MISSISSIPPI LEGISLATURE

REGULAR SESSION 2019

By: Representative Bomgar

To: Corrections

HOUSE BILL NO. 1422

AN ACT TO CREATE THE "DIGNITY FOR INCARCERATED WOMEN ACT"; TO
DEFINE CERTAIN TERMS AS USED UNDER THE ACT; TO PROVIDE THAT WHEN
AN INCARCERATED INMATE IS GIVING BIRTH, THE USE OF RESTRAINTS
SHALL BE LIMITED; TO REQUIRE CERTAIN CARE AND TREATMENT FOR WOMEN
RELATED TO PREGNANCY AND CHILDBIRTH; TO REQUIRE CERTAIN CARE
DURING INMATE POSTPARTUM RECOVERY; TO URGE THE DEPARTMENT OF
CORRECTIONS TO PLACE MOTHERS WHO ARE PARENTS OF A MINOR CHILD
WITHIN A CERTAIN DISTANCE FROM THE MOTHER'S PERMANENT ADDRESS; TO
PROVIDE CERTAIN STANDARDS WHERE A FEMALE IS IN THE STATE OF
UNDRESS; TO PROVIDE THAT INCARCERATED WOMEN SHALL HAVE ACCESS TO
FEMININE HYGIENE PRODUCTS AND TO PROVIDE SUCH PRODUCTS AT NO COST
IF AN INMATE IS DETERMINED TO BE INDIGENT; TO REQUIRE THE
DEPARTMENT OF CORRECTIONS TO DEVELOP AND PROVIDE TO ITS CORRECTION
STAFF TRAINING RELATED TO THE PHYSICAL AND MENTAL HEALTH OF
PREGNANT INMATES IF SUCH STAFF HAVE CONTACT WITH PREGNANT INMATES;
AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Title. Sections 1 through 9 of this act may be
cited as the "Dignity for Incarcerated Women Act."

SECTION 2. Legislative findings and purpose.

The Legislature of the State of Mississippi finds that:

(a) The number of incarcerated women in the State of
Mississippi has increased by a third (1/3) since 2001 and at one
point in 2008 the rate had grown by forty-four (44%);
(b) Nationally, the number of children under age eighteen (18) with a mother in prison more than doubled since 1991;

(c) Children who grow up with parents in prison are six to seven (7) times more likely to become incarcerated themselves;

(d) Prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates;

(e) Children of inmates who are able to visit their imprisoned parents have increased cognitive skills, improved academic self-esteem, greater self-control and change schools much less often;

(f) To mitigate the collateral impact on families and children, the Department of Corrections should consider the location of family;

(g) Nationally, approximately two thousand (2,000) women give birth while incarcerated each year;

(h) Prenatal care significantly improves outcomes for pregnant women and infants;

(i) Participation in post-delivery mother-infant residency or nursery programs is associated with lower recidivism rates, reduced risk of babies entering foster care, and improved odds that mothers and their babies will remain together after the mother's period of incarceration;
(j) Use of restrictive housing and restraints on incarcerated pregnant women may be extremely dangerous to the health of mothers, fetuses and infants; and
(k) Nationally, eighty-six percent (86%) of women in prison were victims of sexual assault prior to entering the prison system.

SECTION 3. Definitions.

(a) "Restraints" means any physical or mechanical device used to restrict or control the movement of a prisoner's body, limbs, or both.
(b) "Body cavity searches" means invasive searches on inmates, conducted by facility employees in search of contraband.
(c) "Flight risk" means an inmate who has shown the desire to escape the facility.
(d) "Restrictive housing" means any type of detention that involves:
   (i) Removal from the general inmate population, whether voluntary or involuntary; and
   (ii) Inability to leave a room or cell for the vast majority of the day.
(e) "Postpartum recovery" means the eight-week period, or longer as determined by the healthcare professional responsible for the health and safety of the prisoner.
(f) "Menstrual hygiene products" means products that women use during their menstrual cycle. This includes tampons, sanitary napkins and menstrual cups.

(g) "Indigent" means an inmate who has less than an average of Sixteen Dollars ($16.00) in her prison account.

(h) "Correctional facility employee" refers to anyone who is employed by the facility or the Department of Corrections.

(i) "State of undress" refers to a state where a female is partially or fully naked, either in the shower, toilet areas, a medical examination room or having a body cavity search conducted.

SECTION 4. Care for incarcerated women related to pregnancy and childbirth.

(1) Upon notification and/or diagnosis of an inmate's pregnancy, and for the duration of the pregnancy, and for thirty (30) days following the inmate's delivery, the Department of Corrections and/or a correctional facility employee shall not apply the following restraints on the pregnant inmate unless a correctional facility employee has a reasonable belief that the inmate will harm herself, the fetus, or any other person, or pose a substantial flight risk:

(a) Leg restraints.

(b) Handcuffs or other wrist restraints, except to restrain the inmate's wrists in front of her.

