

Representative Candice B. Pierucci proposes the following substitute bill:

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 and postpartum inmates.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ allows the Department of Corrections to create a nursery subject to rules established by the Department of Health and Human Services;
- ▶ establishes the Correctional Postnatal and Early Childhood Advisory Board (board);
- ▶ provides that the Department of Health and Human Services shall, after consulting with the board, make rules governing any nursery established by the Department of Corrections;
- ▶ 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **17-22-8**, as last amended by Laws of Utah 2022, Chapter 123

31 **63I-1-226**, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255,
32 347, and 451

33 **64-13-46**, as enacted by Laws of Utah 2019, Chapter 385

34 ENACTS:

35 **26B-1-401**, Utah Code Annotated 1953

36 **63I-1-264**, Utah Code Annotated 1953

37 **64-13-46.5**, Utah Code Annotated 1953



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

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

41 **17-22-8. Care of prisoners -- Funding of services -- Private contractor.**

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

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

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

46 (c) provide each prisoner medical care when:

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

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

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

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

53 (i) an oral contraceptive;

54 (ii) an injectable contraceptive;

55 (iii) a patch;

56 (iv) a vaginal ring; or

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

60 (2) A sheriff may provide the generic form of a contraceptive described in Subsection
 61 (1)(d)(i) or (ii).

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

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

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

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

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

74 **26B-1-401. Correctional Postnatal and Early Childhood Advisory Board -- Duties**
 75 **-- Rulemaking.**

76 (1) As used in this part:

77 (a) "Advisory board" means the Correctional Postnatal and Early Childhood Advisory
 78 Board.

79 (b) "Incarcerated mother" means the same as that term is defined in Section
 80 64-13-46.5.

81 (2) The advisory board shall consist of the following members:

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

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

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

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

87 (ii) two pediatric healthcare providers;

88 (iii) one individual with expertise in early childhood development; and
89 (iv) one individual with experience advocating for incarcerated women.
90 (3) (a) Except as provided in Subsection (3)(b), a member of the advisory board shall
91 be appointed for a four-year term.

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

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

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

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

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

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

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

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

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

109 (7) The advisory board shall:

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

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

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

118 (d) create a provisional plan for implementing a diversion program for infants and

119 incarcerated mothers removed from a secure correctional environment; and

120 (e) advise and make recommendations to the department regarding rules and policies
121 for any nursery established by the Department of Corrections to provide space for incarcerated
122 mothers and infants.

123 (8) The advisory board may, upon request from the Department of Corrections,
124 consider the specific circumstances of an infant and the infant's incarcerated mother and extend
125 the age that qualifies the infant for a nursery under Subsection 64-13-46.5(2) from 18 months
126 old or younger to 24 months old or younger if:

127 (a) the extension is in the best interest of the infant; and

128 (b) without the extension the infant would be separated from the incarcerated mother
129 while the incarcerated mother remains in the correctional facility.

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

133 (a) the Law Enforcement and Criminal Justice Interim Committee; and

134 (b) the Executive Offices and Criminal Justice Appropriations Subcommittee.

135 (10) The department shall:

136 (a) after receiving recommendations from the advisory board under Subsection (7)(e),
137 adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
138 certification of a nursery established in a secure correctional environment that address:

139 (i) the safety of the nursery for infants and incarcerated mothers;

140 (ii) the childhood development needs of the infants in the nursery;

141 (iii) the specific medical needs of the infants and incarcerated mothers in the nursery;

142 (iv) the appropriate needs of the incarcerated mothers in the nursery; and

143 (v) any other requirements recommended by the advisory board that the department
144 deems necessary for the nursery; and

145 (b) certify that any nursery established by the department is in compliance with the
146 rules established under this section before the nursery begins operations.

147 (11) The department may make rules in accordance with Title 63G, Chapter 3, Utah
148 Administrative Rulemaking Act, regarding corrective action, including closure of a nursery
149 established by the Department of Corrections, if the Department of Corrections fails to comply

150 with the rules established under this section.

151 Section 3. Section **63I-1-226** is amended to read:

152 **63I-1-226. Repeal dates: Title 26 through 26B.**

153 (1) Section **26-1-7.5**, which creates the Utah Health Advisory Council, is repealed July
154 1, 2025.

155 (2) Section **26-1-40** is repealed July 1, 2022.

156 (3) Section **26-1-41** is repealed July 1, 2026.

157 (4) Section **26-1-43** is repealed December 31, 2025.

158 (5) Section **26-7-10** is repealed July 1, 2025.

159 (6) Subsection **26-7-11(5)**, regarding reports to the Legislature, is repealed July 1,
160 2028.

161 (7) Section **26-7-14** is repealed December 31, 2027.

162 (8) Section **26-8a-603** is repealed July 1, 2027.

163 (9) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
164 1, 2025.

165 (10) Subsection **26-10-6(5)**, which creates the Newborn Hearing Screening Committee,
166 is repealed July 1, 2026.

167 (11) Section **26-10b-106**, which creates the Primary Care Grant Committee, is repealed
168 July 1, 2025.

169 (12) Subsection **26-15c-104(3)**, relating to a limitation on the number of
170 microenterprise home kitchen permits that may be issued, is repealed July 1, 2022.

