

Representative Candice B. Pierucci proposes the following substitute bill:

PREGNANT AND POSTPARTUM INMATE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill amend provisions related to pregnant and postpartum inmates.

Highlighted Provisions:

This bill:

- ▶ provides that the Department of Corrections may not establish a nursery for a female inmate and the inmate's infant within a correctional facility;
- ▶ amends the Correctional Postnatal and Early Childhood Advisory Board; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-226 (Superseded 07/01/24), as last amended by Laws of Utah 2023, Chapters 249, 269, 270, 275, 332, 335, 420, and 495 and repealed and reenacted by Laws of Utah 2023, Chapter 329

63I-1-226 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 249,



26 269, 270, 275, 310, 332, 335, 420, and 495 and repealed and reenacted by Laws of Utah 2023,
 27 Chapter 329 and last amended by Coordination Clause, Laws of Utah 2023, Chapters 329, 332
 28 **63I-1-264**, as enacted by Laws of Utah 2023, Chapter 420
 29 **64-13-46**, as last amended by Laws of Utah 2023, Chapter 420

30 RENUMBERS AND AMENDS:

31 **64-13-46.1**, (Renumbered from 26B-1-434, as enacted by Laws of Utah 2023, Chapter
 32 420)

33 REPEALS:

34 **64-13-46.5**, as enacted by Laws of Utah 2023, Chapter 420
 35

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

37 Section 1. Section **63I-1-226 (Superseded 07/01/24)** is amended to read:

38 **63I-1-226 (Superseded 07/01/24). Repeal dates: Titles 26A through 26B.**

39 (1) Subsection **26B-1-204(2)(i)**, related to the Primary Care Grant Committee, is
 40 repealed July 1, 2025.

41 (2) Section **26B-1-315**, which creates the Medicaid Expansion Fund, is repealed July 1,
 42 2024.

43 (3) Section **26B-1-319**, which creates the Neuro-Rehabilitation Fund, is repealed
 44 January 1, 2025.

45 (4) Section **26B-1-320**, which creates the Pediatric Neuro-Rehabilitation Fund, is
 46 repealed January 1, 2025.

47 (5) Subsection **26B-1-324(4)**, the language that states "the Behavioral Health Crisis
 48 Response Commission, as defined in Section **63C-18-202**," is repealed December 31, 2026.

49 (6) Subsection **26B-1-329(6)**, related to the Behavioral Health Crisis Response
 50 Commission, is repealed December 31, 2026.

51 (7) Section **26B-1-402**, related to the Rare Disease Advisory Council Grant Program, is
 52 repealed July 1, 2026.

53 (8) Section **26B-1-409**, which creates the Utah Digital Health Service Commission, is
 54 repealed July 1, 2025.

55 (9) Section **26B-1-410**, which creates the Primary Care Grant Committee, is repealed
 56 July 1, 2025.

57 (10) Section 26B-1-416, which creates the Utah Children's Health Insurance Program
58 Advisory Council, is repealed July 1, 2025.

59 (11) Section 26B-1-417, which creates the Brain Injury Advisory Committee, is
60 repealed July 1, 2025.

61 (12) Section 26B-1-418, which creates the Neuro-Rehabilitation Fund and Pediatric
62 Neuro-Rehabilitation Fund Advisory Committee, is repealed January 1, 2025.

63 (13) Section 26B-1-422, which creates the Early Childhood Utah Advisory Council, is
64 repealed July 1, 2029.

65 (14) Section 26B-1-428, which creates the Youth Electronic Cigarette, Marijuana, and
66 Other Drug Prevention Program, is repealed July 1, 2025.

67 (15) Section 26B-1-430, which creates the Coordinating Council for Persons with
68 Disabilities, is repealed July 1, 2027.

69 (16) Section 26B-1-431, which creates the Forensic Mental Health Coordinating
70 Council, is repealed July 1, 2023.

71 (17) Section 26B-1-432, which creates the Newborn Hearing Screening Committee, is
72 repealed July 1, 2026.

73 [~~(18) Section 26B-1-434, regarding the Correctional Postnatal and Early Childhood~~
74 ~~Advisory Board, is repealed July 1, 2026.~~]

75 [(19)] (18) Section 26B-2-407, related to drinking water quality in child care centers, is
76 repealed July 1, 2027.

