State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 400

SENATE BILL 1849

AN ACT

AMENDING SECTION 31-201.01, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 31-232 AND 31-236; AMENDING TITLE 31, CHAPTER 2, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-256; AMENDING SECTION 31-601, ARIZONA REVISED STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 31-201.01, Arizona Revised Statutes, is amended to read:

31-201.01. Duties of the director; tort actions; medical treatment costs; state immunity; definitions

A. The director shall hold in custody all persons who are sentenced to the department under the law and shall hold such persons for the term directed by the court, subject to law.

B. In addition to the medical and health services to be provided pursuant to subsection D of this section, the director, in cooperation with the department of health services, may provide to prisoners psychiatric care and treatment pursuant to sections 31-226 and 31-226.01.

C. The director may institute and pursue programs that promote the rehabilitation of the prisoners in the director's charge.

D. The director shall provide medical and health services for the prisoners. The director may contract for professional services to assist the director in carrying out this responsibility on behalf of the state, except that all records made and retained in connection with the services provided by this subsection shall be made and retained only by duly authorized or qualified medical and professional personnel and not by any prisoner. Such records when not in use shall be retained in a safe and secure place.

E. If a victim of a person for whom a cost of incarceration has been calculated notifies the state that full restitution has not been made by the person for whom a cost of incarceration has been calculated, the state shall interplead with the superior court the disputed amount and set off the amounts owed the state from the remaining obligation.

F. Any and all causes of action that may arise out of tort caused by the director, prison officers or employees of the department, within the scope of their legal duty, shall run only against the state.

G. The director shall establish by rule reasonable medical and health service fees for the medical and health services that are provided pursuant to subsection D of this section. Except as provided in subsection I of this section, every inmate shall be charged a reasonable medical and health services fee for each medical visit an inmate makes pursuant to a health needs request form or for emergency treatment.

H. Except as provided in subsection I of this section, the director may charge each inmate a reasonable fee for prescriptions, medication or prosthetic devices.

I. The director shall exempt the following inmates or medical visits by inmates from payment of medical and health services fees and fees for prescriptions, medication or prosthetic devices:

1. Medical visits initiated by the medical or mental health staff of the department.

2. Medical visits to a physician by inmates who are referred by a physician assistant or nurse practitioner.
3. Inmates at reception centers.
4. Juvenile inmates.
5. Pregnant inmates.
6. Seriously mentally ill inmates. For the purposes of this paragraph, "seriously mentally ill inmates" means inmates who as a result of a mental disorder as defined in section 36-501 exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the general prison population without supportive treatment or services of a long-term or indefinite duration and whose mental disability is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living, including interpersonal relationships, self-care, employment and recreation.
7. Inmates with developmental disabilities who are housed in a special programs unit.
8. Inmates who are housed in unit 8 at the Florence prison facility.
9. Inmates who are inpatients at the Alhambra prison facility special programs psychiatric hospital.
10. Inmates who are inpatients at the Flamenco prison facility mental health treatment unit.
11. Inmates who are undergoing administrative physical examinations for statewide driver status and fire fighting crews.
12. Inmates who are undergoing follow-up medical treatment for chronic diseases.
J. An inmate shall not be refused medical treatment for financial reasons.
K. All monies received by the department for medical and health service fees shall be deposited in the general fund.
L. A person who is convicted of a felony offense and who is incarcerated while awaiting sentence or while serving a sentence imposed by a court of law may not bring a cause of action seeking damages or equitable relief from the state or its political subdivisions, agencies, officers or employees for injuries suffered while in the custody of the state or its political subdivisions or agencies unless the complaint alleges specific facts from which the court may conclude that the plaintiff suffered serious physical injury or the claim is authorized by a federal statute.
M. The director shall establish criteria for reasonable deductions from monies credited to the prisoner's spendable account to repay the cost of:
1. State property that the inmate wilfully damages or destroys during the inmate's incarceration.

2. Medical treatment for injuries that the inmate inflicts on himself or others.

3. Searching for and apprehending an inmate who escapes or attempts to escape.

4. Quelling a riot or other disturbance in which the inmate is unlawfully involved.

5. Fees prescribed by title 28 or the department of transportation's rules for the issuance of either a driver license or a nonoperating identification license to the inmate, if eligible.

N. ON REQUEST OF A FEMALE INMATE, THE DIRECTOR SHALL PROVIDE FEMALE INMATES WITH A SUFFICIENT SUPPLY OF FEMININE HYGIENE PRODUCTS. NOTWITHSTANDING ANY OTHER LAW, THE DIRECTOR MAY NOT CHARGE FEMALE INMATES FOR FEMININE HYGIENE PRODUCTS.

