

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act To create a Department of Corrections in the District of Columbia to improve the resources and supports available to incarcerated individuals who are pregnant while in the custody of the Department of Corrections, to make pregnancy testing, pregnancy counseling options, and abortion counseling options available to incarcerated individuals who are pregnant or may be pregnant, to provide a pregnant individual with a method to request the presence of a support or alternate support person, to provide necessary supplies for safe storage and transportation of breast milk, and to provide for a private right of action for damages and such other remedies as appropriate; and to amend the Limitations on the Use of Restraints Amendment Act of 2014 to expand reporting requirements on the use of restraints, and to provide a private right of action for damages and such other remedies as appropriate.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Safe and Supported Pregnancy and Delivery Amendment Act of 2024”.

Sec. 2. An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.01 *et seq.*), is amended by adding new sections 10 and 11 to read as follows:

“Sec. 10. Safe and supported pregnancy and delivery for incarcerated individuals.

“(a) The Department of Corrections (“Department”) shall make pregnancy testing, pregnancy counseling options, and abortion counseling options available to incarcerated individuals who are pregnant or may be pregnant.

“(b) The Department shall ensure that incarcerated individuals who are pregnant receive confidential, appropriate, timely, culturally responsive, and comprehensive healthcare, evaluation, and treatment from healthcare providers licensed in the District, including:

“(1) Healthcare for related health conditions that emerge during the pregnancy or during postpartum recovery;

“(2) Specialized pregnancy or postpartum healthcare, if necessary, which may be referred to external healthcare providers, in accordance with the Limitations on the Use of Restraints Amendment Act of 2014, effective July 25, 2015 (D.C. Law 20-280; D.C. Official Code 24-276.01 *et seq.*); and

“(3) Medical, healthcare, and personal care supplies prescribed or recommended by a licensed healthcare provider treating an individual or reasonably requested by an individual, which shall be provided at no cost to the individual, including:

“(A) Equipment and cleaning supplies necessary to safely pump, store, and transport breast milk, including nursing brassieres, breast pumps, breast milk storage bags, detergent, bottle brushes, drying racks, a refrigerator of sufficient capacity, and a cooler; and

“(B) The diet that is required by Department policy or is medically recommended during pregnancy and postpartum.

“(c)(1) If an incarcerated individual who is pregnant is scheduled to deliver an infant while in the custody of the Department, the Department shall provide the individual with a method to request the presence of a support person, or an alternate support person in the event that the primary support person is unavailable, at the time of delivery, during labor, delivery, a cesarean section, a pregnancy termination, and during postpartum recovery while hospitalized.

“(2)(A) The Director of the Department or the Director’s designee shall approve a request for a primary support person and an alternate support person within 5 business days after receipt of a request, unless the department determined the request raises specific safety or security concerns for the incarcerated individual, infant, public, or staff.

“(B) Denials shall be issued sparingly and shall not be issued based on the requested support persons’ past criminal record or their probation, conditional release, parole, or supervision status.

“(C) The Department shall not require that a primary support person or an alternate support person need to have visited the incarcerated individual while in Department custody prior to serving as a support person.

“(D) If the Director of the Department or the Director’s designee denies a request for a primary support person or an alternate support person, detailed reasons for the denial shall be provided in writing to the incarcerated individual within 3 business days after the denial. The written denial shall provide the rationale for the denial, including specific safety or security concerns for the incarcerated individual, infant, public, or staff. Upon receipt of a written denial, an incarcerated individual may submit another request.

“(3)(A) The Department shall notify the incarcerated individual and approved support persons within 3 business days after approving the request.

“(B) The Department shall provide approved support persons with information regarding their rights and responsibilities as a support person, the anticipated due date or possible due dates of the incarcerated individual, and a written confirmation stating the above to bring to the hospital.

“(C) Approved support persons shall be notified as follows:

“(i) Within one hour after the Department determining that an incarcerated individual is in labor or at least one hour before an incarcerated individual is transported to a hospital for labor and delivery or termination; and

“(ii) Within one hour after an induction, cesarean section, or pregnancy termination is scheduled.

ENROLLED ORIGINAL

“(D) When the incarcerated individual is transported to a hospital for labor and delivery, the Department shall notify the designated hospital security staff in writing of the support person’s name and contact information to facilitate access.

“(E) The alternate support person may be present with the incarcerated individual in the event that the primary support person cannot be present with the incarcerated individual during labor, delivery, a cesarean section, pregnancy termination, or during postpartum recovery while hospitalized.

“(d)(1) The incarcerated individual shall be given the maximum level of privacy possible during labor, delivery, a cesarean section, or a pregnancy termination.

“(2) Department officers required to escort or accompany the incarcerated individual to a hospital during labor, delivery, a cesarean section, pregnancy termination, or during postpartum recovery while hospitalized shall be stationed outside the delivery room; except, that in the event of extraordinary circumstances as determined by the Department, a Department officer may stand in a place in the delivery room that grants as much privacy as possible to the incarcerated individual throughout labor, delivery, a cesarean section, or a pregnancy termination; provided further, that a Department officer may not be stationed in the delivery room if a Department staff member is present acting as the incarcerated individual’s approved support person or if the medical provider determines that the removal of the Department officer is medically necessary.

