

PREGNANT AND POSTPARTUM INMATE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amend provisions related to pregnant and postpartum inmates.

Highlighted Provisions:

This bill:

- ▶ provides that the Department of Corrections may not establish a nursery for a female inmate and the inmate's infant within a correctional facility;
- ▶ amends the Correctional Postnatal and Early Childhood Advisory Board;
- ▶ establishes guidelines for pregnant or postpartum inmates to enter community-based programming; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-1-434, as enacted by Laws of Utah 2023, Chapter 420

63I-1-264, as enacted by Laws of Utah 2023, Chapter 420

64-13-46, as last amended by Laws of Utah 2023, Chapter 420

REPEALS:



28 [64-13-46.5](#), as enacted by Laws of Utah 2023, Chapter 420

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **26B-1-434** is amended to read:

32 **26B-1-434. Correctional Postnatal and Early Childhood Advisory Board -- Duties**
33 **-- Rulemaking.**

34 (1) As used in this part:

35 (a) "Advisory board" means the Correctional Postnatal and Early Childhood Advisory
36 Board.

37 (b) "Incarcerated mother" means ~~[the same as that term is defined in Section~~
38 [64-13-46.5](#)] an inmate who gives birth after entering the department's custody.

39 (2) The advisory board shall consist of the following members:

40 (a) two individuals from the Department of Corrections, appointed by the executive
41 director of the Department of Corrections;

42 (b) one individual appointed by the Board of Pardons and Parole; and

43 (c) six individuals appointed by the executive director of the department, including:

44 (i) two individuals from the department with experience in child care licensing;

45 (ii) two pediatric healthcare providers;

46 (iii) one individual with expertise in early childhood development; and

47 (iv) one individual with experience advocating for incarcerated women.

48 (3) (a) Except as provided in Subsection (3)(b), a member of the advisory board shall
49 be appointed for a four-year term.

50 (b) A member that is appointed to complete an unexpired term may complete the
51 unexpired term and serve a subsequent four-year term.

52 (c) Appointments and reappointments may be staggered so that one-fourth of the
53 advisory board changes each year.

54 (d) The advisory board shall annually elect a chair and co-chair of the board from
55 among the members of the board to serve a two-year term.

56 (4) The advisory board shall meet at least bi-annually, or more frequently as
57 determined by the executive director, the chair, or three or more members of the advisory
58 board.

59 (5) A majority of the board constitutes a quorum and a vote of the majority of the
60 members present constitutes an action of the advisory board.

61 (6) A member of the advisory board may not receive compensation or benefits for the
62 member's service, but may receive per diem and travel expenses as allowed in:

63 (a) Section 63A-3-106;

64 (b) Section 63A-3-107; and

65 (c) rules made by the Division of Finance in accordance with Sections 63A-3-106 and
66 63A-3-107.

67 (7) The advisory board shall:

68 (a) review research regarding childhood development and best practices for [~~infants~~
69 ~~placed in a nursery located within a secure correctional environment~~] placing an infant or
70 incarcerated mother in a diversion program not located in a secure correctional environment;

71 [~~(b) as part of the advisory board's review of research under Subsection (7)(a), study~~
72 ~~the benefits of having a nursery for infants and incarcerated mothers located within a secure~~
73 ~~correctional environment and the benefits of placing an infant or incarcerated mother in a~~
74 ~~diversion program removed from a secure correctional environment;]~~

75 [~~(c)~~] (b) study the costs of implementing a diversion program for infants and
76 incarcerated mothers removed from a secure correctional environment;

77 [~~(d)~~] (c) create a provisional plan for implementing a diversion program for infants and
78 incarcerated mothers removed from a secure correctional environment; and

79 [~~(e)~~] (d) advise and make recommendations to the department regarding rules and
80 policies for [~~any nursery established by the Department of Corrections to provide space for~~
81 ~~incarcerated mothers and infants.~~] placing an infant or incarcerated mother in a diversion
82 program not located in a secure correctional environment.

83 [~~(8) The advisory board, upon request from the Department of Corrections, may:]~~

84 [~~(a) after considering the specific circumstances of an infant and the infant's~~
85 ~~incarcerated mother, extend the age that qualifies the infant for a nursery under Subsection~~
86 ~~64-13-46.5(2) up to 24 months old if:]~~

87 [(i) the extension is in the best interest of the infant; and]

88 [(ii) without the extension the infant would be separated from the incarcerated mother
89 while the incarcerated mother remains in the correctional facility; or]

90 ~~[(b) allow an incarcerated mother who has committed a violent felony to be provided~~
 91 ~~space in a nursery if it is in the best interest of the incarcerated mother's infant.]~~

92 ~~[(9)] (8)~~ On or before November 30, 2024, the advisory board shall provide a report of
 93 the advisory board's research and study under Subsections (7)(a) through ~~[(d)] (c)~~, including
 94 any proposed legislation, to:

95 (a) the Law Enforcement and Criminal Justice Interim Committee; and

96 (b) the Executive Offices and Criminal Justice Appropriations Subcommittee.