~~N.~~ O. For the purposes of this section:

1. "FEMININE HYGIENE PRODUCTS" INCLUDES TAMPONS, SANITARY NAPKINS, MENSTRUAL SPONGES, MENSTRUAL CUPS AND SIMILAR ITEMS THAT ARE USED FOR A MENSTRUAL CYCLE.

~~1.~~ 2. "Reasonable fee" means an amount not to exceed $5.

~~2.~~ 3. "Serious physical injury" means an impairment of physical condition that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

Sec. 2. Title 31, chapter 2, article 2, Arizona Revised Statutes, is amended by adding sections 31-232 and 31-236, to read:

31-232. Family considerations in prisoner placement and visitation rules

A. TO THE GREATEST EXTENT POSSIBLE AND AFTER ACCOUNTING FOR SECURITY AND CAPACITY FACTORS, THE DEPARTMENT SHALL PLACE A PRISONER WHO IS A PARENT OF A MINOR CHILD IN A PRISON FACILITY THAT IS LOCATED WITHIN TWO HUNDRED FIFTY MILES OF THE PRISONER'S PERMANENT ADDRESS ON RECORD.

B. THE DEPARTMENT SHALL ADOPT RULES THAT AUTHORIZE A PRISONER WHO IS A PARENT OF A MINOR CHILD AND WHO IS CLASSIFIED AS A LOW OR MINIMUM SECURITY RISK TO BE VISITED BY THE MINOR CHILD. AT A MINIMUM THE RULES SHALL:

1. PROVIDE OPPORTUNITIES FOR A CHILD WHO IS UNDER EIGHTEEN YEARS OF AGE TO VISIT THE CHILD'S INCARCERATED PARENT AT LEAST TWO TIMES EACH WEEK UNLESS A DEPARTMENT EMPLOYEE HAS A REASONABLE BELIEF THAT THE DEPENDENT CHILD:

(a) MAY BE HARMED DURING VISITATION.

(b) POSES A SECURITY RISK DUE TO THE PRISONER'S GANG AFFILIATION, A PRIOR CONVICTION OR A PREVIOUS VIOLATION OF A CONTRABAND POLICY.

2. ELIMINATE RESTRICTIONS ON THE NUMBER OF DEPENDENT CHILDREN WHO ARE UNDER EIGHTEEN YEARS OF AGE WHO ARE GRANTED VISITATION PRIVILEGES.

3. AUTHORIZE CONTACT VISITS FOR A PRISONER WHO IS A PARENT OF A MINOR CHILD.

31-236. Prisoner inspection or search; state of undress; prohibited acts; exception; report; definition

A. THE DEPARTMENT SHALL ADOPT RULES TO THE GREATEST EXTENT POSSIBLE AND CONSISTENT WITH SAFETY AND ORDER THAT LIMIT A MALE CORRECTIONAL OFFICER FROM CONDUCTING AN INSPECTION OR SEARCH OF A FEMALE PRISONER WHO IS IN A STATE OF UNDRESS. THIS SUBSECTION DOES NOT LIMIT THE ABILITY OF A MALE CORRECTIONAL OFFICER TO CONDUCT AN INSPECTION OR SEARCH WHEN A FEMALE PRISONER MAY BE IN A STATE OF UNDRESS IF A FEMALE CORRECTIONAL OFFICER IS NOT AVAILABLE.

B. IF A MALE CORRECTIONAL OFFICER DETERMINES THAT IT IS APPROPRIATE TO CONDUCT AN INSPECTION OR SEARCH WHEN IT IS CLEAR THAT A FEMALE PRISONER IS IN A STATE OF UNDRESS IN A PRIVATE AREA, INCLUDING A SHOWER, A MEDICAL EXAMINATION ROOM OR A TOILET AREA, OR THE LOCATION IN WHICH THE FEMALE PRISONER IS UNDERGOING A BODY CAVITY SEARCH, THE MALE CORRECTIONAL OFFICER SHALL SUBMIT A REPORT TO THE WARDEN OF THE CORRECTIONAL FACILITY WITHIN SEVENTY-TWO HOURS AFTER THE INSPECTION OR SEARCH THAT PROVIDES THE JUSTIFICATION FOR THE INSPECTION OR SEARCH.

C. FOR THE PURPOSES OF THIS SECTION, "STATE OF UNDRESS" MEANS A FEMALE PRISONER IS PARTIALLY OR FULLY NAKED.

Sec. 3. Title 31, chapter 2, article 3, Arizona Revised Statutes, is amended by adding section 31-256, to read:

31-256. Inmate training; individual certificates; requirements

WHILE INCARCERATED, A PRISONER WHO SUCCESSFULLY COMPLETES A TRAINING PROGRAM THAT RESULTS IN CERTIFICATION TO WORK IN A SPECIFIC FIELD OR TRADE SHALL RECEIVE AN INDIVIDUAL CERTIFICATE THAT INCLUDES THE PRISONER'S NAME, THE DATE OF THE TRAINING AND INFORMATION THAT THE PRISONER SUCCESSFULLY COMPLETED THE TRAINING PROGRAM AND IS CERTIFIED TO WORK IN THAT SPECIFIC FIELD OR TRADE.

