
OLR Bill Analysis

sSB 13 (File 603, as amended by Senate "A")*

AN ACT CONCERNING FAIR TREATMENT OF INCARCERATED WOMEN.

SUMMARY

This bill makes several changes in laws that govern the treatment of inmates.

The bill establishes various requirements that specifically apply to pregnant inmates. Among other things, it:

1. requires the Department of Correction (DOC) commissioner to ensure that at least one health care provider employed at York Correctional Institution has certain specialized training and knowledge related to pregnancy and childbirth;
2. requires a licensed health care provider to assess each inmate for pregnancy upon admission to the correctional institution;
3. gives pregnant inmates the right to receive specified counseling and written material (i.e., the "Pregnant Woman's Guide"), medical care at the correctional institution, specialized diet, appropriate clothing and sanitary materials, opportunity for ambulatory movement, and access to treatment for postpartum depression;
4. requires the transfer of inmates with high risk pregnancies to the medical infirmary or a hospital;
5. generally limits the use of restraints on pregnant inmates, including during transportation, labor and delivery, and during the postpartum period, and requires written documentation when certain restraints are used;
6. requires the correctional institution to provide pregnant inmates

with counseling and discharge planning prior to their release;
and

7. requires the DOC commissioner to report to the Judiciary Committee, by October 1, 2019, on certain incidences related to pregnant inmates that occur from July 1, 2018 to June 30, 2019.

The bill also makes changes regarding the general treatment of incarcerated women. Among other things, it requires DOC to (1) establish support services for incarcerated women, such as a lactation policy, and (2) provide inmates with feminine hygiene products free of cost, upon request.

Under the bill, DOC may, in consultation with the Department of Mental Health and Addiction Services (DMHAS), reinstate its training program on mental health issues for custodial staff. It must also:

1. establish visitation policies for all inmates with children under age 18,
2. permit specific privacy-related parameters for staff of the opposite gender regarding certain inmate activities, and
3. adhere to certain requirements that relate to the treatment and placement of inmates with a gender identity that differs from the inmate's assigned sex at birth.

The bill also requires DOC, the Board of Pardons and Paroles, and the judicial branch's Court Support Services Division (CSSD) to use a gender-responsive approach in their risk assessment strategy.

*Senate Amendment "A" strikes the underlying bill and replaces it with similar provisions and in doing so (1) designates the written material that must be provided to pregnant inmates as the "Pregnant Woman's Guide" and expands its content; (2) requires the unit administrator's approval before certain restraints may be used on pregnant inmates; (3) eliminates a requirement in the underlying bill for DOC to establish a neonatal intensive care unit visiting policy; (4) allows the DOC commissioner to reinstate its custodial staff training

program in consultation with DMHAS; (5) eliminates the requirement for DOC to develop and implement a policy regarding transgender inmates and replaces it with requirements that relate to the treatment and placement of inmates with a gender identity that differs from the inmate's assigned sex at birth; and (6) requires the DOC commissioner to report to the Judiciary Committee on certain incidences related to pregnant inmates that occur from July 1, 2018, to June 30, 2019.

EFFECTIVE DATE: October 1, 2018, except the gender identity provision is effective July 1, 2018, and the DOC reporting provision is effective upon passage.

§1 — TREATMENT OF PREGNANT INMATES

Licensed Department or Contracted Health Care Provider

The bill requires the DOC commissioner to ensure that at least one department or contracted licensed health care provider employed at the York Correctional Institution has (1) been trained in prenatal and postpartum medical care and (2) knowledge of and the ability to educate pregnant inmates on prenatal nutrition, high-risk pregnancy, and addiction and substance abuse during pregnancy and childbirth.

Pregnancy Assessment

The bill requires a licensed health care provider to assess each inmate for pregnancy upon admission to the York Correctional Institution. The provider must inform the inmate of any necessary medical tests associated with the pregnancy assessment before administering the tests.

Rights of Pregnant Inmates

The York Correctional Institution must provide each pregnant inmate with counseling and written material (known as the “Pregnant Woman’s Guide”), in a form she can reasonably understand, concerning:

1. the inmate's options with regard to her pregnancy;
2. prenatal nutrition;

3. maintaining a healthy pregnancy;
4. labor and delivery;
5. the postpartum period;
6. the institution's policies and practices on inmate care during pregnancy, labor and delivery, and the postpartum period; and
7. restrictions on using restraints on pregnant inmates.