77 [(20)] (19) Subsection 26B-3-107(9), which addresses reimbursement for dental
78 hygienists, is repealed July 1, 2028.

79 [(21)] (20) Section 26B-3-136, which creates the Children's Health Care Coverage
80 Program, is repealed July 1, 2025.

81 [(22)] (21) Section 26B-3-137, related to reimbursement for the National Diabetes
82 Prevention Program, is repealed June 30, 2027.

83 [(23)] (22) Subsection 26B-3-213(2), the language that states "and the Behavioral
84 Health Crisis Response Commission created in Section 63C-18-202" is repealed December 31,
85 2026.

86 [(24)] (23) Sections 26B-3-302 through 26B-3-309, regarding the Drug Utilization
87 Review Board, are repealed July 1, 2027.

88 ~~[(25)]~~ (24) Title 26B, Chapter 3, Part 5, Inpatient Hospital Assessment, is repealed July
89 1, 2024.

90 ~~[(26)]~~ (25) Title 26B, Chapter 3, Part 6, Medicaid Expansion Hospital Assessment, is
91 repealed July 1, 2024.

92 ~~[(27)]~~ (26) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July
93 1, 2028.

94 ~~[(28)]~~ (27) Section 26B-3-910, regarding alternative eligibility, is repealed July 1,
95 2028.

96 ~~[(29)]~~ (28) Section 26B-4-136, related to the Volunteer Emergency Medical Service
97 Personnel Health Insurance Program, is repealed July 1, 2027.

98 ~~[(30)]~~ (29) Section 26B-4-710, related to rural residency training programs, is repealed
99 July 1, 2025.

100 ~~[(31)]~~ (30) Subsections 26B-5-112(1) and (5), the language that states "In consultation
101 with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202,"
102 is repealed December 31, 2026.

103 ~~[(32)]~~ (31) Section 26B-5-112.5 is repealed December 31, 2026.

104 ~~[(33)]~~ (32) Section 26B-5-114, related to the Behavioral Health Receiving Center
105 Grant Program, is repealed December 31, 2026.

106 ~~[(34)]~~ (33) Section 26B-5-118, related to collaborative care grant programs, is repealed
107 December 31, 2024.

108 ~~[(35)]~~ (34) Section 26B-5-120 is repealed December 31, 2026.

109 ~~[(36)]~~ (35) In relation to the Utah Assertive Community Treatment Act, on July 1,
110 2024:

111 (a) Subsection 26B-5-606(2)(a)(i), the language that states "and" is repealed; and

112 (b) Subsections 26B-5-606(2)(a)(ii), 26B-5-606(2)(b), and 26B-5-606(2)(c) are
113 repealed.

114 ~~[(37)]~~ (36) In relation to the Behavioral Health Crisis Response Commission, on
115 December 31, 2026:

116 (a) Subsection 26B-5-609(1)(a) is repealed;

117 (b) Subsection 26B-5-609(3)(a), the language that states "With recommendations from
118 the commission," is repealed;

119 (c) Subsection 26B-5-610(1)(b) is repealed;

120 (d) Subsection 26B-5-610(2)(b), the language that states "and in consultation with the
121 commission," is repealed; and

122 (e) Subsection 26B-5-610(4), the language that states "In consultation with the
123 commission," is repealed.

124 [~~38~~] (37) Subsections 26B-5-611(1)(a) and (10), in relation to the Utah Substance
125 Use and Mental Health Advisory Council, are repealed January 1, 2033.

126 [~~39~~] (38) Section 26B-5-612, related to integrated behavioral health care grant
127 programs, is repealed December 31, 2025.

128 [~~40~~] (39) Subsection 26B-7-119(5), related to reports to the Legislature on the
129 outcomes of the Hepatitis C Outreach Pilot Program, is repealed July 1, 2028.

130 [~~41~~] (40) Section 26B-7-224, related to reports to the Legislature on violent incidents
131 and fatalities involving substance abuse, is repealed December 31, 2027.

132 [~~42~~] (41) Title 26B, Chapter 8, Part 5, Utah Health Data Authority, is repealed July 1,
133 2024.

134 [~~43~~] (42) Section 26B-8-513, related to identifying overuse of non-evidence-based
135 health care, is repealed December 31, 2023.

136 Section 2. Section 63I-1-226 (Effective 07/01/24) is amended to read:

137 **63I-1-226 (Effective 07/01/24). Repeal dates: Titles 26A through 26B.**

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169 Council, is repealed July 1, 2023.