171 (13) Subsection **26-18-2.6(9)**, which addresses reimbursement for dental hygienists, is
172 repealed July 1, 2028.

173 (14) Section **26-18-27** is repealed July 1, 2025.

174 (15) Section **26-18-28** is repealed June 30, 2027.

175 (16) Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is repealed July 1,
176 2027.

177 (17) Subsection **26-18-418(2)**, the language that states "and the Behavioral Health
178 Crisis Response Commission created in Section **63C-18-202**" is repealed July 1, 2023.

179 (18) Section **26-33a-117** is repealed December 31, 2023.

180 (19) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

181 (20) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1,
182 2024.

183 (21) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed
184 July 1, 2024.

185 (22) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.

186 (23) Section [26-39-201](#), which creates the Residential Child Care Licensing Advisory
187 Committee, is repealed July 1, 2024.

188 (24) Section [26-39-405](#), Drinking water quality in child care centers, is repealed July 1,
189 2027.

190 (25) Section [26-40-104](#), which creates the Utah Children's Health Insurance Program
191 Advisory Council, is repealed July 1, 2025.

192 (26) Section [26-50-202](#), which creates the Traumatic Brain Injury Advisory
193 Committee, is repealed July 1, 2025.

194 (27) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and
195 Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.

196 (28) Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1,
197 2026.

198 (29) Title 26, Chapter 68, COVID-19 Vaccine Restrictions Act, is repealed July 1,
199 2024.

200 (30) Section [26-69-406](#) is repealed July 1, 2025.

201 (31) Subsection [26B-1-204\(2\)\(i\)](#), related to the Residential Child Care Licensing
202 Advisory Committee, is repealed July 1, 2024.

203 (32) Subsection [26B-1-204\(2\)\(k\)](#), related to the Primary Care Grant Committee, is
204 repealed July 1, 2025.

205 (33) Section [26B-1-401](#), regarding the Correctional Postnatal and Early Childhood
206 Advisory Board, is repealed July 1, 2026.

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

208 **63I-1-264. Repeal dates: Title 64.**

209 Section [64-13-46.5](#), Correctional Facility Nursery, is repealed July 1, 2026.

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

211 **64-13-46. Pregnant inmates.**

212 (1) As used in this section:

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

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

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

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

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

228 [(2) (3) [~~The staff of a correctional facility]~~ A correctional staff member may not use
229 restraints on an inmate during the third trimester of pregnancy, labor [and], or childbirth unless
230 a correctional staff member makes an individualized determination that there are compelling
231 grounds to believe that the inmate presents:

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

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

236 [(3) (4) Notwithstanding Subsection [(1) or (2)] (3), under no circumstances may
237 shackles, leg restraints, or waist restraints be used on an inmate during the third trimester of
238 pregnancy, labor [and], childbirth, or postpartum recovery [while in a medical facility].

239 [(4) (5) Correctional staff present during labor or childbirth shall:

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

242 (b) be female, if practicable.

243 ~~[(5)]~~ (6) ~~[If restraints are authorized under Subsection (1) or (2)]~~ If a correctional staff
244 member authorizes restraints under Subsection (2) or (3), the correctional staff member shall
245 make a written record of the ~~[decision]~~ authorization ~~and use of the restraints~~ ~~[shall be made]~~
246 that includes:

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

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

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

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

252 ~~[(6)]~~ (7) The record ~~[created]~~ described in Subsection ~~[(5)]~~ (6):

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

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

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

257 (8) For a minimum of 48 hours after an inmate has given birth, a correctional facility
258 shall, if directed by the inmate's physician, allow the infant to remain with the inmate at the
259 health care facility.

260 (9) A correctional facility shall provide:

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

263 (i) arrange childcare;

264 (ii) establish a reunification plan; and

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

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

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

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

272 ~~[(b) "Restraints" means any physical restraint or mechanical device used to control the~~
273 ~~movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a~~

274 ~~convex shield.]~~

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

277 Section 6. Section ~~64-13-46.5~~ is enacted to read:

278 **64-13-46.5. Correctional facility nursery.**

279 (1) As used in this section:

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

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

283 (2) Subject to Subsection (3), the department may create a nursery within a correctional
284 facility to provide space for incarcerated mothers and infants 18 months old or younger.

285 (3) The department may, in accordance with Subsection [26B-1-401\(8\)](#), request the
286 Correctional Postnatal and Early Childhood Advisory Board authorize an infant who is 24
287 months old or younger to remain in a nursery.

288 (4) The Department of Health and Human Services shall certify that any nursery
289 established by the department is in compliance with the rules established under Section
290 [26B-1-401](#) before the nursery begins operations.

291 (5) If the department establishes a nursery within a correctional facility, the department
292 shall:

293 (a) ensure that at least one administrator of the nursery has experience or training in
294 early childhood development; and

295 (b) comply with the requirements under Section [26B-1-401](#) created by the Department
296 of Health and Human Services.

297 (6) An incarcerated mother is not eligible to be placed in a nursery established by the
298 department if the incarcerated mother has been convicted of, or has charges pending for, a
299 violent felony, including attempt, solicitation, or conspiracy to commit the violent felony.

300 (7) The department may make rules, in accordance with Title 63G, Chapter 3, Utah
301 Administrative Rulemaking Act, regarding the eligibility requirements for an incarcerated
302 mother to enter any nursery established by the department.