

SENATE BILL NO. 1152

September 30, 2020, Introduced by Senators GEISS and CHANG and referred to the Committee on Judiciary and Public Safety.

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) "Incarcerated individual" means an individual who is

1 detained in a jail or lockup in this state.

2 (c) "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 (d) "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 (e) "Postpartum" means the 12 weeks following childbirth.

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

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

17 (h) "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) An employee of a jail or lockup shall not restrain
23 an incarcerated individual who is known to be pregnant or is within
24 a postpartum period unless the employee makes an individualized
25 determination, with explicit permission from a ranking
26 administrator, that restraints are reasonably necessary for the
27 legitimate safety and security needs of the incarcerated
28 individual, jail or lockup employees, other incarcerated
29 individuals, or the public, and the treating medical care provider

1 explicitly approves the use of restraints. If restraints are
2 determined to be necessary, the restraints must be the least
3 restrictive available and the most reasonable under the
4 circumstances.

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

13 (3) An employee of a 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.

16 (4) An employee of a jail or lockup may restrain an
17 incarcerated individual who is in labor or who has given birth
18 within the preceding 3 days only if all of the following conditions
19 apply:

20 (a) There is a substantial flight risk or another
21 extraordinary medical or security circumstance that dictates
22 restraints be used to ensure the safety and security of the
23 incarcerated individual, jail or lockup employees, other
24 incarcerated individuals, or the public.

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

29 (c) The restraints used are the least restrictive type and are

1 used in the least restrictive manner.

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

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

7 (b) The type of restraints used.

8 (c) An assessment of the reasons the restraints used were the
9 least restrictive available and the most reasonable under the
10 circumstances.

11 (d) The reasons the treating medical care provider approved
12 the use of restraints or determined that an extraordinary medical
13 circumstance dictated the use of restraints.

14 (6) The sheriff must ensure a female individual who is not
15 more than 50 years of age is offered pregnancy testing at the time
16 the individual is admitted to the jail. The jail administrator or
17 supervising authority must ensure a female individual who is not
18 more than 50 years of age is offered pregnancy testing at the time
19 the individual is detained in the lockup.

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

27 (a) If the incarcerated individual has an opioid use disorder,
28 access to medication-assisted treatment.

29 (b) Access to medically necessitated best practices for care

1 and services as determined appropriate by the incarcerated
2 individual and the individual's treating medical care provider.

3 (8) Every incarcerated individual who has given birth within
4 the last 12 months and is producing breast milk must be provided
5 both of the following opportunities:

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

8 (b) To express breast milk for the infant child of the
9 incarcerated individual.

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

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

29 (11) An incarcerated individual who is breastfeeding a child

1 who is less than 37 months old must be provided more frequent
2 visitation.

3 (12) An employee of the jail or lockup who may have contact
4 with incarcerated individuals who are pregnant or within a
5 postpartum period must receive annual training on the provisions of
6 this section.

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

16 (14) An incarcerated individual must not have visitation
17 limited with her child during the following:

18 (a) The 72 hours after the incarcerated individual delivers
19 that child.

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

21 (c) Any admission of the child into a neonatal intensive care
22 unit.

23 (15) The sheriff shall provide, regarding incarcerated
24 individuals detained in jails, and the jail administrator or
25 supervising authority shall provide, regarding incarcerated
26 individuals detained in lockups, quarterly reports to the
27 legislature, the county board of commissioners of the county in
28 which the jail or lockup is located, and to the public, that
29 include all of the following information:

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 Sec. 3. The legislature shall provide for funding to counties
12 and local units of government for any increase in costs related to
13 compliance with this section.