170 (17) Section 26B-1-432, which creates the Newborn Hearing Screening Committee, is
171 repealed July 1, 2026.

172 [~~(18) Section 26B-1-434, regarding the Correctional Postnatal and Early Childhood~~
173 ~~Advisory Board, is repealed July 1, 2026.~~]

174 [(19)] (18) Section 26B-2-407, related to drinking water quality in child care centers, is
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177 hygienists, is repealed July 1, 2028.

178 [(21)] (20) Section 26B-3-136, which creates the Children's Health Care Coverage
179 Program, is repealed July 1, 2025.

180 [(22)] (21) Section 26B-3-137, related to reimbursement for the National Diabetes

181 Prevention Program, is repealed June 30, 2027.

182 ~~[(23)]~~ (22) Subsection 26B-3-213(2), the language that states "and the Behavioral
183 Health Crisis Response Commission created in Section 63C-18-202" is repealed December 31,
184 2026.

185 ~~[(24)]~~ (23) Sections 26B-3-302 through 26B-3-309, regarding the Drug Utilization
186 Review Board, are repealed July 1, 2027.

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188 1, 2024.

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190 repealed July 1, 2024.

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194 2028.

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196 July 1, 2025.

197 ~~[(30)]~~ (29) Subsections 26B-5-112(1) and (5), the language that states "In consultation
198 with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202,"
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201 ~~[(32)]~~ (31) Section 26B-5-114, related to the Behavioral Health Receiving Center
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203 ~~[(33)]~~ (32) Section 26B-5-118, related to collaborative care grant programs, is repealed
204 December 31, 2024.

205 ~~[(34)]~~ (33) Section 26B-5-120 is repealed December 31, 2026.

206 ~~[(35)]~~ (34) In relation to the Utah Assertive Community Treatment Act, on July 1,
207 2024:

208 (a) Subsection 26B-5-606(2)(a)(i), the language that states "and" is repealed; and

209 (b) Subsections 26B-5-606(2)(a)(ii), 26B-5-606(2)(b), and 26B-5-606(2)(c) are
210 repealed.

211 ~~[(36)]~~ (35) In relation to the Behavioral Health Crisis Response Commission, on

212 December 31, 2026:

213 (a) Subsection [26B-5-609](#)(1)(a) is repealed;

214 (b) Subsection [26B-5-609](#)(3)(a), the language that states "With recommendations from
215 the commission," is repealed;

216 (c) Subsection [26B-5-610](#)(1)(b) is repealed;

217 (d) Subsection [26B-5-610](#)(2)(b), the language that states "and in consultation with the
218 commission," is repealed; and

219 (e) Subsection [26B-5-610](#)(4), the language that states "In consultation with the
220 commission," is repealed.

221 [~~37~~] [\(36\)](#) Subsections [26B-5-611](#)(1)(a) and (10), in relation to the Utah Substance
222 Use and Mental Health Advisory Council, are repealed January 1, 2033.

223 [~~38~~] [\(37\)](#) Section [26B-5-612](#), related to integrated behavioral health care grant
224 programs, is repealed December 31, 2025.

225 [~~39~~] [\(38\)](#) Subsection [26B-7-119](#)(5), related to reports to the Legislature on the
226 outcomes of the Hepatitis C Outreach Pilot Program, is repealed July 1, 2028.

227 [~~40~~] [\(39\)](#) Section [26B-7-224](#), related to reports to the Legislature on violent incidents
228 and fatalities involving substance abuse, is repealed December 31, 2027.

229 [~~41~~] [\(40\)](#) Title 26B, Chapter 8, Part 5, Utah Health Data Authority, is repealed July 1,
230 2024.

231 [~~42~~] [\(41\)](#) Section [26B-8-513](#), related to identifying overuse of non-evidence-based
232 health care, is repealed December 31, 2023.

233 Section 3. Section **63I-1-264** is amended to read:

234 **63I-1-264. Repeal dates: Title 64.**

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

236 Section [64-13-46.1](#), regarding the Correctional Postnatal and Early Childhood Advisory
237 Board, is repealed July 1, 2025.

