

HOUSE BILL No. 1401

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-8-1-11; IC 11-10-3; IC 11-12-4-1; IC 34-30-2-39.8; IC 35-52-11-4.

Synopsis: Health care for incarcerated women. Requires the department of correction (department) to provide free and unlimited access to toilet paper, tampons, and pads to any incarcerated woman held by the department. Requires the department to provide the following prenatal, postnatal, and postpartum treatment to pregnant or postpartum women, as applicable: (1) Medical examinations. (2) Certain laboratory and diagnostic tests. (3) Counseling concerning the safe and proper administration of prescribed medications and dietary supplements. (4) Counseling concerning recommended vaccinations. (5) The administration of certain medications for women suffering from an active substance use disorder during pregnancy. (6) An appropriate space for lactating women to pump or express breast milk. (7) Counseling concerning lactation and breastfeeding and a medically appropriate diet for lactating mothers. (8) Access to a doula in certain instances. (9) The presence of a family member during delivery. Requires the department to create and implement written policies that do the following: (1) Require the proper documentation for all prenatal, postnatal, and postpartum care provided by the department. (2) Require certain medical documentation to be made available to a physician or qualified medical professional upon request. (3) Designate one or more local hospitals as possible venues for the administration of necessary prenatal, postnatal, or postpartum care, as applicable. (4) Establish an administrative preference for administering prenatal, postnatal, and postpartum care at a hospital. (5) Prohibit certain disclosures on a child's birth certificate when a child is born to a woman who is
(Continued next page)

Effective: July 1, 2020.

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January 15, 2020, read first time and referred to Committee on Courts and Criminal Code.



Digest Continued

incarcerated. (6) Provide women with access to: (A) conventional beds; or (B) bottom bunks; during pregnancy or the six weeks following the delivery of a child, as applicable, in order to minimize the risk of serious injury in the event of a fall. (7) Require the timely reporting of certain obstetric emergencies to a physician or qualified medical professional. (8) Allow for the timely examination of a woman by a physician or qualified health provider upon a woman's arrival at a hospital or local medical facility. (9) Establish a written policy that complies with specified requirements concerning the use of restraints, shackles, and restraint techniques on pregnant and postpartum women. (10) Require correctional officers to remain outside of delivery rooms in certain instances. Provides the department with rulemaking and emergency rulemaking authority for the purpose of creating and implementing certain practices and policies. Requires the department to adopt specified standards that apply to county jails. Provides that: (1) agents; (2) employees; and (3) persons contracted to work on behalf of the department; are immune from civil liability, damages, and punitive damages, for certain acts or omissions. Specifies an exception. Makes conforming amendments.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1401

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, 2020]: **Sec. 11. "Postpartum period", for purposes of**
4 **IC 11-10-3-3.5, has the meaning set forth in IC 11-10-3-3.5(a).**
5 SECTION 2. IC 11-10-3-2.8 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2020]: **Sec. 2.8. (a) The department shall provide free and**
8 **unlimited access to toilet paper, tampons, and menstrual pads to**
9 **any incarcerated woman held by the department.**
10 **(b) The department may adopt rules under IC 4-22-2, including**
11 **emergency rules under IC 4-22-2-37.1, to implement this section.**
12 SECTION 3. IC 11-10-3-3 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 3. (a) Necessary**
14 **prenatal, and postnatal, and postpartum care and treatment shall be**
15 **provided to women who are pregnant** consistent with acceptable



- 1 medical practice and standards and must include the following:
- 2 (1) Counseling and assistance that complies, to the extent
- 3 possible, with a woman's expressed wishes concerning her
- 4 pregnancy.
- 5 (2) Prenatal care that, with the consent of the mother,
- 6 includes the following:
- 7 (A) The performance of:
- 8 (i) medical examinations; and
- 9 (ii) required laboratory or diagnostic tests;
- 10 as determined by a physician or qualified medical
- 11 professional.
- 12 (B) Diet, nutrition, and a level of physical activity
- 13 conducive to a healthy pregnancy as determined by a
- 14 physician or qualified medical professional.
- 15 (3) Counseling concerning the safe and proper administration
- 16 of prescribed medications and dietary supplements.
- 17 (4) Counseling concerning the administration of
- 18 recommended vaccines as determined by a physician or
- 19 qualified medical professional and the administration of any
- 20 vaccine described under this subdivision at the request of the
- 21 mother.
- 22 (5) The administration of methadone or buprenorphine, as
- 23 determined by a physician or qualified medical professional,
- 24 for a woman with an active opioid use disorder during
- 25 pregnancy.
- 26 (6) The providing to lactating, postpartum mothers of:
- 27 (A) a clean space for pumping and storing breast milk for:
- 28 (i) the mother's own baby; or
- 29 (ii) donation to an agency or organization that stores
- 30 donated breast milk for use by infants in need and
- 31 complies with the accreditation requirements of the
- 32 Human Milk Banking Association of North America;
- 33 (B) counseling concerning lactation, breastfeeding, and the
- 34 expression of breast milk;
- 35 (C) a medically appropriate diet for lactating mothers; and
- 36 (D) the means to provide the mother's breastmilk to an
- 37 authorized caregiver or recipient.
- 38 (7) Counseling concerning medically appropriate symptom
- 39 management for women who are unable to breastfeed or
- 40 choose to stop breastfeeding or pumping breast milk.
- 41 (8) Access to a doula before and during the delivery of a child.
- 42 (9) At the request of the mother and subject to department