Sec. 4. Heading change

The chapter heading of title 31, chapter 5, Arizona Revised Statutes, is changed from "RESTRAINTS ON PREGNANT PRISONERS" to "LIMITED RESTRICTIONS FOR PREGNANT PRISONERS AND PRISONERS WITH CHILDREN".

Sec. 5. Section 31-601, Arizona Revised Statutes, is amended to read:

31-601. Pregnant prisoners; restraints; written findings; rules; appropriate food and dietary supplements; restrictive housing; bed placement; training; reporting; definitions

A. AFTER A CORRECTIONAL INSTITUTION RECEIVES INFORMATION THAT A PRISONER OR DETAINEE IS PREGNANT OR AFTER A PRISONER'S OR DETAINEE'S PREGNANCY DIAGNOSIS, a correctional institution shall not use restraints on a prisoner or detainee ~~who~~ FOR THE DURATION OF THE PREGNANCY AND FOR THIRTY DAYS FOLLOWING THE DELIVERY OF A CHILD, INCLUDING WHEN THE PRISONER

OR DETAINEE is being transported for delivery or during labor, delivery and postpartum recovery, unless either of the following applies:

1. Attending medical staff requests the use of restraints.

2. The corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance.

B. Leg restraints, waist restraints or restraints that hinder the ability of the physician to move the prisoner or detainee, as determined by the physician, shall not be used on any prisoner or detainee who is in labor or delivery.

C. If restraints are used on a prisoner or detainee pursuant to subsection A of this section:

1. The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary.

2. The corrections official shall make written findings within ~~fourteen days~~ SEVENTY-TWO HOURS as to the extraordinary circumstance that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least two years and made available for public inspection unless otherwise dictated by state or federal law.

D. Notwithstanding subsection A of this section, a security tether chain that is attached to the bed frame and the prisoner's or detainee's ankle may be used during postpartum recovery. The security tether chain shall be long enough for the prisoner or detainee to reach the bathroom in a private or semi-private room or to exit the bed and stand in any other recovery setting.

E. UNLESS THE CORRECTIONAL EMPLOYEE IS A LICENSED HEALTH CARE PROFESSIONAL, THE CORRECTIONAL EMPLOYEE MAY NOT CONDUCT A BODY CAVITY SEARCH ON A PREGNANT PRISONER OR DETAINEE UNLESS THE CORRECTIONAL EMPLOYEE HAS A REASONABLE BELIEF THAT THE PREGNANT PRISONER OR DETAINEE IS CONCEALING CONTRABAND. THE CORRECTIONAL EMPLOYEE SHALL SUBMIT A WRITTEN REPORT TO THE PERSON IN CHARGE OF THE CORRECTIONAL INSTITUTION WITHIN SEVENTY-TWO HOURS AFTER A BODY CAVITY SEARCH FOR CONTRABAND THAT PROVIDES THE JUSTIFICATION FOR THE SEARCH AND WHETHER ANY CONTRABAND WAS FOUND.

F. A CORRECTIONAL INSTITUTION SHALL ENSURE THAT A PREGNANT PRISONER OR DETAINEE IS PROVIDED SUFFICIENT FOOD AND DIETARY SUPPLEMENTS WHEN ORDERED BY THE ATTENDING MEDICAL STAFF OR A NUTRITIONIST THAT MEET GENERALLY ACCEPTED PRENATAL NUTRITIONAL GUIDELINES FOR PREGNANT WOMEN. DURING THE FIRST SEVENTY-TWO HOURS AFTER THE PRISONER OR DETAINEE GIVES BIRTH, THE CORRECTIONAL INSTITUTION SHALL PROVIDE ALL NECESSARY HYGIENE AND NUTRITIONAL PRODUCTS TO THE PRISONER OR DETAINEE. IF THE PRISONER OR DETAINEE IS INDIGENT, THE CORRECTIONAL INSTITUTION SHALL PROVIDE THE PRODUCTS WITHOUT COST TO THE PRISONER OR DETAINEE.

