

PREGNANT AND POSTPARTUM INMATE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends requirements relating to pregnant inmates.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ codifies the existing prison nursery as the Incarcerated Mothers and Infants Program (program);
- ▶ establishes the Incarcerated Mothers and Infants Program Advisory Board (board);
- ▶ provides that the Department of Health and Human Services shall, after consulting with the board, make rules governing the program;
- ▶ modifies requirements relating to the use of restraints on a pregnant inmate;
- ▶ requires access to postpartum care and certain social services for an inmate who has recently given birth;
- ▶ includes a sunset date; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **17-22-8**, as last amended by Laws of Utah 2022, Chapter 123

30 **63I-1-223**, as last amended by Laws of Utah 2020, Chapters 154, 232

31 **64-13-46**, as enacted by Laws of Utah 2019, Chapter 385

32 ENACTS:

33 **26B-1-401**, Utah Code Annotated 1953

34 **63I-1-264**, Utah Code Annotated 1953

35 **64-13-46.5**, Utah Code Annotated 1953



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

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

39 **17-22-8. Care of prisoners -- Funding of services -- Private contractor.**

40 (1) Except as provided in Subsection (5), a sheriff shall:

41 (a) receive each individual committed to jail by competent authority;

42 (b) provide each prisoner with necessary food, clothing, and bedding in the manner
43 prescribed by the county legislative body;

44 (c) provide each prisoner medical care when:

45 (i) the prisoner's symptoms evidence a serious disease or injury;

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

47 (iii) the potential for harm to the person by reason of delay or the denial of medical
48 care would be substantial; and

49 (d) provide each prisoner, as part of the intake process, with the option of continuing
50 any of the following medically prescribed methods of contraception:

51 (i) an oral contraceptive;

52 (ii) an injectable contraceptive;

53 (iii) a patch;

54 (iv) a vaginal ring; or

55 (v) an intrauterine device, if the prisoner was prescribed the intrauterine device because
56 the prisoner experiences serious and persistent adverse effects when using the methods of
57 contraception described in Subsections (1)(d)(i) and (ii).

58 (2) A sheriff may provide the generic form of a contraceptive described in Subsection

59 (1)(d)(i) or (ii).

60 (3) A sheriff shall follow the provisions of Section 64-13-46 if a prisoner is pregnant
61 [~~and gives birth~~] or in postpartum recovery, including the reporting requirements in Subsection
62 64-13-45(2)(c).

63 (4) (a) Except as provided in Subsection (4)(b), the expense incurred in providing the
64 services required by this section to prisoners shall be paid from the county treasury, except as
65 provided in Section 17-22-10.

66 (b) The expense incurred in providing the services described in Subsection (1)(d) to
67 prisoners shall be paid by the Department of Health and Human Services.

68 (5) If the county executive contracts with a private contractor to provide the services
69 required by this section, the sheriff shall provide only those services required of the sheriff by
70 the contract between the county and the private contractor.

71 Section 2. Section 26B-1-401 is enacted to read:

72 **26B-1-401. Incarcerated Mothers and Infants Program Advisory Board -- Duties**
73 **-- Rulemaking.**

74 (1) As used in this part:

75 (a) "Advisory board" means the Incarcerated Mothers and Infants Program Advisory
76 Board.

77 (b) "Incarcerated mother" means the same as that term is defined in Section
78 64-13-46.5.

79 (c) "Program" means the Incarcerated Mothers and Infants Program created under
80 Section 64-13-46.5.

81 (2) The Incarcerated Mothers and Infants Program Advisory Board shall consist of the
82 following members:

83 (a) two individuals from the Department of Corrections, appointed by the executive
84 director of the Department of Corrections;

85 (b) one individual appointed by the Board of Pardons and Parole; and

86 (c) six individuals appointed by the executive director of the department, including:

87 (i) two individuals from the department with experience in child care licensing;

88 (ii) two pediatric healthcare providers;

89 (iii) one individual with expertise in early childhood development; and

90 (iv) one individual with experience advocating for incarcerated women.

91 (3) (a) Except as provided in (3)(b), a member of the advisory board shall be appointed
92 for a four-year term.

93 (b) A member that is appointed to complete an unexpired term may complete the
94 unexpired term and serve a subsequent four-year term.

95 (c) Appointments and reappointments may be staggered so that one-fourth of the
96 advisory board changes each year.

97 (d) The advisory board shall annually elect a chair and co-chair of the board from
98 among the members of the board to serve a two-year term.

99 (4) The advisory board shall meet at least bi-annually, or more frequently as
100 determined by the executive director, the chair, or three or more members of the advisory
101 board.

102 (5) A majority of the board constitutes a quorum and a vote of the majority of the
103 members present constitutes an action of the advisory board.