1 **discretion, the opportunity for:**

2 **(A) the father; or**

3 **(B) a close family member;**

4 **to attend the delivery of the child.**

5 **(10) The creation and implementation of written policies that**
 6 **do the following:**

7 **(A) Require the proper documentation of all prenatal,**
 8 **postnatal, and postpartum care provided by the**
 9 **department, jail, or other detention facility.**

10 **(B) Require the documentation described in clause (A) to**
 11 **be made available to a physician or qualified medical**
 12 **professional upon request unless the disclosure is**
 13 **prohibited under state or federal law.**

14 **(C) Designate one (1) or more local hospitals as possible**
 15 **venues for the administration of necessary prenatal,**
 16 **postnatal, or postpartum care, as applicable.**

17 **(D) Establish an administrative preference for**
 18 **administering prenatal, postnatal, and postpartum care at**
 19 **one (1) of the hospitals described in clause (C) and ensure,**
 20 **when possible, that arrangements shall be are made for**
 21 **children to be born in a hospital outside the correctional**
 22 **facility.**

23 **(E) Prohibit, if a child is born in a correctional facility, this**
 24 **the disclosure of this fact may not be mentioned on the**
 25 **child's birth certificate.**

26 **(F) Provide women with access to:**

27 **(i) conventional beds; or**

28 **(ii) bottom bunks;**

29 **during pregnancy or the six (6) weeks following the**
 30 **delivery of a child, as applicable, in order to minimize the**
 31 **risk of serious injury in the event of a fall.**

32 **(G) Requires the timely reporting of bleeding, extreme**
 33 **pain, leaking fluid, eclamptic seizures, or any other**
 34 **obstetric emergency to a physician or qualified medical**
 35 **professional.**

36 **(H) Allow for the timely examination of a woman by a**
 37 **physician or qualified health provider upon a woman's**
 38 **arrival at a hospital or local medical facility.**

39 **(I) Restricts the use of restraints and shackles on pregnant**
 40 **and postpartum women in a manner that complies with**
 41 **section 3.5 of this chapter.**

42 **(I) Requires correctional officers to remain outside of any**



1 room where a child is being delivered unless:

2 (i) the mother; or

3 (ii) a qualified medical professional;

4 asks for a correctional officer to be present.

5 (b) The department may adopt rules under IC 4-22-2, including
6 emergency rules under IC 4-22-2-37.1, to implement this section.

7 (c) Nothing in this section shall be construed to require any:

8 (1) agent of the department;

9 (2) employee of the department; or

10 (3) person contracted to work on behalf of the department;
11 to risk their health or safety in order to implement this section.

12 (d) Except as provided in subsection (e), no person shall be
13 subject to civil liability or damages, including punitive damages,
14 for any act or omission that is consistent with the requirements of
15 this section and undertaken in good faith. If a person is granted
16 civil immunity under this subsection, no other person may be
17 subject to civil liability or damages, including punitive damages, by
18 reason of an agency relationship between the parties.

19 (e) The immunity described in subsection (d) does not apply to
20 an act or omission that constitutes gross negligence or willful and
21 wanton misconduct.

22 SECTION 4. IC 11-10-3-3.5 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2020]: Sec. 3.5 (a) As used in this section, "postpartum period"
25 means the six (6) week period immediately following the delivery
26 of a child.

27 (b) This section applies to pregnant and postpartum women who
28 are incarcerated and being held at a facility affiliated with the
29 department.

30 (c) Subject to subsection (d), a rebuttable presumption
31 prohibiting the use of shackles or restraints shall be established for
32 the following individuals:

33 (1) An inmate being transported to a hospital or medical
34 facility during labor.

35 (2) An inmate undergoing any phase of labor.

36 (3) An inmate in the process of delivering a child.

37 (4) An inmate during her postpartum period.

38 (d) The rebuttable presumption described in subsection (c) does
39 not apply to a woman who presents:

40 (1) an immediate and serious threat of harm to:

41 (A) herself;