97 ~~[(10) The department shall:]~~

98 ~~[(a) after receiving recommendations from the advisory board under Subsection (7)(c);~~
 99 ~~adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for~~
 100 ~~certification of a nursery established in a secure correctional environment that address:]~~

101 ~~[(i) the safety of the nursery for infants and incarcerated mothers;]~~

102 ~~[(ii) the childhood development needs of the infants in the nursery;]~~

103 ~~[(iii) the specific medical needs of the infants and incarcerated mothers in the nursery;]~~

104 ~~[(iv) the appropriate needs of the incarcerated mothers in the nursery; and]~~

105 ~~[(v) any other requirements recommended by the advisory board that the department~~
 106 ~~deems necessary for the nursery; and]~~

107 ~~[(b) certify that any nursery established by the Department of Corrections is in~~
 108 ~~compliance with the rules established under this section before the nursery begins operations:]~~

109 ~~[(11) The department may make rules in accordance with Title 63G, Chapter 3, Utah~~
 110 ~~Administrative Rulemaking Act, regarding corrective action, including closure of a nursery~~
 111 ~~established by the Department of Corrections, if the Department of Corrections fails to comply~~
 112 ~~with the rules established under this section.]~~

113 Section 2. Section **63I-1-264** is amended to read:

114 **63I-1-264. Repeal dates: Title 64.**

115 ~~[Section 64-13-46.5, Correctional Facility Nursery, is repealed July 1, 2026]~~ Reserved.

116 Section 3. Section **64-13-46** is amended to read:

117 **64-13-46. Pregnant inmates.**

118 (1) As used in this section:

119 (a) "Postpartum recovery" means, as determined by the pregnant inmate's physician,
 120 the period immediately following delivery, including the entire period the inmate is in the

121 hospital or health care facility after birth.

122 (b) "Restraints" means any physical restraint or mechanical device used to control the
123 movement of an inmate's body or limbs, including flex cuffs, soft restraints, shackles, or a
124 convex shield.

125 (c) (i) "Shackles" means metal restraints, including leg irons, belly chains, or a security
126 or tether chain.

127 (ii) "Shackles" does not include hard metal handcuffs.

128 (d) "Violent felony" means the same as that term is defined in [Section 76-3-203.5](#).

129 (2) Subject to Subsections (3) and (4), if the staff of a correctional facility knows or has
130 reason to believe that an inmate is pregnant or is in postpartum recovery, the staff shall, when
131 restraining the inmate at any time or location, use the least restrictive restraints necessary to
132 ensure the safety and security of the inmate and others.

133 (3) A correctional staff member may not use restraints on an inmate during the third
134 trimester of pregnancy, labor, or childbirth unless a correctional staff member makes an
135 individualized determination that there are compelling grounds to believe that the inmate
136 presents:

137 (a) an immediate and serious risk of harm to the inmate, the inmate's infant, medical
138 staff, correctional staff, or the public; or

139 (b) a substantial risk of escape that cannot reasonably be reduced by the use of other
140 existing means.

141 (4) Notwithstanding Subsection (3), under no circumstances may shackles, leg
142 restraints, or waist restraints be used on an inmate during the third trimester of pregnancy,
143 labor, childbirth, or postpartum recovery.

144 (5) Correctional staff present during labor or childbirth shall:

145 (a) be stationed in a location that offers the maximum privacy to the inmate, while
146 taking into consideration safety and security concerns; and

147 (b) be female, if practicable.

148 (6) If a correctional staff member authorizes restraints under Subsection (2) or (3), the
149 correctional staff member shall make a written record of the authorization and use of the
150 restraints that includes:

151 (a) an explanation of the grounds for the correctional staff member's authorization on

152 the use of restraints;

153 (b) the type of restraints that were used; and

154 (c) the length of time the restraints were used.

155 (7) The record described in Subsection (6):

156 (a) shall be retained by the correctional facility for five years;

157 (b) shall be available for public inspection with individually identifying information
158 redacted; and

159 (c) may not be considered a medical record under state or federal law.

160 (8) For a minimum of 48 hours after an inmate has given birth, a correctional facility
161 shall, if directed by the inmate's physician, allow the infant to remain with the inmate at the
162 health care facility.

163 (9) A correctional facility shall provide:

164 (a) an inmate who is pregnant, or who has given birth within the past six weeks, access
165 to a social worker to help the inmate:

166 (i) arrange childcare;

167 (ii) establish a reunification plan; and

168 (iii) establish a substance abuse treatment plan, if needed; and

169 (b) an inmate in postpartum recovery access to postpartum care for up to 12 weeks as
170 determined by the inmate's physician.

171 (10) The department may transfer an inmate who is pregnant or has given birth within
172 the past 24 months to a community-based program not located in a secure correctional
173 environment and not operated by the department if:

174 (a) the inmate has not been convicted of, or has charges pending for, a violent felony,
175 including attempt, solicitation, or conspiracy to commit a violent felony; and

176 (b) the community-based program:

177 (i) is approved by the department and the Department of Health and Human Services;

178 (ii) is aimed at rehabilitating inmates through community-based treatment and reentry
179 services; and

180 (iii) allows an inmate who has recently given birth, or an inmate who is about to give
181 birth, to remain with the inmate's child in the same room of a designated residential facility or a
182 half-way house until the child turns 36 months old.

183 (11) The department may not create or operate a nursery in a correctional facility to
184 provide space for a female inmate and the inmate's child.

185 Section 4. **Repealer.**

186 This bill repeals:

187 Section **64-13-46.5, Correctional facility nursery.**

188 Section 5. **Effective date.**

189 (1) This bill takes effect on May 1, 2024.