

1 **INMATE RESTRICTIONS STANDARDS AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephanie Pitcher**

5 Senate Sponsor: Jacob L. Anderegg

7 **LONG TITLE**

8 **General Description:**

9 This bill creates standards for the treatment of pregnant inmates.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ provides that the least restrictive restraints are to be used on a pregnant inmate;
- 13 ▶ requires that a correctional staff member individually review an inmate's situation
- 14 before allowing restraints to be used on an inmate during labor, delivery, and
- 15 postpartum recovery;
- 16 ▶ prohibits the use of shackles or other restraints during labor and delivery;
- 17 ▶ requires the correctional staff member to document in a written record all decisions
- 18 made regarding the use of restraints on a pregnant inmate;
- 19 ▶ makes the record public with individually identifying information redacted;
- 20 ▶ extends the requirements to county jails; and
- 21 ▶ requires that specific information regarding inmate births be reported to the
- 22 Commission on Criminal and Juvenile Justice for inclusion in the annual report.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 17-22-8, as last amended by Laws of Utah 2011, Chapter 64

30 64-13-45, as enacted by Laws of Utah 2018, Chapter 437

31 ENACTS:

32 64-13-46, Utah Code Annotated 1953

33

34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section 17-22-8 is amended to read:

36 **17-22-8. Care of prisoners -- Funding of services -- Private contractor.**

37 (1) Except as provided in Subsection [~~(3)~~] (4), the sheriff shall:

38 (a) receive all persons committed to jail by competent authority;

39 (b) provide them with necessary food, clothing, and bedding in the manner prescribed

40 by the county legislative body; and

41 (c) provide medical care when:

42 (i) the person's symptoms evidence a serious disease or injury;

43 (ii) the person's disease or injury is curable or may be substantially alleviated; and

44 (iii) the potential for harm to the person by reason of delay or the denial of medical
45 care would be substantial.

46 (2) The sheriff shall follow the provisions of Section 64-13-46 if a prisoner is pregnant
47 and gives birth, including the reporting requirements in Subsection 64-13-45(2)(c).

48 [~~(2)~~] (3) The expense incurred in providing these services to prisoners shall be paid
49 from the county treasury, except as provided in Section 17-22-10.

50 [~~(3)~~] (4) If the county executive contracts with a private contractor to provide the
51 services required by this section, the sheriff shall provide only those services required of him
52 by the contract between the county and the private contractor.

53 Section 2. Section 64-13-45 is amended to read:

54 **64-13-45. Department reporting requirements.**

55 (1) As used in this section:

56 (a) (i) "In-custody death" means an inmate death that occurs while the inmate is in the
57 custody of the department.

58 (ii) "In-custody death" includes an inmate death that occurs while the inmate is:
59 (A) being transported for medical care; or
60 (B) receiving medical care outside of a correctional facility, other than a county jail.
61 (b) "Inmate" means an individual who is processed or booked into custody or housed in
62 the department or a correctional facility other than a county jail.
63 (c) "Opiate" means the same as that term is defined in Section 58-37-2.
64 (2) So that the state may oversee the inmate health care system, the department shall
65 submit a report to the Commission on Criminal and Juvenile Justice, created in Section
66 63M-7-201, before August 1 of each year that includes:
67 (a) the number of in-custody deaths that occurred during the preceding calendar year[;],
68 including:
69 [~~(b)~~] (i) the known, or discoverable on reasonable inquiry, causes and contributing
70 factors of each of the in-custody deaths described in Subsection (2)(a); and
71 [~~(c)~~] (ii) the department's policy for notifying an inmate's next of kin after the inmate's
72 in-custody death;
73 [~~(d)~~] (b) the department policies, procedures, and protocols:
74 (i) for treatment of an inmate experiencing withdrawal from alcohol or substance use,
75 including use of opiates; and
76 (ii) relating to the department's provision, or lack of provision, of medications used to
77 treat, mitigate, or address an inmate's symptoms of withdrawal, including methadone and all
78 forms of buprenorphine and naltrexone; [~~and~~]
79 (c) the number of inmates who gave birth and were restrained in accordance with
80 Section 64-13-46, including:
81 (i) the types of restraints used; and
82 (ii) whether the use of restraints was to prevent escape or to ensure the safety of the
83 inmate, medical or corrections staff, or the public; and
84 [~~(e)~~] (d) any report the department provides or is required to provide under federal law
85 or regulation relating to inmate deaths.

- 86 (3) The Commission on Criminal and Juvenile Justice shall:
87 (a) compile the information from the reports described in Subsection (2);
88 (b) omit or redact any identifying information of an inmate in the compilation to the
89 extent omission or redaction is necessary to comply with state and federal law; and
90 (c) submit the compilation to the Law Enforcement and Criminal Justice Interim
91 Committee and the Utah Substance Use and Mental Health Advisory Council before November
92 1 of each year.

93 Section 3. Section ~~64-13-46~~ is enacted to read:

94 **64-13-46. Pregnant inmates.**

95 (1) If the staff of a correctional facility knows or has reason to believe that an inmate is
96 pregnant, the staff, when restraining the inmate, shall use the least restrictive restraints
97 necessary to ensure the safety and security of the inmate and others. This requirement shall
98 continue during postpartum recovery and any transport to or from a correctional facility.

99 (2) The staff of a correctional facility may not use restraints on an inmate during labor
100 and childbirth unless a correctional staff member makes an individualized determination that
101 there are compelling grounds to believe that the inmate presents:

102 (a) an immediate and serious risk of harm to herself, medical staff, correctional staff, or
103 the public; or

104 (b) a substantial risk of escape that cannot reasonably be reduced by the use of other
105 existing means.

106 (3) Notwithstanding Subsection (1) or (2), under no circumstances may shackles, leg
107 restraints, or waist restraints be used on an inmate during labor and childbirth or postpartum
108 recovery while in a medical facility.

109 (4) Correctional staff present during labor or childbirth shall:

110 (a) be stationed in a location that offers the maximum privacy to the inmate, while
111 taking into consideration safety and security concerns; and

112 (b) be female, if practicable.

113 (5) If restraints are authorized under Subsection (1) or (2), a written record of the

- 114 decision and use of the restraints shall be made that includes:
- 115 (a) the correctional staff member's determination on the use of restraints;
- 116 (b) the circumstances that necessitated the use of restraints;
- 117 (c) the type of restraints that were used; and
- 118 (d) the length of time the restraints were used.
- 119 (6) The record created in Subsection (5):
- 120 (a) shall be retained by the correctional facility for five years;
- 121 (b) shall be available for public inspection with individually identifying information
- 122 redacted; and
- 123 (c) may not be considered a medical record under state or federal law.
- 124 (7) As used in this section:
- 125 (a) "Postpartum recovery" means, as determined by her physician, the period
- 126 immediately following delivery, including the entire period a woman is in the hospital or
- 127 medical facility after birth.
- 128 (b) "Restraints" means any physical restraint or mechanical device used to control the
- 129 movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a
- 130 convex shield.
- 131 (c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg
- 132 irons, belly chains, or a security or tether chain.