42 (B) department staff; or



- 1 **(C) any other third party; or**
2 **(2) a substantial flight risk that cannot be reasonably deterred**
3 **or prevented by other means.**
4 **(e) If, prior to labor, the use of restraints or shackles are**
5 **necessary to ensure the safety of the inmate, department staff, or**
6 **other third parties, only the least restrictive means to secure the**
7 **inmate may be used.**
8 **(f) A restraint, shackle, or restraint procedure does not meet the**
9 **least restrictive requirement described in subsection (e) if one (1)**
10 **or more of the following conditions apply:**
11 **(1) The restraint, shackle, or restraint technique does not**
12 **mitigate the possibility of adverse medical consequences for**
13 **the inmate or her fetus as determined by a qualified medical**
14 **professional.**
15 **(2) A qualified medical professional was not consulted about**
16 **the use of a specific restraint, shackle, or restraint technique**
17 **prior to the application of the restraint, shackle, or restraint**
18 **technique.**
19 **(3) Written approval concerning the use of the restraint,**
20 **shackle, or restraint technique was not obtained from the**
21 **warden or a person of comparable executive authority prior**
22 **to the application of the restraint, shackle, or restraint**
23 **technique.**
24 **(4) Correctional officers are not made available to remove any**
25 **applied restraint or shackle upon request by qualified medical**
26 **personnel during the course of a medical procedure or**
27 **examination.**
28 **(g) Notwithstanding any other law or provision, the following**
29 **restraints and restraint techniques are prohibited:**
30 **(1) Abdominal restraints.**
31 **(2) Four (4) point restraints.**
32 **(3) The placement of a pregnant inmate in a face down**
33 **position.**
34 **(4) Any leg restraint, leg shackle, or restraint procedure that**
35 **increases the risk of a forward fall.**
36 **(5) Any leg restraint, leg shackle, or restraint procedure that**
37 **links one (1) inmate to another inmate.**
38 **(6) Any other restraint or shackle that could result in adverse**
39 **medical consequences for a woman or her fetus as determined**
40 **by a qualified medical professional.**
41 **(h) The requirements specified in this section shall be**
42 **conspicuously displayed in every location where medical care is**



1 provided to female inmates.

2 (i) The department may adopt rules under IC 4-22-2, including
3 emergency rules under IC 4-22-2-37.1, to implement this section.

4 (j) Nothing in this section shall be construed to require any:

5 (1) agent of the department;

6 (2) employee of the department; or

7 (3) person contracted to work on behalf of the department;
8 to risk their health or safety in order to implement this section.

9 (k) Except as provided in subsection (l), no person shall be
10 subject to civil liability or damages, including punitive damages,
11 for any act or omission that is consistent with the requirements of
12 this section and undertaken in good faith. If a person is granted
13 civil immunity under this subsection, no other person may be
14 subject to civil liability or damages, including punitive damages, by
15 reason of an agency relationship between the parties.

16 (l) The immunity described in subsection (k) does not apply to
17 an act or omission that constitutes gross negligence or willful and
18 wanton misconduct.

19 (m) A person who knowingly or intentionally violates this
20 chapter commits unlawful application of a restraint or restraint
21 technique, a Class A misdemeanor.

22 SECTION 5. IC 11-12-4-1 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) The department
24 shall adopt under IC 4-22-2 minimum standards for county jails
25 governing:

26 (1) general physical and environmental conditions;

27 (2) services and programs to be provided to confined persons; and

28 (3) procedures for the care and control of confined persons that
29 are necessary to ensure the health and safety of confined persons,
30 the security of the jail, and public safety.

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

34 (b) The standards must be sufficiently flexible to foster the
35 development of new and improved practices and to accommodate local
36 needs and circumstances. The standards must be consistent with the
37 laws of Indiana and the rules of the state department of health and the
38 fire prevention and building safety commission.

39 (c) Standards adopted under this section must comply with the
40 specifications and requirements described under:

41 (1) IC 11-10-3-2.8;

42 (2) IC 11-10-3-3; and



1 **(3) IC 11-10-3-3.5.**

2 ~~(c)~~ **(d)** The commissioner shall select a committee of not less than
 3 five (5) county sheriffs to consult with the department before and
 4 during the drafting of the proposed minimum standards. County
 5 sheriffs shall be selected from the various classes of counties to ensure
 6 that densely, moderately, and sparsely populated counties are
 7 represented. Each county sheriff is entitled to the minimum salary per
 8 diem as provided in IC 4-10-11-2.1 for each day engaged in the official
 9 business of the committee and to reimbursement for traveling and other
 10 expenses, as provided in the state travel policies and procedures
 11 established by the Indiana department of administration and approved
 12 by the budget agency.

13 ~~(d)~~ **(e)** At least sixty (60) days before setting the date for a public
 14 hearing under IC 4-22-2, the department shall forward copies of the
 15 proposed minimum standards to each county sheriff and each board of
 16 county commissioners and shall solicit their views and suggestions.

17 SECTION 6. IC 34-30-2-39.8 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2020]: **Sec. 39.8. (a) IC 11-10-3-3**
 19 **(Concerning prenatal, postnatal, and postpartum care and**
 20 **counseling by the department of correction).**

21 **(b) IC 11-10-3-3.5 (Concerning the use of restraints on pregnant**
 22 **and postpartum inmates).**

23 SECTION 7. IC 35-52-11-4 IS ADDED TO THE INDIANA CODE
 24 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 25 1, 2020]: **Sec. 4. IC 11-10-3-3.5 defines a crime concerning the use**
 26 **of restraints on pregnant and postpartum inmates.**
 27