“(e) For the duration of the period that an approved support person is present with the incarcerated individual, the Department shall:

“(1) Allow a support person to freely leave the delivery room and return;

“(2) Allow a support person to bring a camera or a telephone with a camera into the delivery or recovery room;

“(3) Allow a support person and the incarcerated individual to take pictures; and

“(4) Allow an incarcerated individual to use a support person’s telephone speakerphone capabilities to communicate about the birth of the infant.

“(f) At least 2 months prior to an incarcerated pregnant individual’s estimated delivery date or within one week of arrival in DOC custody if the incarcerated individual’s estimated delivery date is sooner than 2 months away, the Department shall provide the individual with contact information for family law attorneys that can counsel the individual regarding their options to establish the infant’s paternity, and for the placement, custody, and care of the infant after birth.

“(g) The Department shall allow additional visitation beyond that permitted by Department policy between an incarcerated individual who is the parent of a child under one year of age and that child and shall give special consideration of additional visitation to an incarcerated individual who is breastfeeding their child. The Department shall allow an incarcerated individual who pumps breast milk to breast feed their child during visitation if the individual informs a supervising guard that they wish to.

“(h) The rights provided for incarcerated individuals by this section shall be posted in any non-English language spoken by one or more limited or no-English proficient incarcerated

individuals in at least one conspicuous place to which all incarcerated individuals have access and in locations in the Department where medical care is provided.

“(i) Any individual in the Department’s custody who is known to be pregnant or could be pregnant shall receive notice in writing in a language and manner understandable to them about the requirements of this section upon admission to the Department.

“(j) The Department shall ensure that all guards and staff who interact with incarcerated individuals known to be or could become pregnant receive annual training of their responsibilities under this section.

“(k) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this section.

“Sec. 11. Private right of action.

“(a) Any incarcerated individual who has been deprived of the rights conferred by section 10 shall have a private cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. A private cause of action pursuant to this section shall be filed in a court of competent jurisdiction within one year after the unlawful act, or the discovery thereof.

“(b) An incarcerated individual who prevails in a private cause of action under this section shall be entitled to costs, including reasonable attorney’s and expert’s fees.

“(c) Notwithstanding any other law:

“(1) No action shall be brought under this section until such administrative remedies as are available are exhausted;

“(2) If an incarcerated individual is not provided timely access to the necessary resources, including access to any requested grievance form, writing utensils, and access to the Inmate Grievance Procedure mailbox, to make use of the grievance process outlined in paragraph (1) of this subsection, the administrative remedy process outlined by paragraph (1) of this subsection shall be deemed unavailable; and

“(3) In an action under this section, an incarcerated individual’s sworn statement including facts that if true would be sufficient to show the individual had either completed the grievance process or that the grievance process was unavailable to the individual, shall create a rebuttable presumption that can only be overcome by clear and convincing evidence that the grievance process was completed or unavailable.”.

Sec. 3. The Limitations on the Use of Restraints Amendment Act of 2014, effective July 25, 2015 (D.C. Law 20-280; D.C. Official Code § 24-276.01 *et seq.*), is amended as follows:

(a) Section 203(b) (D.C. Official Code § 24-276.03(b)) is amended by striking the phrase “provide the following information to the Council:” and inserting the phrase “submit to the Council Secretary and to the Council chairperson with oversight jurisdiction over the Department a report containing, at a minimum, the following:” in its place.

(b) Section 204 (D.C. Official Code § 24-276.04) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) A new subsection (b) is added to read as follows:

“(b) The Department shall ensure that all guards and staff who interact with incarcerated individuals known to be or could become pregnant receive annual training of their responsibilities under this title.”.

(c) A new section 205 is added to read as follows:

“Sec. 205. Private right of action.

“(a) Any incarcerated individual who has been deprived of the rights conferred by this title shall have a private cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. A private cause of action pursuant to this section shall be filed in a court of competent jurisdiction within one year after the unlawful act, or the discovery thereof.

“(b) An incarcerated individual who prevails in a private cause of action under this section shall be entitled to costs, including reasonable attorney’s and expert’s fees.

“(c) Notwithstanding any other law:

“(1) No action shall be brought under this section until such administrative remedies as are available are exhausted;

“(2) If an incarcerated individual is not provided timely access to the necessary resources, including access to any requested grievance form, writing utensils, and access to the Inmate Grievance Procedure mailbox, to make use of the grievance process outlined in paragraph (1) of this subsection, the administrative remedy process outlined by paragraph (1) of this subsection shall be deemed unavailable; and

“(3) In an action under this section, an incarcerated individual’s sworn statement including facts that if true would be sufficient to show the individual had either completed the grievance process or that the grievance process was unavailable to the individual, shall create a rebuttable presumption that can only be overcome by clear and convincing evidence that the grievance process was completed or unavailable.”.

Sec. 4. Applicability.

(a) Amendatory sections 10(c), (e), and (g), and 11 within section 2 shall apply upon the date of inclusion of their fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provisions identified in subsection (a) of this section.

ENROLLED ORIGINAL

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and a 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia