

HB0429S02 compared with HB0429

~~text~~ shows text that was in HB0429 but was deleted in HB0429S02.

text shows text that was not in HB0429 but was inserted into HB0429S02.

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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;
- ▶ ~~codifies the existing prison nursery as the Incarcerated Mothers and Infants Program (program)~~ specifies that if the Department of Corrections creates a nursery, the nursery is subject to rules established by the Department of Health and Human Services;
- ▶ establishes the ~~Incarcerated Mothers~~ Correctional Postnatal and ~~Infants Program~~ Early Childhood Advisory Board (board);
- ▶ provides that the Department of Health and Human Services shall, after consulting

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with the board, make rules governing any nursery established by the
~~{program}~~ 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

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

~~{63I-1-223}~~ 63I-1-226, as last amended by Laws of Utah ~~{2020}~~ 2022, Chapters
~~{154}~~ 194, ~~{232}~~ 206, 224, 253, 255, 347, and 451

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

ENACTS:

26B-1-401, Utah Code Annotated 1953

63I-1-264, Utah Code Annotated 1953

64-13-46.5, Utah Code Annotated 1953

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

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

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

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

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

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

(c) provide each prisoner medical care when:

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

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(ii) the prisoner's disease or injury is curable or may be substantially alleviated; and
(iii) the potential for harm to the person by reason of delay or the denial of medical care would be substantial; and

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

(i) an oral contraceptive;
(ii) an injectable contraceptive;
(iii) a patch;
(iv) a vaginal ring; or
(v) an intrauterine device, if the prisoner was prescribed the intrauterine device because the prisoner experiences serious and persistent adverse effects when using the methods of contraception described in Subsections (1)(d)(i) and (ii).

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

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

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

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

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

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

26B-1-401. ~~{ Incarcerated Mothers }~~ Correctional Postnatal and ~~{ Infants Program }~~ Early Childhood Advisory Board -- Duties -- Rulemaking.

(1) As used in this part:

(a) "Advisory board" means the ~~{ Incarcerated Mothers }~~ Correctional Postnatal and ~~{ Infants Program }~~ Early Childhood Advisory Board.

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

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

~~(2) The Incarcerated Mothers and Infants Program Advisory Board;~~ (2) The advisory board shall consist of the following members:

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

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

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

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

(ii) two pediatric healthcare providers;

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

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

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

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

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

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

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

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

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

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

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

(7) The advisory board shall:

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

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

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

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

(e) advise and make recommendations to the department regarding ~~the~~ rules and policies for any nursery established by the department shall establish under Subsection (10) for the Incarcerated Mothers and Infants Program that address:

~~— (i) the safety of the program for infants and incarcerated mothers;~~

~~— (ii) the childhood development needs of the infants in the program;~~

~~— (iii) the specific medical needs of the infants and~~ Department of Corrections to provide space for ~~incarcerated mothers in the program;~~

~~— (iv) the appropriate needs of the incarcerated mothers in the program; and~~

~~— (v) other requirements the advisory board deems necessary for the success} and {safety of the program} infants.~~

(8) The advisory board ~~may~~, upon request from the Department of Corrections, may:

(a) after considering the specific circumstances of an infant and the infant's incarcerated mother, extend the age that qualifies ~~an~~ the infant for ~~the program~~ a nursery under Subsection 64-13-46.5(2) ~~{(a) from 18 months old or younger}~~ up to 24 months old ~~{or younger}~~ if:

~~{a}~~ i) the extension is in the best interest of the infant; and

~~{b}~~ ii) without the extension the infant would be separated from the incarcerated mother while the incarcerated mother remains in the correctional facility ~~{.}; or~~

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(b) allow an incarcerated mother who has committed a violent felony to be provided space in a nursery if it is in the best interest of the incarcerated mother's infant.

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

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

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

(10) The department ~~},~~ shall:

(a) after receiving recommendations from the ~~{Incarcerated Mothers and Infants Program Advisory Board}~~ advisory board under Subsection (7)(~~f~~~~c~~~~e~~), ~~{shall}~~ adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, ~~{that the Department of Corrections shall follow in implementing the Incarcerated Mothers and Infants Program.~~

~~—— (11) The rules established under Subsection (10) shall require the program to:~~

~~—— (a) have materials needed for proper ~~}~~for certification of a nursery established in a secure correctional environment that address:~~

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

~~(ii) the childhood development ~~{for}~~needs of the infants in the ~~{program}~~nursery;~~

~~(~~b~~)~~iii~~) ~~{meet basic safety requirements for}~~the specific medical needs of the infants and incarcerated mothers in the ~~{program}; and~~~~

~~—— (c) meet ~~}~~nursery;~~

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

~~(v) any other requirements recommended by the advisory board that the department deems necessary for the ~~{program}.~~~~

~~—— (12)~~nursery; and~~~~

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

(11) The department may make rules ~~{under Subsection (10)}~~in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding corrective action, including ~~{suspension or }~~closure of a nursery established by the ~~{program}~~Department of Corrections, if the Department of Corrections fails to comply with the rules established under this section.

