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Senate Bill 1152 (as introduced 9-30-20)
Sponsor: Senator Erika Geiss
Committee: Judiciary and Public Safety

Date Completed: 10-12-20

CONTENT

The bill would enact a new law to do the following:

- **Prohibit an employee of a jail or lockup 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 employee of a jail or lockup from placing an incarcerated individual who was pregnant or within a postpartum period in segregation or isolating conditions.**
- **Require an employee of a jail or lockup to document 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 jail or lockup.**
- **Require a pregnant incarcerated individual to be allowed to develop a birth plan with the assistance of a board-certified obstetrician-gynecologist, a certified nurse midwife, or a doula.**
- **Require every incarcerated individual who had given birth within the last 12 months to have an opportunity to breastfeed the individual's infant child and to express breast milk for the child.**
- **Require an incarcerated individual who was breastfeeding a child who was less than 37 months old to be provided more frequent visitation.**
- **Require an employee of a jail or lockup who could have contact with incarcerated individuals who were pregnant or within a postpartum period 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 that person to be notified when the incarcerated individual was being transported to a medical appointment or to a hospital, began labor, or delivered her child.**
- **Prohibit an incarcerated individual's visitation with her child during the 72 hours after delivery, any medical emergency experienced by the child, or admission of the child into a neonatal intensive care unit from being limited.**
- **Require the sheriff and jail administrator or supervising authority to provide to the Legislature, the county board of commissioners of the county in which the jail or lockup was located, and the public quarterly reports containing certain information regarding incarcerated individuals.**

The bill would take effect 90 days after its enactment.

The bill would prohibit an employee of a jail or lockup 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

administrator, that restraints were necessary for the legitimate safety and security needs of the individual, jail or lockup employees, 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.

"Jail" would mean a facility that is operated by a local unit of government for the detention of individuals charged with or convicted of criminal offenses or ordinance violations, or individuals found guilty of civil or criminal contempt, for up to one year. "Lockup" would mean a cell, room, or facility that is operated by a local unit of government for the detention of one or more individuals awaiting processing, booking, court appearances, discharge, or transportation to a jail or another facility, for up to 72 hours.

"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 an employee of the jail or lockup, as applicable.

An employee of a jail or lockup 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, handcuffs, or another device that crossed or touched the individual's wrists when affixed behind the individual's back.

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

An employee of a jail or lockup 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 restraints be used to ensure the safety and security of the individual, jail or lockup employees, other incarcerated individuals, or the public.
- The employee had made an individualized determination, with explicit permission from a ranking 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, an employee of a jail or lockup 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.

The sheriff, jail administrator, or supervising authority would have to ensure a female individual who was 50 years of age or younger was offered pregnancy testing at the time the individual was admitted to the jail or detained in the lockup, as applicable.

An incarcerated individual who was known to be pregnant would have to be allowed 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 incarcerated individual would have to be given autonomy in treatment decisions 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.

Every incarcerated individual who had given birth within the last 12 months and was producing breast milk would have to be 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.

An incarcerated individual would have to have access to doula services if the individual were 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 employee of the jail or lockup who was on duty could not be present in the delivery room during the individual's labor and delivery of her child.

An incarcerated individual who was breastfeeding a child who was less than 37 months old would have to be provided more frequent visitation.

An employee of the jail or lockup who could have contact with incarcerated individuals who were pregnant or within a postpartum period 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.

An incarcerated individual could not have visitation limited 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 sheriff, jail administrator, or supervising authority would have to provide, regarding incarcerated individuals in jails or detained individuals in lockups, as applicable, quarterly reports to the Legislature, the county board of commissioners of the county in which the jail or lockup was located, and to the public that included all of the following information:

- 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.

The Legislature would have to provide funding to counties and local units of government for any increase in costs related to compliance with the proposed Act.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a significant, but indeterminate, fiscal impact on local units of government for costs in county jails and local lock-ups. Counties and local units of government with local lock-ups would have to create a system to allow a female incarcerated individual to breast feed her infant child during any visit with the infant and to express breast milk for the infant child. Counties and local units of government 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 incarcerated individuals 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 counties and local units of government.

The bill also would require counties and local units of government to allow an incarcerated individual who was pregnant to develop a treatment plan with an outside physician not employed by the county or local unit of government. The costs of developing that plan could be significant, as the counties and local units of government would have no 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 bill's costs are indeterminate and would depend on the programming, facilities updates, and additional staff that would be needed to comply with the proposed requirements. Additionally, costs for 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.