The bill also requires York Correctional Institution to provide pregnant inmates with medical care at the correctional institution, which must include (1) periodic health monitoring and evaluation during pregnancy and (2) prenatal vitamins or supplements, as deemed necessary by a licensed health care provider.

Additionally, the correctional institution must provide pregnant inmates with:

1. a diet containing the nutrients necessary to maintain a healthy pregnancy, as determined by a licensed health care provider trained in prenatal care;
2. the clothing, undergarments, and sanitary materials deemed appropriate by a licensed health care provider trained in prenatal and postpartum medical care;
3. the opportunity for ambulatory movement at least one hour of every day; and
4. access to treatment for postpartum depression by a qualified mental health professional, if deemed necessary by a licensed health care provider who has been trained in postpartum medical care.

High Risk Pregnancy

Under the bill, if a department or contracted licensed health care provider in prenatal medical care, or any other health care professional

who evaluates or treats a pregnant inmate, determines that the inmate's pregnancy is high risk or involves any other medical complication for either the inmate or the baby, the inmate must be immediately transferred to the medical infirmary setting or any hospital deemed appropriate, as determined by such health care provider or professional.

Use of Restraints

The bill generally prohibits York Correctional Institution's correctional staff from using any leg or waist restraint on any inmate who is known to be pregnant or in the postpartum period. Under the bill, "restraints" means metal handcuffs, metal leg restraints, and waist and tether chains.

Risk of Harm or Escape. The bill generally limits the use of restraints on pregnant inmates to handcuffs that are placed on the wrists held in front of her body. It allows correctional staff to place the inmate in wrist, leg, or waist restraints if (1) there are compelling grounds to believe that the inmate presents an immediate and serious threat of harm to herself, staff, and others or a substantial flight risk and cannot be reasonably contained by other means and (2) the institution's unit administrator or his or her designee approves it, except under exigent circumstances. In such cases, the restraints must be the least restrictive kind considering the circumstances. (The bill prohibits the use of restraints during labor and delivery, as described below.)

Documentation. The bill requires correctional staff to document, in writing, the:

1. reasons they believed that the inmate posed a risk of harm or escape,
2. kind of restraints used, and
3. reasons they considered such restraints to be the least restrictive kind available and the most reasonable means of preventing harm or escape.

Medical Restraints and Removal. The bill does not prohibit the use of medical restraints by a licensed health care provider to ensure the medical safety of the inmate. Also, correctional staff must immediately remove any correctional restraints if an attending physician or advanced practice registered nurse requests it for medical reasons.

Transportation. The correctional staff must ensure that any inmate, who is determined by a licensed health care provider to be in the second or third trimester of a pregnancy, is transported to and from visits to health care providers and court proceedings in a vehicle with seatbelts.

Labor and Delivery

Under the bill, each pregnant inmate at the York Correctional Institution must receive labor and delivery services in a hospital deemed appropriate by a department or contracted licensed health care provider.

The bill prohibits the use of restraints at any time on an inmate who is in any stage of labor or delivery, including during transportation to the hospital.

If a correction officer is present with the inmate during any stage of labor or delivery, the correction officer must be (1) female, if possible, and (2) in a location that ensures the inmate's privacy to the extent possible.

Postpartum Period

Under the bill, inmates in the postpartum period must be assessed by a licensed health care provider upon return to the correctional institution. Each inmate in the postpartum period must be housed in a medical or mental health housing unit at the correctional institution until discharged by a licensed health care provider.

Counseling and Discharge Planning

The York Correctional Institution must provide pregnant inmates, prior to their release, with counseling and discharge planning to

ensure, to the extent feasible, the continuity of prenatal and pregnancy-related care, including substance abuse programming and treatment referrals when deemed appropriate.

§ 2 — SERVICES AND SUPPORTS

The bill requires DOC to establish prenatal, labor, and postpartum services and supports for women incarcerated at the York Correctional Institution, including a lactation policy that provides inmate mothers the opportunity to pump and store breast milk for their babies.

