

**SUBSTITUTE FOR
SENATE BILL NO. 1152**

A bill to regulate the treatment of incarcerated individuals in a jail or lockup who are pregnant or are in a postpartum period; and to provide for the powers and duties of certain local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

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

5 (b) "Health care staff" means an employee of a jail or lockup
6 who provides health care to incarcerated individuals and who is not
7 a correctional officer.

8 (c) "Incarcerated individual" means an individual who is



1 detained in a jail or lockup in this state.

2 (d) "Jail" means a facility that is operated by a local unit
3 of government for the detention of individuals charged with or
4 convicted of criminal offenses or ordinance violations, or
5 individuals found guilty of civil or criminal contempt, for not
6 more than 1 year.

7 (e) "Lockup" means a cell, room, or facility that is operated
8 by a local unit of government for the detention of 1 or more
9 individuals awaiting processing, booking, court appearances,
10 discharge, or transportation to a jail or another facility, for not
11 to exceed 72 hours.

12 (f) "Postpartum" means the 6 weeks following childbirth.

13 (g) "Ranking administrator" means the jail administrator or
14 the supervising authority of a jail or lockup.

15 (h) "Sheriff" means the sheriff of the county in which the
16 jail is located.

17 (i) "Treating medical care provider" means a physician who is
18 licensed under part 170 or 175 of the public health code, 1978 PA
19 368, MCL 333.17001 to 333.17097 and 333.17501 to 333.17556, has a
20 physician-patient relationship with the individual at issue, and is
21 not an employee of the jail or lockup, as applicable.

22 Sec. 2. (1) Except as otherwise provided in this section, an
23 employee of a jail or lockup shall not restrain an incarcerated
24 individual who is known to be pregnant or is within a postpartum
25 period unless the employee makes an individualized determination,
26 with explicit permission from a ranking administrator after
27 consultation with health care staff, that restraints are reasonably
28 necessary for the legitimate safety and security needs of the
29 incarcerated individual, jail or lockup employees, other



1 incarcerated individuals, or the public. Subject to subsection (4),
2 an employee may make an individualized determination to temporarily
3 place an individual who is known to be pregnant or is within a
4 postpartum period in handcuffs secured in front of the individual's
5 body without explicit permission from the ranking administrator to
6 protect the incarcerated individual, jail or lockup employees,
7 other incarcerated individuals, or the public. If restraints are
8 temporarily placed on an individual under this subsection, the
9 restraints must be removed within 1 hour unless the employee
10 obtains explicit permission from the ranking administrator to
11 maintain the use of the restraint beyond 1 hour. If restraints are
12 determined to be necessary, the restraint must be the least
13 restrictive restraint that is appropriate for the circumstance.

14 (2) Subject to this subsection, an employee of a jail or
15 lockup may restrain an incarcerated individual who is known to be
16 pregnant or is within a postpartum period while the incarcerated
17 individual is being transported through the use of handcuffs placed
18 on the wrists of the individual in front of the individual's body.
19 If the treating medical care provider determines the individual is
20 in labor or the restraint must be removed to provide medical
21 treatment during transport, the employee shall request permission
22 from the ranking administrator to remove the restraint and shall
23 immediately remove the restraint if the administrator gives that
24 permission. An employee of a jail or lockup shall not restrain an
25 incarcerated individual who is known to be pregnant or is within a
26 postpartum period while the incarcerated individual is being
27 transported if the restraint is through the use of leg restraints,
28 waist chains, or another device that impairs the incarcerated
29 individual's ability to walk or touches the incarcerated



1 individual's abdomen unless all of the following conditions apply:

2 (a) There is a substantial flight risk or another
3 extraordinary medical or security circumstance that dictates the
4 type of restraint that must be used to ensure the safety and
5 security of the incarcerated individual, jail or lockup employees,
6 other incarcerated individuals, or the public.

7 (b) The employee has made an individualized determination,
8 with explicit permission from a ranking administrator in
9 consultation with health care staff, that the type of restraint is
10 necessary to prevent escape or injury.

11 (c) The restraint is the least restrictive restraint that is
12 appropriate for the circumstance.

13 (3) An employee of the jail or lockup may not place an
14 incarcerated individual who is known to be pregnant or is within a
15 postpartum period in segregation or isolating conditions unless any
16 of the following circumstances apply:

17 (a) The incarcerated individual is placed in a therapeutic
18 observation status by a qualified mental health provider due to a
19 risk that the incarcerated individual will engage in self-harm.

20 (b) The incarcerated individual makes a bona fide request for
21 protection that requires temporary isolation.

22 (c) The incarcerated individual requires medical isolation
23 pursuant to policies related to the spread of a communicable
24 disease.

25 (d) The incarcerated individual is placed in disciplinary
26 segregation due to an assaultive infraction or an incident
27 involving a threat of violence.

28 (4) An employee of a jail or lockup may restrain an
29 incarcerated individual who is in labor or who has given birth



1 within the preceding 3 days only if all of the following conditions
2 apply:

3 (a) There is a substantial flight risk or another
4 extraordinary medical or security circumstance that dictates
5 restraints be used to ensure the safety and security of the
6 incarcerated individual, jail or lockup employees, other
7 incarcerated individuals, or the public.

