

(Reprinted with amendments adopted on April 21, 2023)

FIRST REPRINT

A.B. 292

ASSEMBLY BILL NO. 292—ASSEMBLYWOMEN GONZÁLEZ;
AND SUMMERS-ARMSTRONG

MARCH 14, 2023

JOINT SPONSORS: SENATORS SPEARMAN, NEAL;
AND SCHEIBLE

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing offenders.
(BDR 16-252)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to incarceration; requiring the Department of Corrections to adopt certain regulations relating to the care of women who are in the custody of the Department; requiring the warden of an institution or manager of a facility to adopt policies relating to conduct between male correctional officers and women who are incarcerated; requiring the warden of an institution or manager of a facility to adopt policies relating to the care of a pregnant offender; requiring the Department to develop and adopt certain policies and regulations relating to the care of a pregnant offender; requiring a correctional officer to submit a written report if restraints are used on a pregnant offender; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Section 2** of this bill requires the Department of Corrections to: (1) ensure that
- 2 a woman who is assigned to an institution or facility completes a form to assess the
- 3 needs of the woman while in the custody of the Department; (2) provide a woman
- 4 who is incarcerated access to certain necessary medical and behavioral health
- 5 services; and (3) provide a woman who is incarcerated with a sufficient supply of
- 6 feminine hygiene products at no cost. **Section 2** additionally requires the
- 7 Department to provide the woman with a preferred type of feminine hygiene



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products upon request. **Section 2** also requires the Department to adopt any regulations necessary to carry out the provisions of **section 2**.

Section 5 of this bill requires certain persons responsible for the operation of an institution or facility of the Department to adopt a policy setting forth standards of conduct for interactions between a male staff member and a woman who is incarcerated in the institution or facility. **Section 5** also requires any such policy to prohibit a male staff member from inspecting or searching a woman who is incarcerated in an institution or facility and who is in a state of undress while located in a private location, unless: (1) there are extraordinary circumstances; and (2) a female correctional staff member, or any female staff member of the institution or facility if a female correctional staff member is unavailable, is present at the time of the inspection or search. **Section 5** additionally requires a male correctional staff member who conducts such an inspection or search to submit a written report concerning the inspection or search with the warden of the institution or manager of the facility within 72 hours. **Section 6** of this bill requires the Department to provide a woman who is pregnant and in the custody of the Department access to necessary medical and behavioral health care services, including obstetrical services. **Section 6** also: (1) requires certain persons responsible for the operation of an institution or facility of the Department to adopt a policy for the prenatal and postnatal care of an offender; and (2) prescribes requirements for such a policy.

Section 6 additionally requires the Department to adopt any regulations necessary to carry out the provisions of **section 6**. **Section 6** additionally requires the Department to develop and adopt a policy to be carried out in each institution and facility concerning the physical and mental health of offenders who are pregnant.

Existing law prohibits the use of restraints on an offender confined in a facility or institution who is in labor, delivering a baby or recuperating from delivery. Under existing law, if restraints are used on such a person, the restraints used must be the least restrictive restraints which are necessary to ensure safety and security. (NRS 209.376) **Section 9** of this bill requires a correctional staff member who orders the use of restraints on such an offender to submit a report to the warden of the institution or manager of the facility which: (1) describes the reasons for the use of the restraints; and (2) must be submitted to the warden or manager within 5 hours after the use of the restraints.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. 1. *The Department shall ensure that each woman who is assigned to an institution or facility completes a form at the time of intake to assess the needs of the woman while in the custody of the Department. The form must include, without limitation, questions relating to:*

(a) How recently the woman has received preventative gynecological care and, if applicable, obstetrical care; and



(b) *The needs of the woman for feminine hygiene products for the purpose of providing the woman with a suitable supply of feminine hygiene products.*

2. *The Department shall provide a woman who is in the custody of the Department access to necessary medical and behavioral health care services, including:*

(a) *Counseling pertaining to mental health or a substance use disorder;*

(b) *Medication prescribed for the treatment for mental health issues;*

(c) *An annual pelvic examination and mammography; and*

(d) *Any appropriate follow-up care necessary for a woman who receives an examination pursuant to paragraph (c).*

3. *The Department shall provide a woman who is in the custody of the Department with a sufficient supply of feminine hygiene products at no cost. The Department shall provide the woman with a preferred type of feminine hygiene products upon request. A woman may at any time inform the Department of a need to adjust the supply of feminine hygiene products necessary to constitute a sufficient supply for the needs of the woman.*

4. *The Department shall adopt regulations necessary to carry out the provisions of this section.*

5. *As used in this section:*

(a) *"Feminine hygiene product" means a sanitary napkin, tampon or other similar item used during a menstrual cycle.*

(b) *"Mammography" has the meaning ascribed to it in NRS 457.182.*

Sec. 3. (Deleted by amendment.)

