physician-patient relationship with the individual at issue and was not employed by the MDOC.

A correctional facility employee could not restrain an incarcerated individual who was known to be pregnant or was within a postpartum period while the individual was being transported if the restraint were through the use of leg irons, waist chains, or another device that crossed or otherwise touched the individual's abdomen, handcuff, or another device that crossed or touched the individual's wrists when affixed behind the individual's back.

An MDOC employee could not place an incarcerated individual who was known to be pregnant or within a postpartum period in segregation or isolating conditions.

A correctional facility employee could restrain an incarcerated individual who was in labor or who had given birth within the preceding three days only if all of the following conditions applied:

- There was a substantial flight risk or another extraordinary medical or security circumstance that dictated restrained be used to ensure the safety and security of the individual, correctional facility employees, other incarcerated individuals, or the public.
- The employee had made an individualized determination, with explicit permission from a ranking prison administrator and the treating medical provider, that restraints were necessary to prevent escape or injury.
- The restraints used were the least restrictive type and were used in the least restrictive manner.

If restraints were used on an incarcerated individual who was known to be pregnant or was within a postpartum period, a correctional facility employee would have to document, in writing, all of the following:

- The reason for the use of restraints.
- The type of restraints used.
- An assessment of the reasons the restraints used were the least restrictive available and the most reasonable under the circumstances.
- The reasons the treating medical care provider approved the use of restraints or determined an extraordinary medical circumstance dictated the use of restraints.

After arriving at a reception center designated under Section 67(1), the MDOC would have to offer pregnancy testing to each incoming female incarcerated individual who was 50 years of age or younger. (Section 67(1) requires quarters for temporary confinement apart from those of regular inmates to be provided for convicted prisoners upon commitment at each of the State correctional facilities, which are designated as a reception center.)

The Department would have to allow an incarcerated individual who was known to be pregnant to develop a birth plan with the assistance of a physician who was board-certified as an

obstetrician-gynecologist, a certified nurse midwife, or an individual providing doula services. The Department would have to allow for autonomy in treatment decisions for the incarcerated individual during the birth process and the postpartum period, including:

- Access to medicated-assisted treatment if the individual had an opioid use disorder.
- Access to medically necessitated best practices for care and services as determined appropriate by the individual and the individual's treating medical care provider.

"Doula services" would mean childbirth education and support service, including emotional, physical, and information support provided during pregnancy, labor, birth, and the postpartum period.

The Department would have to ensure every incarcerated individual who had given birth within the last 12 months and was producing breast milk was provided both of the following opportunities:

- To breast-feed the individual's infant child during any visit with the infant.
- To express breast milk for the individual's infant child.

An incarcerated individual who expressed breast milk for the individual's infant child would have to be given access to necessary supplies, including a breast pump and appropriate, sanitary containers for storage, and would have to be allowed to have the breast milk stored under refrigeration until it was picked up by a person the individual had authorized for that purpose.

The Department would have to allow an incarcerated individual to have access to doula services if the individual was known to be pregnant or had given birth within the six weeks before the individual arrived at a designated reception center. A support person who had completed birth planning with the pregnant incarcerated individual and had been cleared using the law enforcement information network as provided in the CJIS Policy Council Act could be present in the delivery room with the pregnant incarcerated individual, along with an individual providing doula services. An MDOC employee who was on duty could not be present in the delivery room during the individual's labor and delivery of her child.

The Department would have to provide frequent visitation for a female incarcerated individual who was breastfeeding a child who was less than 37 months old.

A correctional facility employee who could have contact with incarcerated individuals who were pregnant or within a postpartum period and were incarcerated in the facility would have to receive annual training on the bill's provisions.

An incarcerated individual known to be pregnant would have to be asked to designate a person to receive updates about the individual's medical condition. A person designated under this provision would have to be notified when the incarcerated individual was being transported to a medical appointment or to a hospital, began labor, or delivered her child. After a designated person was notified that a pregnant individual had begun labor, that person and an additional two support people could be present in the hospital visiting room.

The Department could not limit the visitation of an incarcerated individual with her child during the following periods:

- The 72 hours after the individual delivered that child.
- Any medical emergency experienced by that child.
- An admission of the child into a neonatal intensive care unit.

The Department would have to provide quarterly reports to the Legislature and to the public that included all of the following information regarding incarcerated individuals in correctional facilities:

- The number of pregnant women.
- The race and age of each pregnant woman.
- The number of women with a high-risk pregnancy.
- The number of off-site medical appointments for pregnant women, categorized by the race and age of the individual.
- The number of on-site medical appointments for pregnant women, categorized by the race and age of the individual.
- The documentation on the use of restraints on a pregnant individual described above.

Proposed MCL 791.265j

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a significant, but indeterminate, fiscal impact on the MDOC. The Department would have to create a system to allow a female prisoner to breast feed her infant child during any visit with the infant and to express breast milk for the infant child. The MDOC also would have to provide access to all necessary supplies, including a breast pump, appropriate sanitary containers for storage, and refrigeration for the storage of expressed breast milk, which would have to be picked up by a person authorized by the incarcerated individual.

Additionally, the bill would allow for more visitations for prisoners who had recently delivered to allow for more breast-feeding opportunities for infants under 37 months of age. The additional visits could require more custody staff supervision, which would increase staff costs for the Department.

The bill also would require the MDOC to allow an incarcerated individual who was pregnant to develop a treatment plan with an outside physician not employed by the MDOC. The costs of developing that plan could be significant, as the MDOC would have zero control over those expenses, which are set at the "best practices" level, rather than the "community standard of care", which is the current constitutional level of prisoner care.

As noted above, the costs of the bill are indeterminate and would depend on amount of programming, facilities updates, and additional staff that needed to comply with the proposed requirements. Based on fiscal year 2019-20 data, the current estimated average annual cost for 1.0 FTE for a classified State employee is \$123,000 gross, \$62,600 General Fund/General Purpose for salary and benefits. This estimate could be higher or lower depending on the classification level of the FTEs hired. Costs for additional breast pumps and proper storage are indeterminate.

Fiscal Analyst: Joe Carrasco

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.