

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1171

Introduced by Cavanaugh, 6.

Read first time January 23, 2020

Committee:

- 1 A BILL FOR AN ACT relating to the Healthy Pregnancies for Incarcerated
2 Women Act; to amend sections 47-1001, 47-1002, and 47-1003, Revised
3 Statutes Supplement, 2019; to state intent; to define terms; to
4 provide for breastfeeding and milk expression by a prisoner or
5 detainee and for a mother and infant to live together; to require a
6 parent separation policy; to harmonize provisions; and to repeal the
7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 47-1001, Revised Statutes Supplement, 2019, is
2 amended to read:

3 47-1001 Sections 47-1001 to 47-1007 and sections 4 and 5 of this act
4 shall be known and may be cited as the Healthy Pregnancies for
5 Incarcerated Women Act.

6 Sec. 2. Section 47-1002, Revised Statutes Supplement, 2019, is
7 amended to read:

8 47-1002 (1) The Legislature finds and declares:

9 (a) (1) Restraining a pregnant woman can pose undue health risks to
10 the woman and her pregnancy;

11 (b) (2) The majority of female prisoners and detainees in Nebraska
12 are nonviolent offenders;

13 (c) (3) Restraining prisoners and detainees increases their
14 potential for physical harm from an accidental trip or fall. The impact
15 of such harm to a pregnant woman can negatively impact her pregnancy;

16 (d) (4) Freedom from physical restraints is especially critical
17 during labor, delivery, and postpartum recovery after delivery. Women
18 often need to move around during labor and recovery, including moving
19 their legs as part of the birthing process. Restraints on a pregnant
20 woman can interfere with medical staff's ability to appropriately assist
21 in childbirth or to conduct sudden emergency procedures; and

22 (e) (5) The Federal Bureau of Prisons, the United States Marshals
23 Service, the American Correctional Association, the American College of
24 Obstetricians and Gynecologists, the American Medical Association, and
25 the American Public Health Association all oppose or severely limit the
26 routine shackling of women during labor, delivery, and postpartum
27 recovery because it is unnecessary and dangerous to a woman's health and
28 well-being and creates an unnecessary risk to the baby during birth.

29 (2) It is the intent of the Legislature to keep infants and mothers
30 together unless keeping an infant and mother together presents a clear
31 and imminent danger to such infant. Every effort shall be made to keep a

1 mother who is incarcerated or detained with such mother's infant.

2 Sec. 3. Section 47-1003, Revised Statutes Supplement, 2019, is
3 amended to read:

4 47-1003 For the purposes of the Healthy Pregnancies for Incarcerated
5 Women Act:

6 (1) Administrator means the Director of Correctional Services, the
7 sheriff or other person charged with administration of a jail, or any
8 other official responsible for the administration of a detention
9 facility;

10 (2) Detainee includes any adult or juvenile female detained under
11 the immigration laws of the United States at any detention facility;

12 (3) Detention facility means any:

13 (a) Facility operated by the Department of Correctional Services;

14 (b) City or county jail;

15 (c) Juvenile detention facility or staff secure juvenile facility as
16 such terms are defined in section 83-4,125; or

17 (d) Any other entity or institution operated by the state, a
18 political subdivision, or a combination of political subdivisions for the
19 careful keeping or rehabilitative needs of prisoners or detainees;

20 (4) Infant means a child twenty-four months of age or younger;

21 (5) (4) Labor means the period of time before a birth during which
22 contractions are of sufficient frequency, intensity, and duration to
23 bring about effacement and progressive dilation of the cervix;

24 (6) Lactate means to secrete breastmilk from the mammary glands
25 post-pregnancy;

26 (7) (5) Postpartum recovery means, as determined by her physician,
27 the period immediately following delivery, including the entire period a
28 woman is in the hospital or infirmary after birth;

29 (8) (6) Prisoner means any adult or juvenile incarcerated or
30 detained in any detention facility and includes, but is not limited to,
31 any adult or juvenile who is accused of, convicted of, sentenced for, or

1 adjudicated for violations of criminal law or the terms and conditions of
2 parole, probation, pretrial release, post-release supervision, or a
3 diversionary program; and

4 ~~(9) (7)~~ Restraints means any physical restraint or mechanical device
5 used to control the movement of a prisoner or detainee's body or limbs,
6 including, but not limited to, flex cuffs, soft restraints, hard metal
7 handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security
8 or tether chain, or a convex shield.

9 Sec. 4. (1) A prisoner or detainee who is lactating shall be given
10 the opportunity to either nurse such prisoner's or detainee's infant or
11 express milk to be given to such infant. A lactating prisoner or detainee
12 shall be provided a breast pump and breastmilk storage containers to
13 express breastmilk as needed as determined by such lactating prisoner or
14 detainee and safe storage of such breastmilk for use by such prisoner's
15 or detainee's infant.

16 (2) Any infant six weeks of age or younger shall not be separated
17 from a prisoner or detainee who birthed such infant unless the
18 administrator makes and documents an individualized determination that
19 remaining with such prisoner or detainee presents a clear and imminent
20 danger to such infant. Such determination shall be based solely upon the
21 presenting behaviors of such prisoner or detainee in relation to her
22 infant, and not upon administrative convenience.

23 (3) Any infant older than six weeks of age but less than twenty-four
24 months of age shall not be separated from a prisoner or detainee who
25 birthed such infant unless the administrator makes and documents an
26 individualized determination that remaining with such prisoner or
27 detainee presents a clear and imminent danger to such infant. Such
28 determination shall be based solely upon the presenting behaviors of such
29 prisoner or detainee in relation to her infant, and not upon
30 administrative convenience.

31 (4) The operator of each detention facility shall develop a parent

1 separation policy and make such policy publicly available. Such policy
2 shall include, but not be limited to, the process for placing an infant
3 born of a prisoner or detainee, information regarding the parental rights
4 of a prisoner or detainee, and the plan to provide for a lactating
5 prisoner or detainee.

6 Sec. 5. Any detention facility that incarcerates or detains women
7 may allow a pregnant prisoner or detainee to live in a space dedicated
8 for mothers and their infants to live together, prior to giving birth, as
9 space allows.

10 Sec. 6. (1) A juvenile committed to the Office of Juvenile Services
11 for placement at the Youth Rehabilitation and Treatment Center-Geneva who
12 is lactating shall be given the opportunity to either nurse such
13 juvenile's infant or express milk to be given to such juvenile's infant
14 while the mother is placed at the Youth Rehabilitation and Treatment
15 Center-Geneva.

16 (2) Any infant six weeks of age or younger shall not be separated
17 from the juvenile who birthed such infant unless the administrator makes
18 and documents an individualized determination that such juvenile presents
19 a clear and imminent danger to such infant.

20 (3) Any infant older than six weeks of age but less than twenty-four
21 months of age shall not be separated from a juvenile who birthed such
22 infant unless the administrator makes and documents an individualized
23 determination that remaining with such juvenile presents a clear and
24 imminent danger to such infant.

25 (4) The Department of Health and Human Services may allow a pregnant
26 juvenile to live in a space dedicated for mothers and their infants to
27 live together, prior to giving birth, as space allows.

28 (5) For purposes of this section:

29 (a) Infant means a child twenty-four months of age or younger; and

30 (b) Lactate means to secrete breastmilk from the mammary glands
31 post-pregnancy.

1 Sec. 7. Original sections 47-1001, 47-1002, and 47-1003, Revised
2 Statutes Supplement, 2019, are repealed.