

SENATE BILL NO. 830

March 12, 2020, Introduced by Senators GEISS, CHANG, SANTANA, IRWIN, BAYER, ALEXANDER, BULLOCK, HERTEL, WOJNO and HOLLIER and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
(MCL 791.201 to 791.285) by adding section 65j.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 65j. (1) An employee of the department shall not restrain
2 an incarcerated individual who is known to be pregnant or is within
3 a postpartum period unless the employee makes an individualized
4 determination, with explicit permission from a ranking prison
5 administrator, that restraints are reasonably necessary for the

1 legitimate safety and security needs of the incarcerated
2 individual, correctional facility employees, other incarcerated
3 individuals, or the public, and the treating medical care provider
4 explicitly approves the use of restraints. If restraints are
5 determined to be necessary, the restraints must be the least
6 restrictive available and the most reasonable under the
7 circumstances.

8 (2) An employee of a correctional facility shall not restrain
9 an incarcerated individual who is known to be pregnant or is within
10 a postpartum period while the incarcerated individual is being
11 transported if the restraint is through the use of leg irons, waist
12 chains, or another device that crosses or otherwise touches the
13 incarcerated individual's abdomen, handcuffs, or another device
14 that crosses or otherwise touches the incarcerated individual's
15 wrists when affixed behind the incarcerated individual's back.

16 (3) An employee of the department may not place an
17 incarcerated individual who is known to be pregnant or is within a
18 postpartum period in segregation or isolating conditions.

19 (4) An employee of a correctional facility may restrain an
20 incarcerated individual who is in labor or who has given birth
21 within the preceding 3 days only if all of the following conditions
22 apply:

23 (a) There is a substantial flight risk or another
24 extraordinary medical or security circumstance that dictates
25 restraints be used to ensure the safety and security of the
26 incarcerated individual, correctional facility employees, other
27 incarcerated individuals, or the public.

28 (b) The employee has made an individualized determination,
29 with explicit permission from a ranking prison administrator and

1 the treating medical care provider, that restraints are necessary
2 to prevent escape or injury.

3 (c) The restraints used are the least restrictive type and are
4 used in the least restrictive manner.

5 (5) If restraints are used on an incarcerated individual who
6 is known to be pregnant or is within a postpartum period, an
7 employee of the correctional facility shall document, in writing,
8 all of the following:

9 (a) The reason for the use of restraints.

10 (b) The type of restraints used.

11 (c) An assessment of the reasons the restraints used were the
12 least restrictive available and the most reasonable under the
13 circumstances.

14 (d) The reasons the treating medical care provider approved
15 the use of restraints or determined an extraordinary medical
16 circumstance dictated the use of restraints.

17 (6) Upon arriving at a reception center designated under
18 section 67(1), the department must offer pregnancy testing to each
19 incoming female incarcerated individual who is not more than 50
20 years of age.

21 (7) The department must allow an incarcerated individual who
22 is known to be pregnant to develop a birth plan with the assistance
23 of a physician who is board certified as an obstetrician-
24 gynecologist, a certified nurse midwife, or an individual providing
25 doula services. The department shall allow for autonomy in
26 treatment decisions for the incarcerated individual during the
27 birth process and the postpartum period, including, but not limited
28 to:

29 (a) If the incarcerated individual has an opioid use disorder,

1 access to medicated-assisted treatment.

2 (b) Access to medically necessitated best practices for care
3 and services as determined appropriate by the incarcerated
4 individual and her treating medical care provider.

5 (8) The department must ensure every incarcerated individual
6 who has given birth within the last 12 months and is producing
7 breast milk is provided both of the following opportunities:

8 (a) To breast-feed the infant child of the incarcerated
9 individual during any visit with the infant.

10 (b) To express breast milk for the infant child of the
11 incarcerated individual.

12 (9) An incarcerated individual who expresses her breast milk
13 as authorized under subsection (8)(b) must be given access to
14 necessary supplies, including a breast pump and appropriate,
15 sanitary containers for storage, and must be allowed to have the
16 breast milk stored under refrigeration until it is picked up by a
17 person the incarcerated individual has authorized for that purpose.

18 (10) The department must allow an incarcerated individual to
19 have access to doula services if the incarcerated individual is
20 known to be pregnant or has given birth not more than 6 weeks
21 before she arrived at a reception center designated under section
22 67(1). A support person who has completed birth planning with the
23 pregnant incarcerated individual and has been cleared using the law
24 enforcement information network as provided in the C.J.I.S. policy
25 council act, 1974 PA 163, MCL 28.211 to 28.215, may be present in
26 the delivery room with the pregnant incarcerated individual, along
27 with an individual providing doula services. An employee of the
28 department who is on duty may not be present in the delivery room
29 during the pregnant incarcerated individual's labor and delivery of

1 her child.

2 (11) The department shall provide more frequent visitation for
3 a female incarcerated individual who is breastfeeding a child who
4 is less than 37 months old.

5 (12) An employee of the correctional facility who may have
6 contact with incarcerated individuals who are pregnant or within a
7 postpartum period and are incarcerated in the facility must receive
8 annual training on the provisions of this section.

9 (13) An incarcerated individual known to be pregnant must be
10 asked to designate a person to receive updates about her medical
11 condition. A person designated under this subsection must be
12 notified when that incarcerated individual is transported to a
13 medical appointment or to a hospital, begins labor, or delivers her
14 child. After a person designated under this section is notified
15 that a pregnant incarcerated individual has begun labor, that
16 person and an additional 2 support persons may be present in a
17 hospital visiting room.

18 (14) The department shall not limit the visitation of an
19 incarcerated individual with her child during the following
20 periods:

21 (a) The 72 hours after the incarcerated individual delivers
22 that child.

23 (b) Any medical emergency experienced by that child.

24 (c) Any admission of the child into a neonatal intensive care
25 unit.

26 (15) The department shall provide quarterly reports to the
27 legislature and to the public that include all of the following
28 information regarding incarcerated individuals in correctional
29 facilities:

1 (a) The number who are pregnant women.

2 (b) The race and age of each pregnant woman.

3 (c) The number of women with a high-risk pregnancy.

4 (d) The number of off-site medical appointments for pregnant
5 women, categorized by the race and age of the incarcerated
6 individual.

7 (e) The number of on-site medical appointments for pregnant
8 women, categorized by the race and age of the incarcerated
9 individual.

10 (f) The documentation required under subsection (5).

11 (16) As used in this section:

12 (a) "Doula services" means childbirth education and support
13 services, including emotional, physical, and informational support
14 provided during pregnancy, labor, birth, and the postpartum period.

15 (b) "Incarcerated individual" means an individual who is under
16 the jurisdiction of the department and has not been released on
17 parole or discharged.

18 (c) "Postpartum" means the 12 weeks following childbirth.

19 (d) "Treating medical care provider" means a physician who is
20 licensed under part 170 or 175 of the public health code, 1978 PA
21 368, MCL 333.17001 to 333.17097, and 333.17501 to 333.17556, has a
22 physician-patient relationship with the individual at issue, and is
23 not employed by the department.

24 Enacting section 1. This amendatory act takes effect 90 days
25 after the date it is enacted into law.