238 Section 4. Section **64-13-46** is amended to read:

239 **64-13-46. Pregnant inmates.**

240 (1) As used in this section:

241 (a) "Postpartum recovery" means, as determined by the pregnant inmate's physician,
242 the period immediately following delivery, including the entire period the inmate is in the

243 hospital or health care facility after birth.

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

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

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

250 (2) Subject to Subsections (3) and (4), if the staff of a correctional facility knows or has
251 reason to believe that an inmate is pregnant or is in postpartum recovery, the staff shall, when
252 restraining the inmate at any time or location, use the least restrictive restraints necessary to
253 ensure the safety and security of the inmate and others.

254 (3) A correctional staff member may not use restraints on an inmate during the third
255 trimester of pregnancy, labor, or childbirth unless a correctional staff member makes an
256 individualized determination that there are compelling grounds to believe that the inmate
257 presents:

258 (a) an immediate and serious risk of harm to the inmate, the inmate's infant, medical
259 staff, correctional staff, or the public; or

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

262 (4) Notwithstanding Subsection (3), under no circumstances may shackles, leg
263 restraints, or waist restraints be used on an inmate during the third trimester of pregnancy,
264 labor, childbirth, or postpartum recovery.

265 (5) Correctional staff present during labor or childbirth shall:

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

268 (b) be female, if practicable.

269 (6) If a correctional staff member authorizes restraints under Subsection (2) or (3), the
270 correctional staff member shall make a written record of the authorization and use of the
271 restraints that includes:

272 (a) an explanation of the grounds for the correctional staff member's authorization on
273 the use of restraints;

- 274 (b) the type of restraints that were used; and
- 275 (c) the length of time the restraints were used.
- 276 (7) The record described in Subsection (6):
- 277 (a) shall be retained by the correctional facility for five years;
- 278 (b) shall be available for public inspection with individually identifying information
- 279 redacted; and
- 280 (c) may not be considered a medical record under state or federal law.
- 281 (8) For a minimum of 48 hours after an inmate has given birth, a correctional facility
- 282 shall, if directed by the inmate's physician, allow the infant to remain with the inmate at the
- 283 health care facility.
- 284 (9) A correctional facility shall provide:
- 285 (a) an inmate who is pregnant, or who has given birth within the past six weeks, access
- 286 to a social worker to help the inmate:
- 287 (i) arrange childcare;
- 288 (ii) establish a reunification plan; and
- 289 (iii) establish a substance abuse treatment plan, if needed; and
- 290 (b) an inmate in postpartum recovery access to postpartum care for up to 12 weeks as
- 291 determined by the inmate's physician.
- 292 (10) The department may not create or operate a nursery in a correctional facility to
- 293 provide space for a female inmate and the inmate's child.

294 Section 5. Section ~~64-13-46.1~~, which is renumbered from Section 26B-1-434 is

295 renumbered and amended to read:

296 ~~[26B-1-434]~~. **64-13-46.1. Correctional Postnatal and Early Childhood**

297 **Advisory Board -- Duties -- Rulemaking.**

- 298 (1) As used in this part:
- 299 (a) "Advisory board" means the Correctional Postnatal and Early Childhood Advisory
- 300 Board.
- 301 (b) "Correctional facility" means a facility operated by the department or a county
- 302 sheriff that houses inmates in a secure setting.
- 303 ~~[(b)]~~ (c) "Incarcerated mother" means ~~[the same as that term is defined in Section~~
- 304 ~~64-13-46.5]~~ an inmate who:

- 305 (i) has recently given birth before entering a correctional facility;
306 (ii) is pregnant and incarcerated in a correctional facility; or
307 (iii) has given birth while incarcerated in a correctional facility.
308 (2) The advisory board shall consist of the following members:
309 (a) two individuals from the [~~Department of Corrections~~] department, appointed by the
310 executive director [~~of the Department of Corrections~~];
311 (b) one individual appointed by the Board of Pardons and Parole;
312 (c) one individual appointed by the president of the Utah Sheriffs' Association; and
313 [~~(c)~~] (d) [six] four individuals appointed by the executive director [~~of the department~~]
314 of the Department of Health and Human Services, including:
315 [~~(i) two individuals from the department with experience in child care licensing;~~]
316 [~~(ii)~~] (i) two pediatric healthcare providers;
317 [~~(iii)~~] (ii) one individual with expertise in early childhood development; and
318 [~~(iv)~~] (iii) one individual with experience advocating for incarcerated women.
319 (3) (a) Except as provided in Subsection (3)(b), a member of the advisory board shall
320 be appointed for a four-year term.
321 (b) A member that is appointed to complete an unexpired term may complete the
322 unexpired term and serve a subsequent four-year term.
323 (c) Appointments and reappointments may be staggered so that one-fourth of the
324 advisory board changes each year.
325 (d) The advisory board shall annually elect a chair and co-chair of the board from
326 among the members of the board to serve a two-year term.
327 (4) The advisory board shall meet at least bi-annually, or more frequently as
328 determined by the executive director, the chair, or three or more members of the advisory
329 board.
330 (5) A majority of the board constitutes a quorum and a vote of the majority of the
331 members present constitutes an action of the advisory board.
332 (6) A member of the advisory board may not receive compensation or benefits for the
333 member's service, but may receive per diem and travel expenses as allowed in:
334 (a) Section [63A-3-106](#);
335 (b) Section [63A-3-107](#); and