104 (6) A member of the advisory board may not receive compensation or benefits for the
105 member's service, but may receive per diem and travel expenses as allowed in:

106 (a) Section [63A-3-106](#);

107 (b) Section [63A-3-107](#); and

108 (c) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
109 [63A-3-107](#).

110 (7) The advisory board shall:

111 (a) review research regarding childhood development and best practices for infants
112 placed in a nursery located within a secure correctional environment;

113 (b) as part of the advisory board's review of research under Subsection (7)(a), study the
114 benefits of having a nursery for infants and incarcerated mothers located within a secure
115 correctional environment and the benefits of placing an infant or incarcerated mother in a
116 diversion program removed from a secure correctional environment;

117 (c) study the costs of implementing a diversion program for infants and incarcerated
118 mothers removed from a secure correctional environment;

119 (d) create a provisional plan for implementing a diversion program for infants and
120 incarcerated mothers removed from a secure correctional environment; and

121 (e) advise and make recommendations to the department regarding the rules and
122 policies the department shall establish under Subsection (10) for the Incarcerated Mothers and
123 Infants Program that address:

124 (i) the safety of the program for infants and incarcerated mothers;
125 (ii) the childhood development needs of the infants in the program;
126 (iii) the specific medical needs of the infants and incarcerated mothers in the program;
127 (iv) the appropriate needs of the incarcerated mothers in the program; and
128 (v) other requirements the advisory board deems necessary for the success and safety of
129 the program.

130 (8) The advisory board may, upon request from the Department of Corrections, extend
131 the age that qualifies an infant for the program under Subsection 64-13-46.5(2)(a) from 18
132 months old or younger to 24 months old or younger if:

133 (a) the extension is in the best interest of the infant; and
134 (b) without the extension the infant would be separated from the incarcerated mother
135 while the incarcerated mother remains in the correctional facility.

136 (9) On or before November 30, 2024, the advisory board shall provide a report of the
137 advisory board's research and study under Subsections (7)(a) through (d), including any
138 proposed legislation, to:

139 (a) the Law Enforcement and Criminal Justice Interim Committee; and
140 (b) the Executive Offices and Criminal Justice Appropriations Subcommittee.

141 (10) The department, after receiving recommendations from the Incarcerated Mothers
142 and Infants Program Advisory Board under Subsection (7)(c), shall adopt rules, in accordance
143 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that the Department of
144 Corrections shall follow in implementing the Incarcerated Mothers and Infants Program.

145 (11) The rules established under Subsection (10) shall require the program to:
146 (a) have materials needed for proper childhood development for infants in the program;
147 (b) meet basic safety requirements for the infants and incarcerated mothers in the
148 program; and

149 (c) meet any other requirements recommended by the advisory board that the
150 department deems necessary for the program.

151 (12) The department may make rules under Subsection (10) regarding corrective

152 action, including suspension or closure of the program, if the Department of Corrections fails
153 to comply with the rules established under this section.

154 Section 3. Section **63I-1-223** is amended to read:

155 **63I-1-223. Repeal dates: Titles 23 through 23B.**

156 (1) Section 23-14-2.5, which creates the Wildlife Board Nominating Committee, is
157 repealed July 1, 2023.

158 (2) Section 23-14-2.6, which creates regional advisory councils for the Wildlife Board,
159 is repealed July 1, 2023.

160 (3) Section 26B-1-401, regarding the Incarcerated Mothers and Infants Program
161 Advisory Board, is repealed July 1, 2026.

162 Section 4. Section **63I-1-264** is enacted to read:

163 **63I-1-264. Repeal dates: Title 64.**

164 Section 64-13-46.5, regarding the Incarcerated Mothers and Infants Program, is
165 repealed July 1, 2026.

166 Section 5. Section **64-13-46** is amended to read:

167 **64-13-46. Pregnant inmates.**

168 (1) As used in this section:

169 (a) "Postpartum recovery" means, as determined by the pregnant inmate's physician,
170 the period immediately following delivery, including the entire period the inmate is in the
171 hospital or health care facility after birth.

172 (b) "Restraints" means any physical restraint or mechanical device used to control the
173 movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a
174 convex shield.

175 (c) (i) "Shackles" means metal restraints, including leg irons, belly chains, or a security
176 or tether chain.

177 (ii) "Shackles" does not include hard metal handcuffs.