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. *Subject to the approval of the Director, the warden of each institution and the manager of each facility shall adopt a policy setting forth standards of conduct for interactions between a male correctional staff member and a woman who is incarcerated in the institution or facility.*

2. *The policy adopted pursuant to subsection 1 must:*

(a) *Be consistent with any other applicable laws or regulations;*

(b) *Prohibit a male correctional staff member from conducting an inspection or search of a woman who is incarcerated in the institution or facility and is in a state of undress in a private location, unless:*

(1) *There are extraordinary circumstances; and*

(2) *A female correctional staff member, or any female staff member of the institution or facility if a female correctional staff*



1 *member is unavailable, is present at the time of the inspection or*
2 *search; and*

3 *(c) Include, without limitation, a requirement that a male*
4 *correctional staff member who inspects or searches a woman*
5 *pursuant to paragraph (b) submit to the warden of the institution*
6 *or manager of the facility a written report concerning the*
7 *inspection or search.*

8 *3. A written report filed pursuant to subsection 2 must:*

9 *(a) Be filed not later than 72 hours after the inspection or*
10 *search occurs; and*

11 *(b) Include a description of the inspection or search and any*
12 *other information requested by the warden or manager, as*
13 *applicable.*

14 *4. As used in this section:*

15 *(a) "Private location" means an area in an institution or*
16 *facility in which a woman has a reasonable expectation of privacy,*
17 *including, without limitation, an area which contains a shower or*
18 *toilet, a medical examination room or an area in which body*
19 *cavity searches are conducted.*

20 *(b) "State of undress" means that the naked or undergarment-*
21 *clad genitals, pubic area, buttocks or breast of a woman are*
22 *exposed.*

23 **Sec. 6. 1. The Department shall provide an offender who is**
24 **pregnant and in the custody of the Department access to necessary**
25 **medical and behavioral health care services, including, without**
26 **limitation, obstetrical services.**

27 **2. Subject to the approval of the Director, the warden of each**
28 **institution and the manager of each facility shall adopt a policy**
29 **for the prenatal and postnatal care of offenders. Any such policy**
30 **must be consistent with any other applicable laws or regulations.**

31 **3. A policy adopted pursuant to subsection 2 must include,**
32 **without limitation:**

33 **(a) A requirement that each offender who is pregnant receive:**

34 **(1) Training, educational programming or written**
35 **materials concerning prenatal care, pregnancy, hygiene and**
36 **health concerns relating to pregnancy, the impact of alcohol and**
37 **drugs on a fetus, labor, the care of newborns and the postpartum**
38 **period;**

39 **(2) Prenatal vitamins or supplements, as deemed necessary**
40 **by the Medical Director;**

41 **(3) A diet containing the nutrients necessary to maintain a**
42 **healthy pregnancy, as deemed necessary by the Medical Director;**

43 **(4) Any hygiene products which are reasonably necessary**
44 **and specifically designed for a person who is pregnant; and**

45 **(5) Counseling regarding parenting skills; and**



(b) A requirement that each offender who delivers a baby while in the custody of the Department:

(1) Receives appropriate, trauma-informed medical care at the institution or facility, including, without limitation, treatment for postpartum depression;

(2) Receives counseling regarding parenting skills upon the request of the offender; and

(3) To be provided an opportunity to bond with a baby delivered while in the custody of the Department for a minimum period of not less than 72 hours after delivery.

4. The counseling and written materials required by subsection 3 must be communicated or written in easily understood language.

5. The Department shall develop and adopt a policy to be carried out in each institution and facility concerning the physical and mental health of offenders who are pregnant. In developing such a policy, the Department shall take into consideration the impact of certain actions on the offender and the fetus, including, without limitation, the impact of:

(a) The use of restraints; and

(b) An invasive body cavity search.

6. The Department shall adopt any regulations necessary to carry out the provisions of this section.

7. Nothing in this section shall be construed to require an institution or facility to adopt any policy that does not comply with federal law or regulation.

Sec. 7. (Deleted by amendment.)

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 209.376 is hereby amended to read as follows:

209.376 1. No restraints of any kind may be used on an offender who is in labor, delivering her baby or ~~recovering from delivery~~ in the postpartum period, unless there are compelling reasons to believe that the offender presents:

(a) A serious and immediate threat of harm to herself, staff or others; or

(b) A substantial flight risk and cannot be reasonably confined by other means.

2. If an offender who is in labor, delivering her baby or ~~recovering from delivery~~ in the postpartum period is restrained, only the least restrictive restraints which are necessary to ensure safety and security ~~may~~ be used.

3. A correctional staff member who orders the use of restraints on an offender who is pregnant or in the postpartum period shall submit a written report to the warden of the institution or manager of the facility. The report must:



(a) Describe the reasons for the use of the restraints on the offender; and

(b) Be submitted to the warden or manager within 5 hours after the use of the restraints.

4. As used in this section:

(a) “Postpartum period” means the period of time an offender is recuperating from delivering a baby, as determined by the physician of the offender, immediately following delivery and directly related to the birth, including the period an offender is in a hospital or infirmary after birth.

(b) “Restraints” means any physical restraint or mechanical device used to control the movement of the limbs of a person, including, without limitation, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security tether chain or a convex shield.

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. (Deleted by amendment.)

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. (Deleted by amendment.)

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

Sec. 21. (Deleted by amendment.)

Sec. 22. (Deleted by amendment.)

Sec. 23. (Deleted by amendment.)

Sec. 24. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 23, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations or policies and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On October 1, 2023, for all other purposes.