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Section 3. Section ~~{63I-1-223}~~63I-1-226 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(30) Section 26-69-406 is repealed July 1, 2025.

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

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

(33) Section 26B-1-401, regarding the Correctional Postnatal and Early Childhood

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Advisory Board, is repealed July 1, 2026.

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

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

Section 64-13-46.5, ~~regarding the Incarcerated Mothers and Infants Program~~ ~~Correctional Facility Nursery~~, is repealed July 1, 2026.

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

64-13-46. Pregnant inmates.

(1) As used in this section:

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

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

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

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

~~[(1) ~~If~~ (2) ~~if~~]~~ Subject to Subsections (3) and (4), if the staff of a correctional facility knows or has reason to believe that an inmate is pregnant or is in postpartum recovery, the staff shall, when restraining the inmate ~~[-, shall]~~ at any time or location, use the least restrictive restraints necessary to ensure the safety and security of the inmate and others. ~~[This requirement shall continue during postpartum recovery and any transport to or from a correctional facility.]~~

~~[(2) The staff of a correctional facility]~~ ~~{ }~~

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

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

(b) a substantial risk of escape that cannot reasonably be reduced by the use of other

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existing means.

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

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

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

(b) be female, if practicable.

~~[(5)] [(6)] [(7)]~~ ~~If restraints are authorized under Subsection (1) or (2)] [(7)]~~

(6) If a correctional staff member authorizes restraints under Subsection (2) or (3), the correctional staff member shall make a written record of the [decision] authorization and use of the restraints [shall be made] that includes:

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

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

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

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

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

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

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

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

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

(9) A correctional facility shall provide:

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

(i) arrange childcare;

(ii) establish a reunification plan; and

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

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

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

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

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

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

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

64-13-46.5. ~~{ Incarcerated Mothers and Infants Program} Correctional facility nursery.~~

(1) As used in this section:

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

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

~~{ (c) "Violent felony" means the same as that term is defined in Section 76-3-203.5.~~

(2) ~~{There is created within}~~ **If, using existing appropriations,** the department ~~{the Incarcerated Mothers and Infants Program that shall:~~

~~— (a) subject to Subsection (3),} **creates a nursery in a correctional facility to provide space for incarcerated mothers and infants** ~~{18},~~ **the department may not:**~~

(a) subject to Subsection (4)(a)(i), provide space in a nursery for an infant 19 months old or ~~{younger in a facility managed by the department; and~~

~~— (b) comply with the requirements established under Section 26B-1-401 by}~~ **older;**

(b) begin or continue operating the nursery unless the Department of Health and Human Services ~~{:~~

~~— (3) The department may, in accordance with Subsection 26B-1-401(8), request permission from the Incarcerated Mothers and Infants Program Advisory Board to provide~~

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~~space in the program for an infant who is 24 months old or younger.~~

~~—— (4) The Department of Health and Human Services shall certify} certifies that the {program}nursery is in compliance with the rules established under Section 26B-1-401 {before the program begins operations.~~

~~—— (5) On or before July 1, 2024,} or~~

~~(c) subject to Subsection (4)(a)(ii), provide space in a nursery established by the department {shall ensure that at least one administrator of the program has experience or training in early childhood development.~~

~~—— (6) An} for an incarcerated mother {is not eligible for the program if the incarcerated mother} who has been convicted of, or has charges pending for, a violent felony, including attempt, solicitation, or conspiracy to commit the violent felony.~~

~~{7}3) If the department establishes a nursery under Subsection (2), the department shall ensure that at least one administrator of the nursery has experience or training in early childhood development.~~

~~(4) The department may:~~

~~(a) in accordance with Section 26B-1-401, request that the Correctional Postnatal and Early Childhood Advisory Board authorize:~~

~~(i) an infant who is 24 months old or younger to remain in a nursery; or~~

~~(ii) an incarcerated mother who has committed a violent felony to be provided space in a nursery; and~~

~~(b) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the eligibility requirements for an incarcerated mother to enter any nursery established by the {program} department.~~