

SENATE No. 2104

Text of the further Senate amendment (Senator Brewer) to the Senate Bill to prevent shackling and promote safe pregnancies for female inmates (Senate, No. 2063).

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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1 Chapter 127 of the General Laws is hereby amended by striking out section 118, as
2 appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

3 Section 118. (a) Upon admission to a correctional facility, while awaiting trial or after
4 sentencing, a female inmate shall be screened and assessed for pregnancy by a licensed health
5 care professional; provided, however, that the inmate shall be informed of any necessary medical
6 tests connected with the pregnancy screening prior to the administration of such tests. A pregnant
7 inmate shall receive nondirective counseling and written material, in a form the inmate can
8 understand, on pregnancy options and correctional facility policies and practices regarding care
9 and labor for pregnant inmates. Correctional facilities housing female inmates shall ensure that at
10 least 1 member of the correctional facility’s medical staff is trained in pregnancy-related care,
11 which shall include knowledge of prenatal nutrition, high-risk pregnancy, addiction and
12 substance abuse during pregnancy and childbirth education.

13 A pregnant and postpartum inmate shall be provided regular prenatal and postpartum
14 medical care at the correctional facility in which she is housed, including: periodic health
15 monitoring and evaluation during pregnancy; the opportunity for a minimum of 1 hour of
16 ambulatory movement each day; a diet containing the nutrients necessary to maintain a healthy
17 pregnancy, including prenatal vitamins and supplements; postpartum screening for depression;
18 and written information regarding prenatal nutrition, maintaining a healthy pregnancy and
19 childbirth. Pregnant and postpartum inmates shall be provided appropriate clothing,
20 undergarments and sanitary materials.

21 The department of correction shall, in consultation with the department of public health
22 and the Massachusetts Sheriffs Association, Inc., develop appropriate standards of care for
23 pregnant and postpartum inmates, which shall include, at a minimum, the standards for health
24 services set forth by the National Commission on Correctional Health Care. If a pregnant inmate
25 requires medically necessary, specialized care that is unavailable at the correctional facility, the
26 pregnant inmate shall have access to such care at a supporting medical facility with appropriate
27 expertise.

28 If a licensed health care professional determines that an inmate is suffering from
29 postpartum depression, she shall have regular access to a mental health clinician. A postpartum
30 inmate shall not be subject to isolation absent an individualized, documented determination that
31 the inmate poses a serious risk of harm to herself or others.

32 Prior to release, correctional facility medical staff shall provide a pregnant inmate with
33 counseling and discharge planning in order to ensure continuity of pregnancy-related care,
34 including uninterrupted substance abuse treatment.

35 (b) During the second and third trimesters of pregnancy or during post-delivery
36 recuperation, as determined by the attending physician, an inmate shall be transported to and
37 from visits to medical providers and court proceedings in a vehicle with seatbelts and may only
38 be restrained using handcuffs in front.

39 A pregnant inmate shall receive labor and delivery care in an accredited hospital and shall
40 not be removed to another penal institution for the purpose of giving birth. An inmate who is in
41 any stage of labor or delivery, as determined by a licensed health care professional, shall not be
42 placed in restraints at any time, including during transportation. If a correction officer is present
43 in the room during the pregnant inmate's physical examinations, labor or childbirth, the officer
44 shall, if possible, be female. Whenever possible, the correction officer shall be positioned in a
45 location in the room that will ensure, to the extent possible, patient privacy.

46 During post-delivery recuperation, an inmate shall remain in the hospital until the
47 attending physician certifies that she may be safely discharged and transferred back to the
48 correctional facility. An inmate in post-delivery recuperation shall not be placed in restraints,
49 except under extraordinary circumstances.

50 For the purposes of this section, "extraordinary circumstances" shall mean a situation in
51 which a correction officer determines that the specific inmate presents an immediate and serious
52 threat to herself or others or in which the inmate presents an immediate and credible risk of
53 escape that cannot be curtailed by other reasonable means. If an inmate is restrained, the
54 restraints shall be the least restrictive available and the most reasonable under the circumstances.
55 Leg or waist restraints shall not be used on a pregnant or postpartum inmate. In the event the
56 correction officer determines that extraordinary circumstances exist and restraints are used, the
57 correction officer shall fully document, in writing, the reasons that the officer determined such
58 extraordinary circumstances existed, the kind of restraints used and the reasons those restraints
59 were considered the least restrictive available and the most reasonable under the circumstances.
60 A superintendent shall approve the use of any restraints used due to extraordinary circumstances
61 either before the officer makes the determination or after the correction officer submits
62 documentation detailing the reasons restraints were required. If the attending physician or nurse
63 treating the pregnant inmate requests that restraints be removed for medical reasons, the
64 correction officer shall immediately remove all restraints.

65 (c) Nothing in this section shall prohibit the use of hospital restraints requested by a
66 treating physician for the medical safety of a patient."

67 And by inserting before the enacting clause the following emergency preamble:-

68 "Whereas, The deferred operation of this act would tend to defeat its purpose, which is to
69 promote forthwith safe pregnancies among female inmates in correctional facilities, therefore it
70 is hereby declared to be an emergency law, necessary for the immediate preservation of the
71 public convenience."