

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
S.P. 353 - L.D. 1013

**An Act To Prevent the Shackling of Pregnant Prisoners and Pregnant
Juveniles**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §1510 is enacted to read:

§1510. Definitions

For the purposes of this chapter, "prisoner" or "inmate" means an adult sentenced and committed to, transferred to or detained in the custody of a jail, including an adult in a community confinement monitoring program pursuant to section 1659-A.

Sec. 2. 30-A MRSA c. 13, sub-c. 2-A is enacted to read:

SUBCHAPTER 2-A

PREGNANT PRISONERS AND PREGNANT JUVENILES

§1581. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Corrections officer. "Corrections officer" means a person who is responsible for the custody or direct supervision of a person confined in a jail, prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who possesses a current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A.

2. Labor. "Labor" means 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.

3. Postpartum recovery. "Postpartum recovery" means, as determined by a woman's physician, the period immediately following delivery, including the entire period the woman is in the hospital or infirmary after giving birth.

4. Restraints. "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's or juvenile's body or limbs, including, but not limited to, disposable or soft restraints, handcuffs, a security restraint system that combines handcuffs with a rigid component, leg irons, belly chains, a security or tether chain and a convex shield.

§1582. Restraint of pregnant prisoners and pregnant juveniles

1. Restraints prohibited. A jail may not use restraints on a prisoner or juvenile known to be pregnant, including during transport to a medical facility or birthing center, labor, delivery and postpartum recovery, unless the jail administrator or the designee of the jail administrator makes a determination that the prisoner or juvenile presents an extraordinary circumstance as described in subsection 2.

2. Exceptions. Use of restraints on a pregnant prisoner or a pregnant juvenile for an extraordinary circumstance is permitted only if a jail administrator or designee of the jail administrator makes a determination that there is a substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the pregnant prisoner or pregnant juvenile, the staff of the jail or medical facility, other prisoners or juveniles or the public, except that:

A. If a doctor, nurse or other health professional treating the prisoner or juvenile requests that restraints not be used, the corrections officer accompanying the prisoner or juvenile shall immediately remove all restraints; and

B. Notwithstanding this subsection, leg or waist restraints may not be used at any time, and restraints may not be used on a prisoner or juvenile in labor or childbirth.

3. Procedures. If restraints are used on a pregnant prisoner or pregnant juvenile pursuant to subsection 2:

A. The corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary; and

B. The jail administrator or designee of the jail administrator shall make written findings within 10 days as to the extraordinary circumstance that required the use of the restraints. These findings must be kept on file by the jail for at least 5 years and must be made available for public inspection, except that individually identifying information of any prisoner or juvenile may not be made public under this paragraph without the prior written consent of the prisoner or juvenile.

4. Privacy. When a prisoner or juvenile is admitted to a medical facility or birthing center for labor or childbirth, a corrections officer may not be present in the room during labor or childbirth unless specifically requested by medical personnel. If a corrections officer's presence is requested by medical personnel, the corrections officer must be female if practicable.

§1583. Standards; notice to female prisoners and juveniles

1. Mandatory minimum standards for pregnant prisoners and juveniles. The Commissioner of Corrections shall adopt rules to establish mandatory minimum standards necessary to implement this subchapter and must enforce those standards as provided under Title 34-A, section 1208. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Notice. The jail administrator or the jail administrator's designee shall inform all female prisoners and female juveniles upon admission to the jail of the mandatory minimum standards adopted pursuant to subsection 1.

Sec. 3. 30-A MRSA §1660, sub-§4 is enacted to read:

4. Information on pregnant prisoners and pregnant juveniles. The report required in this section must include the following information for each jail about pregnant prisoners and pregnant juveniles restrained pursuant to subchapter 2-A during the prior calendar year:

A. The total number of pregnant prisoners and pregnant juveniles;

B. The total number of pregnant prisoners and pregnant juveniles who were restrained;

C. The length of time each pregnant prisoner or pregnant juvenile was restrained; and

D. The reasons for each instance of restraining a pregnant prisoner or pregnant juvenile.

Sec. 4. 34-A MRSA c. 3, sub-c. 1, art. 4 is enacted to read:

ARTICLE 4

PREGNANT PRISONERS AND PREGNANT JUVENILES

§3101. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Corrections officer. "Corrections officer" means a person who is responsible for the custody or direct supervision of a person confined in a jail, prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who possesses a current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A.