G. A CORRECTIONAL INSTITUTION MAY NOT PLACE A PREGNANT PRISONER OR DETAINEE OR A PRISONER OR DETAINEE WHO HAS GIVEN BIRTH WITHIN THE PAST THIRTY DAYS IN RESTRICTIVE HOUSING UNLESS A CORRECTIONS OFFICIAL MAKES AN INDIVIDUALIZED DETERMINATION THAT THE PRISONER OR DETAINEE PRESENTS AN

EXTRAORDINARY CIRCUMSTANCE. THE CORRECTIONS OFFICIAL SHALL PROVIDE WRITTEN FINDINGS WITHIN SEVENTY-TWO HOURS AS TO THE EXTRAORDINARY CIRCUMSTANCE THAT DICTATES THE PLACEMENT IN RESTRICTIVE HOUSING. THE CORRECTIONAL INSTITUTION SHALL KEEP THESE FINDINGS ON FILE FOR AT LEAST TWO YEARS AND MAKE THE FINDINGS AVAILABLE FOR PUBLIC INSPECTION UNLESS OTHERWISE DICTATED BY STATE OR FEDERAL LAW.

H. A CORRECTIONAL INSTITUTION MAY NOT PLACE A PREGNANT PRISONER OR DETAINEE OR A PRISONER OR DETAINEE WHO HAS GIVEN BIRTH WITHIN THE PAST THIRTY DAYS IN A BED THAT IS ELEVATED MORE THAN THREE FEET FROM THE FLOOR OF THE CORRECTIONAL INSTITUTION.

I. THE CORRECTIONS OFFICIAL SHALL COMPILE A MONTHLY SUMMARY OF THE REPORTS THAT ARE RECEIVED PURSUANT TO SUBSECTIONS C, E AND G OF THIS SECTION. THE CORRECTIONS OFFICIAL SHALL PROVIDE THE REPORTS TO THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS EACH MONTH.

J. THE CORRECTIONAL INSTITUTION SHALL ALLOW A NEWBORN BABY TO REMAIN WITH THE MOTHER FOR SEVENTY-TWO HOURS FOLLOWING THE DELIVERY UNLESS THE ATTENDING MEDICAL STAFF HAS A REASONABLE BELIEF THAT REMAINING WITH THE MOTHER POSES A HEALTH OR SAFETY RISK TO THE NEWBORN BABY.

~~E.~~ K. Within thirty days after the effective date of THIS AMENDMENT TO this section, all correctional institutions in this state shall adopt rules or policies pursuant to this section.

L. THE STATE DEPARTMENT OF CORRECTIONS SHALL DEVELOP AND PROVIDE TO ALL:

1. CORRECTIONAL EMPLOYEES WHO HAVE CONTACT WITH PREGNANT PRISONERS OR DETAINEES TRAINING THAT IS RELATED TO THE PHYSICAL AND MENTAL HEALTH OF A PREGNANT PRISONER OR DETAINEE AND THE FETUS, INCLUDING ALL OF THE FOLLOWING:

(a) GENERAL CARE OF A PREGNANT WOMAN.

(b) THE IMPACT OF RESTRAINTS ON A PREGNANT PRISONER OR DETAINEE AND THE FETUS.

(c) THE IMPACT ON PREGNANT PRISONERS OR DETAINEES WHO ARE PLACED IN RESTRICTIVE HOUSING.

(d) THE IMPACT OF AN INVASIVE BODY CAVITY SEARCH ON A PREGNANT PRISONER OR DETAINEE.

2. PREGNANT PRISONERS AND DETAINEES THE FOLLOWING EDUCATIONAL PROGRAMMING:

(a) PRENATAL CARE.

(b) PREGNANCY-SPECIFIC HYGIENE.

(c) PARENTING SKILLS.

(d) THE IMPACT OF ALCOHOL AND DRUGS ON THE FETUS.

(e) GENERAL HEALTH TOPICS FOR CHILDREN.

~~F.~~ M. For the purposes of this section:

1. "Correctional institution" means any entity under the authority of any state or county law enforcement agency that has the power to detain

or restrain a person under the laws of this state, including a juvenile detention center.

2. "Corrections official" means the official who is responsible for oversight of a correctional institution or the official's designee.

3. "Detainee" includes any female person who is detained under the immigration laws of the United States at any correctional institution.

4. "Extraordinary circumstance" means a substantial flight risk or some other medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees or the public.

5. "Labor" means, as determined by a physician, nurse, physician's assistant or other medical practitioner, the period of time before a birth during which contractions are of sufficient frequency, intensity and duration to bring about effacement and progressive dilation of the cervix.

6. "Postpartum recovery" means, as determined by the woman's physician, the period immediately following delivery and directly related to the birth, including the period a woman is in the hospital or infirmary after birth.

7. "Prisoner" means any female person who is incarcerated or detained in any correctional institution and who is accused of, convicted of, sentenced for or adjudicated delinquent for a violation of a criminal law or the terms and conditions of community supervision, probation, pretrial release or diversionary programs.

8. "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's or detainee's body or limbs, including flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security tether chain or a convex shield.

Sec. 6. Short title

This act may be cited as the "Dignity for Incarcerated Women Act".

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.