336 (c) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
337 [63A-3-107](#).

338 (7) The advisory board shall:

339 (a) review research regarding childhood development and best practices for ~~[infants~~
340 ~~placed in a nursery located within a secure correctional environment]~~ placing infants and
341 incarcerated mothers in a diversion program not located in a correctional facility;

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

346 ~~[(e)]~~ (b) study the costs of implementing a diversion program for infants and
347 incarcerated mothers removed from a ~~[secure correctional environment]~~ correctional facility;

348 ~~[(d)]~~ (c) create a provisional plan for implementing a diversion program for infants and
349 incarcerated mothers removed from a ~~[secure correctional environment]~~ correctional facility;
350 and

351 ~~[(e)]~~ (d) advise and make recommendations to the department and county sheriffs
352 regarding rules and policies for ~~[any nursery established by the Department of Corrections to~~
353 ~~provide space for incarcerated mothers and infants:]~~ placing an infant or incarcerated mother in
354 a diversion program not located in a correctional facility.

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

356 ~~[(a) after considering the specific circumstances of an infant and the infant's~~
357 ~~incarcerated mother, extend the age that qualifies the infant for a nursery under Subsection~~
358 ~~[64-13-46.5\(2\)](#) up to 24 months old if:]~~

359 ~~[(i) the extension is in the best interest of the infant; and]~~

360 ~~[(ii) without the extension the infant would be separated from the incarcerated mother~~
361 ~~while the incarcerated mother remains in the correctional facility; or]~~

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

364 ~~[(9)]~~ (8) On or before November 30, 2024, the advisory board shall provide a report of
365 the advisory board's research and study under Subsections (7)(a) through ~~[(d)]~~ (c), including
366 any proposed legislation, to:

367 (a) the Law Enforcement and Criminal Justice Interim Committee; and
368 (b) the Executive Offices and Criminal Justice Appropriations Subcommittee.
369 ~~[(10) The department shall:]~~
370 ~~[(a) after receiving recommendations from the advisory board under Subsection (7)(c);~~
371 ~~adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for~~
372 ~~certification of a nursery established in a secure correctional environment that address:]~~
373 ~~[(i) the safety of the nursery for infants and incarcerated mothers;]~~
374 ~~[(ii) the childhood development needs of the infants in the nursery;]~~
375 ~~[(iii) the specific medical needs of the infants and incarcerated mothers in the nursery;]~~
376 ~~[(iv) the appropriate needs of the incarcerated mothers in the nursery; and]~~
377 ~~[(v) any other requirements recommended by the advisory board that the department~~
378 ~~deems necessary for the nursery; and]~~
379 ~~[(b) certify that any nursery established by the Department of Corrections is in~~
380 ~~compliance with the rules established under this section before the nursery begins operations:]~~
381 ~~[(11) The department may make rules in accordance with Title 63G, Chapter 3, Utah~~
382 ~~Administrative Rulemaking Act, regarding corrective action, including closure of a nursery~~
383 ~~established by the Department of Corrections, if the Department of Corrections fails to comply~~
384 ~~with the rules established under this section.]~~

385 Section 6. **Repealer.**

386 This bill repeals:

387 Section [64-13-46.5](#), **Correctional facility nursery.**

388 Section 7. **Effective date.**

389 (1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

390 (2) The actions affecting Section [63I-1-226](#) (Effective 07/01/24) take effect on July 1,

391 2024.