

HOUSE BILL No. 1179

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-1; IC 11-10; IC 11-11-6-1; IC 11-12-4-1.

Synopsis: Restraint of pregnant inmates. Provides that a correctional facility shall: (1) use the least restrictive restraints necessary on a pregnant inmate when the pregnant inmate is in the second or third trimester of pregnancy; or (2) use no restraints on a pregnant inmate who is in labor, delivering a baby, recuperating from a delivery, or dealing with a medical emergency related to the pregnancy, with certain exceptions. Provides that a correctional facility and a county jail shall provide specific care, treatment, and education for pregnant inmates and inmates who have recently given birth. Repeals the current statute concerning prenatal and postnatal care and treatment and incorporates it into a new chapter concerning medical care and treatment for pregnant inmates. Defines "pregnant inmate" and "restraints".

Effective: July 1, 2022.

Summers

January 6, 2022, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1179

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-8-1-11 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2022]: **Sec. 11. "Pregnant inmate" has the meaning set forth in**
4 **IC 11-10-3.5-1.**

5 SECTION 2. IC 11-8-1-12 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2022]: **Sec. 12. "Restraints" has the meaning set forth in**
8 **IC 11-10-3.5-1.**

9 SECTION 3. IC 11-10-3-3 IS REPEALED [EFFECTIVE JULY 1,
10 2022]. ~~Sec. 3. Necessary prenatal and postnatal care and treatment shall~~
11 ~~be provided consistent with acceptable medical practice and standards.~~
12 ~~When possible, arrangements shall be made for children to be born in a~~
13 ~~hospital outside the correctional facility. If a child is born in a~~
14 ~~correctional facility, this fact may not be mentioned on the birth~~
15 ~~certificate.~~

16 SECTION 4. IC 11-10-3.5 IS ADDED TO THE INDIANA CODE
17 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2022]:

2 **Chapter 3.5. Medical Care and Treatment for Pregnant Inmates**

3 **Sec. 1. The following definitions apply throughout this chapter:**

4 (1) "Correctional facility" has the meaning set forth in
5 IC 5-1.2-2-11.

6 (2) "Pregnant inmate" means a confined person who is
7 pregnant.

8 (3) "Restraints" means any mechanical device used to control
9 the movement of a pregnant inmate's body or limbs, including
10 handcuffs, leg shackles, and belly chains.

11 **Sec. 2. Necessary prenatal and postnatal care and treatment**
12 **shall be provided consistent with acceptable medical practice and**
13 **standards. When possible, arrangements shall be made for children**
14 **to be born in a hospital outside the correctional facility. If a child**
15 **is born in a correctional facility, this fact may not be mentioned on**
16 **the birth certificate.**

17 **Sec. 3. (a) A correctional facility may not restrain an inmate**
18 **known to be pregnant unless an individualized determination is**
19 **made by the correctional facility that restraints are reasonably**
20 **necessary for the legitimate safety and security needs of the**
21 **pregnant inmate, staff, other inmates, or the public.**

22 **(b) If restraints are determined to be necessary, the restraints**
23 **must be the least restrictive available and the most reasonable**
24 **under the circumstances. A correctional facility shall do the**
25 **following:**

26 (1) Use the least restrictive restraints necessary on a pregnant
27 inmate when the pregnant inmate is in the second or third
28 trimester of pregnancy.

29 (2) Use no restraints on a pregnant inmate who is:

30 (A) in labor;

31 (B) delivering a baby;

32 (C) recuperating from delivery; or

33 (D) dealing with a medical emergency related to the
34 pregnancy.

35 (c) A correctional facility shall use the least restrictive restraints
36 necessary on a pregnant inmate described in subsection (b)(1) if the
37 correctional facility has actual or constructive knowledge that the
38 pregnant inmate is in the second or third trimester of pregnancy.

39 (d) A correctional facility may only use the least restrictive
40 restraints necessary on a pregnant inmate described in subsection
41 (b)(2) if:

42 (1) the pregnant inmate presents an immediate danger to the



1 pregnant inmate or to others; or

2 (2) the pregnant inmate is a substantial flight risk and cannot
3 be contained by any other reasonable means.

4 (e) A correctional facility may not restrain a pregnant inmate
5 while the inmate is being transported if the restraint crosses or
6 otherwise touches:

7 (1) the inmate's abdomen; or

8 (2) the inmate's wrists when affixed behind the inmate's back.

9 If used, the restraints should be applied in such a way that the
10 pregnant inmate may be able to protect the inmate and the
11 inmate's fetus in the event of a forward fall.

12 Sec. 4. The warden of each correctional facility housing a
13 pregnant inmate shall ensure that staff members of the facility who
14 come into contact with pregnant inmates incarcerated at the
15 facility are provided training concerning the requirements under
16 this chapter.

