



# HOUSE BILL 608: Dignity for Women Who are Incarcerated.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 2, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Robert Ryan
<b>Analysis of:</b>	S.L. 2021-143		Staff Attorney

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**OVERVIEW:** *Session Law 2021-143 establishes certain requirements for the housing and treatment of incarcerated females.*

*This act includes the following changes:*

- *Limits the use of restraints and body cavity searches on pregnant females and during the postpartum recovery period.*
- *Requires proper nutrition for pregnant females and during the postpartum recovery period.*
- *Prohibits restrictive housing for pregnant females and during the postpartum recovery period.*
- *Requires lower bed assignments for pregnant females and during the postpartum recovery period.*
- *Requires a bonding period between a newborn and a new mother.*
- *Requires visitation twice a week between children under one and a new mother.*
- *Prohibits inspections by male employees while a female is in a state of undress.*

*This act became effective December 1, 2021, and applies to individuals in custody on or after that date.*

**BILL ANALYSIS:** This act amends Chapter 148 (State Prison System) and Chapter 153A (Counties) to establish certain requirements related to the housing and treatment of females incarcerated in State correctional facilities and local confinement facilities. This act contains the elements outlined below.

**Definitions** – The following terms are defined: body cavity searches, correctional facility, correctional facility employee, escape risk, important circumstance, incarcerated person, menstrual products, postpartum recovery, restraints, restrictive housing, and state of undress.

### **Care for female incarcerated persons related to pregnancy and childbirth.**

- **Limits Use of Restraints** – Limits Department of Public Safety (DPS) and correctional facility employees use of certain restraints on a pregnant female incarcerated person during the second and third trimester of pregnancy, during labor and delivery, and during the six-week postpartum recovery period. Provides that an incarcerated person in the postpartum recovery period can only be restrained if a correctional facility employee makes an individualized determination that an important circumstance exists and then only wrist handcuffs held in front of a person's body can be used and only when she is ambulatory. The employee ordering use of restraints on any female incarcerated person in the postpartum recovery period must submit a written report justifying use within five days following the use of restraints. This does not prohibit handcuffs or wrist restraints

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in front of the body when used during transport outside of the correctional facility, except they must not be used when the female is in labor. Restraints can be used by a licensed health care professional.

- Limits Body Cavity Searches – Prohibits a correctional facility employee, other than a certified health care professional, from conducting body cavity searches of a female incarcerated person who is pregnant or in the postpartum recovery period unless the correctional facility employee has probable cause to believe contraband is being concealed that presents an immediate threat of harm to the female, the fetus, or another person and in which case a written justification is required within five days of the body cavity search.
- Requires Proper Nutrition – The DPS and correctional facility administrator must ensure that pregnant incarcerated persons are provided sufficient food and dietary supplements, at appropriate times of day, as ordered by specified medical or nutrition professionals. While in the hospital, access must be provided to the full range of meal options.
- Prohibits Restrictive Housing – The DPS and correctional facility administrator are prohibited from placing an incarcerated person who is pregnant or in postpartum recovery in restrictive housing unless a correctional facility employee makes an individualized determination that an important circumstance exists and then a written justification is required within five days.
- Requires Lower Bed Height Assignments – The DPS and correctional facility administrator are prohibited from assigning an incarcerated person who is pregnant or in postpartum recovery to any bed that is elevated more than 3 feet from the floor of the correctional facility.
- Cost of Care – A pregnant female incarcerated person must be provided prenatal, labor, and delivery care as needed and at no cost to the pregnant female incarcerated person.
- Reporting – The warden or administrator of the correctional facility must compile a monthly summary of all written reports received and submit the summary to the Chief Deputy Secretary of Adult Correction and Juvenile Justice.

## **Postpartum recovery of female incarcerated persons.**

- Permits Bonding Period – The newborn must be allowed to remain with the female incarcerated person in the hospital following the delivery of a newborn, unless the medical provider has a reasonable belief that there is a health or safety risk to the newborn.
- Provides Nutritional and Hygiene Products – Necessary nutritional and hygiene products must be provided at no cost during the period of postpartum recovery.

## **Family considerations; placement of female incarcerated person; visitation.**

- Placement – The DPS must place a female incarcerated person who is in the custody of the State prison system and who is the mother of a minor child under the age of 1 within 250 miles of the child's permanent address of record, to the extent practicable and accounting for security and capacity.
- Visitation – The DPS must authorize visitation of incarcerated mothers held in State prisons with low or minimum security classifications by a mother's minor child under the age of 1. These visitations must be contact visits and must be allowed at least twice per week unless a correctional facility employee has a reasonable belief that the child can be harmed during visitation. The employee denying visitation must submit a written report with the justification for the denial within five days.

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## **Inspection by correctional facility employees.**

- Inspections When a Female Incarcerated Person is in the State of Undress – Inspections by male correctional facility employees when a female incarcerated person is in a state of undress must be limited to the greatest extent practicable and consistent with safety and order in a correctional facility. A male correctional facility employee can conduct inspections when a female incarcerated person is in a state of undress if no female correctional facility employees are available within a reasonable period of time.
- Documentation Requirement – If a male correctional facility employee deems it is appropriate to conduct an inspection or search while a female incarcerated person is in a clear state of undress in an area such as the shower, the medical examination room, toilet areas, or while a female incarcerated person is having a body cavity search, the male correctional facility employee must submit a written justification is required within five days.

**Access to menstrual products.** Sufficient menstrual products must be available at the correctional facility for all female incarcerated persons who have an active menstrual cycle at no cost to the female incarcerated person.

## **Training and technical assistance.**

- Correctional Facility Employee Training – The DPS must develop training, in consultation with the Department of Health and Human Services, Divisions of Public Health and Mental Health, Developmental Disabilities, and Substance Abuse Services, and provide it to all State prison employees who have significant regular contact with pregnant female incarcerated persons. The training developed must be related to the physical and mental health of pregnant female incarcerated persons and fetuses, including: general care of pregnant women; the impact of restraints on pregnant female incarcerated persons and fetuses; the impact of being placed in restrictive housing on pregnant female incarcerated persons; the impact of body cavity searches on pregnant female incarcerated persons. Additionally, training materials and curricula developed must be made available to administrators of local confinement facilities.
- Educational Programming for Pregnant Female Incarcerated Persons – The DPS must develop and provide educational programming to pregnant female incarcerated persons held in State prisons related to the following: prenatal care; pregnancy specific hygiene; parenting skills; the impact of alcohol and drugs on the fetus; general health of children. Additionally, training materials and curricula developed must be made available to administrators of local confinement facilities.

**EFFECTIVE DATE:** This act became effective December 1, 2021, and applies to individuals in custody on or after that date.

*\*Theresa Matula, Legislative Analyst, substantially contributed to this summary.*