8 (b) The employee has made an individualized determination,
9 with explicit permission from a ranking administrator and the
10 treating medical care provider, that restraints are necessary to
11 prevent escape or injury.

12 (c) The restraints used are the least restrictive restraint
13 that are appropriate for the circumstance.

14 (5) If restraints are used on an incarcerated individual who
15 is known to be pregnant or is within a postpartum period, an
16 employee of the jail or lockup shall document, in writing, all of
17 the following:

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

19 (b) The type of restraints used.

20 (c) An assessment of the reasons the restraints used were the
21 least restrictive type that were appropriate for the circumstance.

22 (d) The reasons the ranking administrator, in consultation
23 with health care staff, approved the use of the restraints.

24 (6) The sheriff must offer pregnancy testing to each incoming
25 female incarcerated individual who is not more than 55 years of age
26 at the time the individual is admitted to the jail. The jail
27 administrator or supervising authority must offer pregnancy testing
28 to each incoming female incarcerated individual who is not more
29 than 55 years of age at the time the individual is detained in the



1 lockup. An individual offered testing on admission to a jail or
2 detention in lockup under this subsection must be offered an
3 additional pregnancy test not more than 14 days after arrival.

4 (7) An incarcerated individual who is known to be pregnant
5 must be allowed to develop a birth plan with the assistance of a
6 physician who is board certified as an obstetrician-gynecologist, a
7 certified nurse midwife, or an individual providing doula services.
8 The jail or lockup shall allow for autonomy in treatment decisions
9 for the incarcerated individual during the birth process and the
10 postpartum period, including, but not limited to:

11 (a) If the incarcerated individual has an opioid use disorder,
12 access to medicated-assisted treatment that will be provided by the
13 jail or lockup.

14 (b) Access to medically necessitated best practices for care
15 and services as determined appropriate by the jail or lockup.

16 (8) The jail or lockup must ensure every incarcerated
17 individual who has given birth within the last 12 months and is
18 producing breast milk is provided all of the following
19 opportunities:

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

22 (b) To express breast milk for the infant child of the
23 incarcerated individual.

24 (c) To express breast milk for disposal at the jail or lockup
25 to allow for breastfeeding to continue after the incarcerated
26 individual is released.

27 (9) Subject to sufficient appropriation, a jail or lockup
28 shall provide the necessary supplies, including a breast pump and
29 appropriate, sanitary containers for storage to an incarcerated



1 individual who expresses her breast milk as authorized under
2 subsection (8) (b) or (c) and must not restrict the individual's
3 access to the supplies. The jail or lockup must allow an
4 incarcerated individual who expresses her breast milk as authorized
5 under subsection (8) (b) to have the breast milk stored under
6 refrigeration until it is picked up by a person the incarcerated
7 individual has authorized for that purpose. In addition to any
8 other immunity or defense otherwise provided by law, a jail or
9 lockup is not liable for any loss or injury sustained once an
10 incarcerated individual's breast milk is relinquished to the person
11 authorized to pick up the breast milk under this subsection.

12 (10) A support person who has completed birth planning with
13 the pregnant incarcerated individual and has been cleared using the
14 law enforcement information network as provided in the C.J.I.S.
15 policy council act, 1974 PA 163, MCL 28.211 to 28.215, may be
16 present in the delivery room with the pregnant incarcerated
17 individual, along with an individual providing doula services. An
18 employee of the jail or lockup who is on duty may be present in the
19 delivery room during the pregnant incarcerated individual's labor
20 and delivery of her child.

21 (11) A jail or lockup shall provide more frequent visitation
22 for a female incarcerated individual who is breastfeeding a child
23 who is less than 12 months old.

24 (12) An employee of a jail or lockup who may have contact with
25 incarcerated individuals who are pregnant or within a postpartum
26 period and are detained in that jail or lockup must receive annual
27 training on the provisions of this section.

28 (13) An incarcerated individual known to be pregnant must be
29 asked to designate a person to receive updates about her medical



1 condition. A person designated under this subsection must be
2 notified when that incarcerated individual is transported to a
3 hospital for purposes of labor or delivering the child.

4 (14) Except as provided in subsection (15), a jail or lockup
5 shall not limit the visitation of an incarcerated individual with
6 her child during the following periods:

7 (a) The period after the incarcerated individual delivers that
8 child until the incarcerated individual is transported back to the
9 jail or lockup.

10 (b) Any admission of the child into a neonatal intensive care
11 unit.

12 (15) A jail or lockup may limit the visitation under
13 subsection (14) if both of the following apply:

14 (a) The incarcerated individual has a documented history of
15 child abuse or neglect or has been convicted of child abuse.

16 (b) A licensed bachelor's social worker or licensed master's
17 social worker who has reviewed the details of the documented
18 history or conviction under subdivision (a) and the proposed
19 visitation with ranking administrator makes a recommendation
20 opposing contact between the incarcerated individual and the child.

21 Sec. 3. The legislature shall provide for funding to counties
22 and local units of government for any increase in costs related to
23 compliance with this act.