17 Sec. 5. (a) Not later than June 30 of each year, the commissioner
18 shall compile a report that includes an account of every instance
19 when a pregnant inmate has been restrained in a correctional
20 facility as described in this chapter. The report shall include the:

21 (1) date;

22 (2) time;

23 (3) location; and

24 (4) reason;

25 for each instance when a pregnant inmate has been restrained. The
26 report shall not contain any personal identifying information of the
27 pregnant inmate. For reporting purposes, the use of restraints does
28 not include the use of handcuffs on the front of the body of a
29 pregnant inmate.

30 (b) The report created under this section shall be submitted to
31 the governor, the chief justice, and the legislative council in an
32 electronic format under IC 5-14-6.

33 (c) The report created under this section is a public record
34 subject to public inspection under IC 5-14-3.

35 Sec. 6. (a) The warden of each correctional facility shall ensure
36 that every confined person who is a female:

37 (1) is tested for pregnancy on or before day fourteen (14) of
38 incarceration, if under fifty (50) years of age, unless the
39 confined person refuses the test;

40 (2) if pregnant, is provided the prevailing standard of care or
41 current practice by the medical care provider's peer group;

42 (3) if pregnant or has given birth in the past six (6) weeks, is



- 1 provided appropriate educational materials and resources
 2 related to pregnancy, child birth, breast feeding, and
 3 parenting;
 4 (4) if pregnant or has given birth in the past six (6) weeks, has
 5 access to doula services if these services are provided by a
 6 certified doula without charge to the correctional facility or
 7 the incarcerated inmate pays for the certified doula services;
 8 (5) if pregnant or has given birth in the past six (6) months,
 9 has access to a mental health assessment and, if necessary,
 10 treatment;
 11 (6) if pregnant or has given birth in the past six (6) months
 12 and determined to be suffering from a mental illness, has
 13 access to evidence based mental health treatment including
 14 psychotropic medication;
 15 (7) if pregnant or has given birth in the past six (6) months
 16 and determined to be suffering from postpartum depression,
 17 has access to evidence based therapeutic care for the
 18 depression; and
 19 (8) if pregnant or has given birth in the past six (6) months, is
 20 advised, orally or in writing, of applicable laws and policies
 21 governing pregnant inmates.
 22 (b) The commissioner, in consultation with the state health
 23 commissioner, may award grants to nonprofit organizations to
 24 provide access to doula services by a certified doula as described
 25 in subsection (a)(4).
 26 SECTION 5. IC 11-11-6-1 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) The department
 28 shall adopt policies and procedures for the protection, **health, and**
 29 **safety** of committed persons, including:
 30 (1) the monitoring of committed persons whose presence in the
 31 general population of a facility or program constitutes a threat of
 32 physical danger to other persons;
 33 (2) reasonable searches of committed persons, facilities and
 34 premises to reduce the number of weapons and dangerous items;
 35 (3) adequate staff supervision of committed persons, including
 36 living quarters;
 37 (4) maintenance of accurate records regarding incidents of
 38 violence;
 39 (5) referral of serious criminal conduct to investigating and
 40 prosecuting authorities with appropriate information; ~~and~~
 41 (6) policies and procedures designed to reduce racial tension; **and**
 42 (7) **policies and procedures designed to provide care,**



1 **treatment, and education for pregnant inmates as described**
 2 **in IC 11-10-3.5.**

3 (b) For purposes of IC 4-22-2, the terms "policies" and "procedures"
 4 as used in this section relate solely to internal policies and procedures
 5 not having the force of law.

6 SECTION 6. IC 11-12-4-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. (a) The department
 8 shall adopt under IC 4-22-2 minimum standards for county jails
 9 governing:

- 10 (1) general physical and environmental conditions;
 11 (2) services and programs to be provided to confined persons; and
 12 (3) procedures for the care and control of confined persons that
 13 are necessary to ensure the health and safety of confined persons,
 14 the security of the jail, and public safety, **including procedures**
 15 **described in IC 11-10-3.5.**

16 However, the department may not adopt any standard that prohibits the
 17 placement of more than one (1) prisoner in a prisoner cell that has
 18 thirty-five (35) square feet or more of floor space per prisoner.

19 (b) The standards must be sufficiently flexible to foster the
 20 development of new and improved practices and to accommodate local
 21 needs and circumstances. The standards must be consistent with the
 22 laws of Indiana and the rules of the state department of health and the
 23 fire prevention and building safety commission.

24 (c) The commissioner shall select a committee of not less than five
 25 (5) county sheriffs to consult with the department before and during the
 26 drafting of the proposed minimum standards. County sheriffs shall be
 27 selected from the various classes of counties to ensure that densely,
 28 moderately, and sparsely populated counties are represented. Each
 29 county sheriff is entitled to the minimum salary per diem as provided
 30 in IC 4-10-11-2.1 for each day engaged in the official business of the
 31 committee and to reimbursement for traveling and other expenses, as
 32 provided in the state travel policies and procedures established by the
 33 Indiana department of administration and approved by the budget
 34 agency.

35 (d) At least sixty (60) days before setting the date for a public
 36 hearing under IC 4-22-2, the department shall forward copies of the
 37 proposed minimum standards to each county sheriff and each board of
 38 county commissioners and shall solicit their views and suggestions.

