

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 886

Introduced by Cavanaugh, M., 6.

Read first time January 07, 2022

Committee:

- 1 A BILL FOR AN ACT relating to incarceration; to amend section 47-1004,
- 2 Reissue Revised Statutes of Nebraska; to prohibit certain restraints
- 3 for pregnant prisoners or detainees; to provide for support persons
- 4 during labor and recovery; to harmonize provisions; and to repeal
- 5 the original section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 47-1004, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 47-1004 (1) A detention facility shall not use restraints on a
4 prisoner or detainee known to be pregnant, including during labor,
5 delivery, or postpartum recovery or during transport to a medical
6 facility or birthing center, unless the administrator makes an
7 individualized determination that there are extraordinary circumstances
8 as described in subsection (2) of this section.

9 (2) Restraints for an extraordinary circumstance are only permitted
10 if the administrator makes an individualized determination that there is
11 a substantial flight risk or some other extraordinary medical or security
12 circumstance that dictates restraints be used to ensure the safety and
13 security of the prisoner or detainee known to be pregnant, the staff of
14 the detention facility or medical facility, other prisoners or detainees,
15 or the public, except that:

16 (a) If the doctor, nurse, or other health professional treating the
17 prisoner or detainee known to be pregnant requests that restraints not be
18 used, any detention facility employee accompanying the prisoner or
19 detainee shall immediately remove all restraints;

20 (b) Under no circumstances shall leg or waist restraints be used on
21 the prisoner or detainee known to be pregnant unless the prisoner or
22 detainee presents an immediate and serious risk of harm or a substantial
23 and immediate flight risk;~~and~~

24 (c) Under no circumstances shall any restraints be used on any
25 prisoner or detainee in labor or during childbirth unless the prisoner or
26 detainee presents an immediate and serious risk of harm or a substantial
27 and immediate flight risk; and -

28 (d) Under no circumstances shall any restraints on the abdomen,
29 waist, or chest be used on any pregnant prisoner or detainee.

30 (3) Upon a prisoner's or detainee's admission to a medical facility
31 or birthing center for labor or childbirth, no detention facility

1 employee shall remain present in the room during labor or childbirth
2 unless specifically requested or approved by medical personnel. A
3 detention facility employee may ask medical personnel to allow such
4 employee to remain present. If a detention facility employee's presence
5 is requested or approved by medical personnel, the employee shall, if
6 practicable, be female.

7 (4) If a prisoner or detainee known to be pregnant is transported to
8 a medical facility or birthing center and restraints are used, the
9 administrator of the detention facility shall inform the relevant staff
10 at the medical facility or birthing center of the risks and dangers of
11 removing the restraints from the specific prisoner or detainee.

12 (5) If restraints are used on a prisoner or detainee known to be
13 pregnant pursuant to subsection (2) of this section:

14 (a) The type of restraint applied and the application of the
15 restraint must be done in the least restrictive manner necessary; and

16 (b) The administrator shall make written findings within ten days as
17 to the extraordinary circumstances that dictated the use of the
18 restraints. These findings shall be kept on file by the detention
19 facility for at least five years and be made available for public
20 inspection, except that no individually identifying information of the
21 prisoner or detainee shall be made public under this section without the
22 prisoner's or detainee's prior written consent.

23 (6)(a) A prisoner or detainee who is pregnant shall be permitted to
24 have at least one support person of her choice accompany her to the
25 delivery room and remain present during labor and recovery. Such support
26 person or persons shall not, (i) be required to have visited the prisoner
27 or detainee at any detention facility prior to serving as a support
28 person, or (ii) be denied eligibility to serve as a support person solely
29 on the basis of a prior criminal conviction or that such person is
30 currently on probation, conditional release, parole, or post-release
31 supervision.

1 (b) If such prisoner or detainee's request for a support person or
2 persons is denied, such denial shall be in writing within five calendar
3 days after the correctional facility's receipt of the request and shall
4 include a statement of the reasons for the denial.

5 (c) The support person or persons shall be notified immediately
6 after a prisoner or detainee goes into labor, or immediately after a
7 caesarean section or termination is scheduled. If available, a doula,
8 midwife, or other birthing support specialist may also assist during
9 labor and delivery.

10 (d) Any woman confined in a detention facility shall receive written
11 notice in a language and manner understandable to her regarding the
12 requirements of this section upon admission to such detention facility. A
13 second notice shall be given to a prisoner or detainee at the time she is
14 known to be pregnant. Administrators of detention facilities that house
15 women shall publish notice of the requirements of this section in
16 prominent locations where medical care is provided.

17 Sec. 2. Original section 47-1004, Reissue Revised Statutes of
18 Nebraska, is repealed.