2. Juvenile. "Juvenile" means juvenile client or juvenile detainee.

3. Labor. "Labor" means 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.

4. Postpartum recovery. "Postpartum recovery" means, as determined by a woman's physician, the period immediately following delivery, including the entire period the woman is in the hospital or infirmary after giving birth.

5. Restraints. "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's or juvenile's body or limbs, including, but not limited to, disposable or soft restraints, handcuffs, a security restraint system that combines handcuffs with a rigid component, leg irons, belly chains, a security or tether chain and a convex shield.

§3102. Restraint of pregnant prisoners and pregnant juveniles

1. Restraints prohibited. A correctional facility or a detention facility may not use restraints on a prisoner or juvenile known to be pregnant, including during transport to a medical facility or birthing center, labor, delivery and postpartum recovery, unless the chief administrative officer or the designee of the chief administrative officer makes a determination that the prisoner or juvenile presents an extraordinary circumstance as described in subsection 2.

2. Exceptions. Use of restraints on a pregnant prisoner or a pregnant juvenile for an extraordinary circumstance is permitted only if the chief administrative officer or the designee of the chief administrative officer makes a determination that there is a substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the pregnant prisoner or pregnant juvenile, the staff of the correctional facility, detention facility or medical facility, other prisoners or juveniles or the public, except that:

A. If a doctor, nurse or other health professional treating the prisoner or juvenile requests that restraints not be used, the corrections officer accompanying the prisoner or juvenile shall immediately remove all restraints; and

B. Notwithstanding this subsection, leg or waist restraints may not be used at any time, and restraints may not be used on a prisoner or juvenile in labor or childbirth.

3. Procedures. If restraints are used on a pregnant prisoner or pregnant juvenile pursuant to subsection 2:

A. The corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary; and

B. The chief administrative officer or the designee of the chief administrative officer shall make written findings within 10 days as to the extraordinary circumstance that required the use of the restraints. These findings must be kept on file by the correctional facility or detention facility for at least 5 years and must be made available for public inspection, except that individually identifying information of any prisoner or juvenile may not be made public under this paragraph without the prior written consent of the prisoner or juvenile.

4. Privacy. When a prisoner or juvenile is admitted to a medical facility or birthing center for labor or childbirth, a corrections officer may not be present in the room during labor or childbirth unless specifically requested by medical personnel. If a corrections officer's presence is requested by medical personnel, the corrections officer must be female if practicable.

§3103. Rulemaking

The department shall adopt rules necessary to implement this article. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§3104. Notice

A correctional facility or detention facility shall inform all female prisoners and juveniles of the rules developed pursuant to section 3103 upon admission to the correctional facility or detention facility and shall include the rules in any handbook provided to female prisoners or juveniles.

Sec. 5. Commissioner to establish standards. Pursuant to the Maine Revised Statutes, Title 30-A, section 1583, subsection 1, the Commissioner of Corrections shall establish minimum standards to implement Title 30-A, chapter 13, subchapter 2-A within 60 days of the effective date of that subchapter. Pursuant to Title 30-A, section 1583, subsection 2, within 30 days of establishing the standards under Title 30-A, section 1583, subsection 1, all jails shall inform all female prisoners and all female juveniles in custody of the standards.

Sec. 6. Commissioner to adopt rules. Pursuant to the Maine Revised Statutes, Title 34-A, section 3103, the Commissioner of Corrections shall adopt rules necessary to implement Title 34-A, chapter 3, subchapter 1, article 4 and shall notify all female prisoners and all female juveniles in custody of the rules within 30 days of the effective date of that article.