DOC must also establish and make available to women incarcerated at the York Correctional Institution parenting support literature, including information on child custody processes, child support, and family reunification resources.

§ 3 — FEMININE HYGIENE PRODUCTS

The bill requires York Correctional Institution correctional staff, upon request, to provide inmates at the institution with feminine hygiene products (i.e., tampons and sanitary napkins) at no cost, as soon as practicable, and in an amount appropriate to the inmate's health care needs.

§ 4 — VISITATION POLICIES

The DOC commissioner must establish visitation policies for any inmate with a child under age 18, with rules regarding (1) physical contact, (2) convenience and frequency of visits, and (3) access to child-friendly visiting areas.

§ 5 — PRIVACY

Under the bill, all inmates must be permitted to shower, perform bodily functions, and change clothes without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when it is incidental to a routine cell check. The bill requires staff of the opposite gender to announce their presence when entering an inmate housing unit when no other staff of the inmate's gender is present.

§ 6 — RISK ASSESSMENT STRATEGY

Existing law, unchanged by the bill, requires DOC, the Board of Pardons and Paroles, and the judicial branch's Court Support Services Division to use a risk assessment strategy to rate an offender's likelihood to recidivate and identify the support programs for successful reentry into the community.

Under current law, such strategy must incorporate use of both static and dynamic factors. The bill expands this by requiring that the strategy also use a gender-responsive approach that recognizes the unique risks and needs of female offenders.

Under current law, the department, board, and division, in developing the risk assessment strategy, may partner with an in-state educational institution with expertise in criminal justice and psychiatry. Under the bill, such educational institution does not have to be in Connecticut.

§ 7 — CUSTODIAL STAFF TRAINING

Current law required DOC to develop a training program for custodial staff members which required between four and eight hours of training on mental health issues each year. This program terminated on July 1, 2012. The bill allows DOC, in consultation with DMHAS, to reinstate this program. The training program must be offered to all custodial staff members at one or more correctional facilities designated by the commissioner.

The bill eliminates the requirement that the training consist of classroom instruction and written materials provided by a qualified mental health professional in conjunction with a training academy accredited by the American Correctional Association.

It requires that, within available appropriations, the training include:

1. prevention of suicide and self-injury,
2. recognition of signs of mental illness,

3. communication skills for interacting with inmates with mental illness, and
4. alternatives to disciplinary action and the use of force when dealing with inmates with mental illness.

Under the bill, all custodial staff at each DOC facility in which female inmates are confined may, within available appropriations, also receive four to eight hours of training on gender-specific and trauma-related mental health issues faced by female inmates.

§ 8 — GENDER IDENTITY

Under the bill, any inmate of a correctional institution who has a gender identity that differs from the inmate's assigned sex at birth and has a diagnosis of gender dysphoria, as set forth in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", must:

1. be addressed by correctional staff in a manner consistent with the inmate's gender identity;
2. have access to commissary items, clothing, personal property, programming, and educational materials that are consistent with the inmate's gender identity; and
3. have the right to be searched by a correctional staff member of the same gender identity, unless the inmate requests otherwise or under exigent circumstances.

An inmate who has a birth certificate, passport, or driver's license that reflects his or her gender identity, or who can meet established standards for obtaining such a document to confirm the inmate's gender identity, must presumptively be placed in a correctional institution with inmates of the gender consistent with the inmate's gender identity. To overcome the presumptive placement, the DOC commissioner, or the commissioner's designee, must demonstrate that the placement would present significant safety, management, or security problems.

The bill requires the commissioner, or his designee, in making these determinations, to give serious consideration to the inmate's views with respect to his or her safety.

§ 501 — DOC REPORTING

The bill requires the DOC commissioner, or his designee, to report to the Judiciary Committee, by October 1, 2019, on instances during the period from July 1, 2018, to June 30, 2019, in which:

1. more than one type of restraint was simultaneously used on a pregnant inmate,
2. an inmate incarcerated in a correctional institution has given birth outside of a traditional hospital setting, and
3. a pregnant inmate was held in administrative segregation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0 (04/02/2018)