178 [(+)] (2) [H] Subject to Subsections (3) and (4), if the staff of a correctional facility
179 knows or has reason to believe that an inmate is pregnant or is in postpartum recovery, the staff
180 shall, when restraining the inmate[~~, shall~~] at any time or location, use the least restrictive
181 restraints necessary to ensure the safety and security of the inmate and others. [This
182 requirement shall continue during postpartum recovery and any transport to or from a

183 ~~correctional facility.]~~

184 ~~[(2)] (3) [The staff of a correctional facility]~~ A correctional staff member may not use
 185 restraints on an inmate during the third trimester of pregnancy, labor [and], or childbirth unless
 186 a correctional staff member makes an individualized determination that there are compelling
 187 grounds to believe that the inmate presents:

188 (a) an immediate and serious risk of harm to ~~[herself]~~ the inmate, the inmate's infant,
 189 medical staff, correctional staff, or the public; or

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

192 ~~[(3)] (4)~~ Notwithstanding Subsection ~~[(1) or (2)] (3)~~, under no circumstances may
 193 shackles, leg restraints, or waist restraints be used on an inmate during the third trimester of
 194 pregnancy, labor [and], childbirth, or postpartum recovery [while in a medical facility].

195 ~~[(4)] (5)~~ Correctional staff present during labor or childbirth shall:

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

198 (b) be female, if practicable.

199 ~~[(5)] (6) [If restraints are authorized under Subsection (1) or (2)]~~ If a correctional staff
 200 member authorizes restraints under Subsection (2) or (3), the correctional staff member shall
 201 make a written record of the [decision] authorization and use of the restraints [shall be made]
 202 that includes:

203 (a) an explanation of the grounds for the correctional staff member's ~~[determination]~~
 204 authorization on the use of restraints;

205 ~~[(b) the circumstances that necessitated the use of restraints;]~~

206 ~~[(c)] (b)~~ the type of restraints that were used; and

207 ~~[(d)] (c)~~ the length of time the restraints were used.

208 ~~[(6)] (7)~~ The record ~~[created]~~ described in Subsection ~~[(5)] (6)~~:

209 (a) shall be retained by the correctional facility for five years;

210 (b) shall be available for public inspection with individually identifying information
 211 redacted; and

212 (c) may not be considered a medical record under state or federal law.

213 (8) For a minimum of 48 hours after an inmate has given birth, a correctional facility

214 shall, if directed by the inmate's physician, allow the infant to remain with the inmate at the
215 health care facility.

216 (9) A correctional facility shall provide:

217 (a) an inmate who is pregnant, or who has given birth within the past six weeks, access
218 to a social worker to help the inmate:

219 (i) arrange childcare;

220 (ii) establish a reunification plan; and

221 (iii) establish a substance abuse treatment plan, if needed; and

222 (b) an inmate in postpartum recovery access to postpartum care for up to 12 weeks as
223 determined by the inmate's physician.

224 ~~[(7) As used in this section:]~~

225 ~~[(a) "Postpartum recovery" means, as determined by her physician, the period~~
226 ~~immediately following delivery, including the entire period a woman is in the hospital or~~
227 ~~medical facility after birth.]~~

228 ~~[(b) "Restraints" means any physical restraint or mechanical device used to control the~~
229 ~~movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a~~
230 ~~convex shield.]~~

231 ~~[(c) "Shackles" means metal or iron restraints and includes hard metal handcuffs, leg~~
232 ~~irons, belly chains, or a security or tether chain.]~~

233 Section 6. Section **64-13-46.5** is enacted to read:

234 **64-13-46.5. Incarcerated Mothers and Infants Program.**

235 (1) As used in this section:

236 (a) "Incarcerated mother" means an inmate who gives birth after entering the
237 department's custody.

238 (b) "Program" means the Incarcerated Mothers and Infants Program created under this
239 section.

240 (c) "Violent felony" means the same as that term is defined in Section [76-3-203.5](#).

241 (2) There is created within the department the Incarcerated Mothers and Infants
242 Program that shall:

243 (a) subject to Subsection (3), provide space for incarcerated mothers and infants 18
244 months old or younger in a facility managed by the department; and

245 (b) comply with the requirements established under Section 26B-1-401 by the
246 Department of Health and Human Services.

247 (3) The department may, in accordance with Subsection 26B-1-401(8), request
248 permission from the Incarcerated Mothers and Infants Program Advisory Board to provide
249 space in the program for an infant who is 24 months old or younger.

250 (4) The Department of Health and Human Services shall certify the program is in
251 compliance with the rules established under Section 26B-1-401 before the program begins
252 operations.

253 (5) On or before July 1, 2024, the department shall ensure that at least one
254 administrator of the program has experience or training in early childhood development.

255 (6) An incarcerated mother is not eligible for the program if the incarcerated mother
256 has been convicted of, or has charges pending for, a violent felony, including attempt,
257 solicitation, or conspiracy to commit the violent felony.

258 (7) The department may make rules, in accordance with Title 63G, Chapter 3, Utah
259 Administrative Rulemaking Act, regarding the eligibility requirements for an incarcerated
260 mother to enter the program.