(c) No restraints connected to other inmates.
(2) No restraints shall be used on any pregnant inmate while in labor or during delivery unless a correctional facility employee has a reasonable belief that the inmate will harm herself, the fetus, or any other person, or pose a substantial flight risk. In such case, the correctional facility employee ordering use of restraints on any female inmate while in labor or during delivery shall submit a written report to the warden of the facility within seventy-two (72) hours following the use of restraints, containing the justification for restraining the female inmate during labor and delivery.

(3) No facility employee of the Department of Corrections, other than a certified healthcare professional, shall conduct invasive body cavity searches of pregnant inmates unless the correctional facility employee has a reasonable belief that the female inmate is concealing contraband. In such case, the correctional facility employee shall submit a written report to the warden of the facility within seventy-two (72) hours following the invasive search, containing the justification for the invasive search and what contraband, if any was recovered.

(4) The Department of Corrections shall ensure that pregnant inmates be provided sufficient food and dietary supplements as ordered by a physician, physician staff member, or a facility nutritionist to meet general accepted prenatal nutritional guidelines for pregnant women.
(5) The Department of Corrections shall not place any pregnant inmate, or any female inmate who has given birth within the previous thirty (30) days, in restrictive housing unless a correctional facility employee has a reasonable belief that the inmate will harm herself, the fetus or any other person, or pose a substantial flight risk. In such case, the correctional facility employee authorizing the placement of the inmate in restrictive housing shall submit a written report to the warden of the facility within seventy-two (72) hours following the transfer, containing the justification for confining the female inmate in restrictive housing.

(6) The Department of Corrections shall not assign any pregnant inmate to any bed that is elevated more than three (3) feet from the floor of the facility.

(7) The warden of the facility shall compile a monthly summary of all written reports received pursuant to Section (4) subsections (2), (3) and (5) of this act and under Section 5 (1) of this act. The warden shall submit the summary to the Commissioner of the Department of Corrections each month.

SECTION 5. Inmate postpartum recovery.

(1) No restraints shall be used on any female inmate who has given birth within the last thirty (30) days and is in postpartum recovery, unless the Department of Corrections has a reasonable belief that the female inmate will harm herself, her newborn, or any other person, or pose a substantial flight risk. In such
case, the facility employee ordering use of restraints on any inmate while in postpartum recovery shall submit a written report to the warden of the facility within seventy-two (72) hours following the use of restraints, containing the justification for restraining the female inmate during postpartum recovery.

(2) Following the delivery of a newborn, by an inmate, the Department of Corrections shall permit the newborn to remain with the mother for seventy-two (72) hours unless the medical provider has a reasonable belief that remaining with the mother poses a health or safety risk to the newborn.

(3) During that time, the Department of Corrections shall make available the necessary nutritional and hygiene products, including diapers, to care for the newborn.

(4) If the female inmate qualifies as indigent, such products shall be provided without cost to the inmate.

SECTION 6. Family considerations in inmate placement and visitation.

(1) To the greatest extent practicable, after accounting for security and capacity factors, the Department of Corrections shall place inmates who are parents of minor children within two hundred fifty (250) miles of their permanent address of record.

(2) The Department of Corrections shall promulgate regulations authorizing visitation of inmates who are parents of minor children with low or minimum security classifications by minor dependents, with the minimum following requirements:
(a) Opportunities for dependent children under the age of eighteen (18) to visit their incarcerated parent at least twice per week unless a correctional facility employee has a reasonable belief that the dependent child:

   (i) May be harmed during visitation; or
   (ii) Poses a security risk due to a gang affiliation, prior conviction or past violation of facility contraband policy.

(b) Eliminating restrictions on the number of dependent children under the age of eighteen (18) that may be permitted visitation privileges.

(c) Authorizing contact visits for inmates who are parents of minor children.

SECTION 7. Inspections by employees of the Department of Corrections.

(1) To the greatest extent practicable, and consistent with safety and order, the Commissioner of the Department of Corrections shall issue regulations that limit inspections by male correctional officers where a female inmate is in a state of undress. Nothing in this section shall limit the ability of a male correctional officer from conducting inspections where a female may be in a state of undress if no female correctional officers are available.
(2) In such case that a male correctional officer deems it is appropriate to conduct an inspection or search while the female inmate is in a clear state of undress in an area such as the shower, the medical examination room, toilet areas or where a female inmate is having a body cavity search, the male correctional officer shall submit a written report to the warden of the facility within seventy-two (72) hours following the inspection or search, containing the justification for a male correctional officer to inspect the female inmate while in a state of undress.

SECTION 8. Access to feminine hygiene products.

(1) The Department of Corrections shall ensure that sufficient menstrual hygiene products are available at each facility for all incarcerated women that have an active menstrual cycle.

(2) Female inmates who otherwise qualify as indigent shall be provided menstrual hygiene products as needed at no cost.

SECTION 9. Training and technical assistance.

(1) The Department of Corrections shall develop and provide to all correctional facility employees and correctional officers who have contact with pregnant inmates training related to the physical and mental health of pregnant inmates and fetuses, including the following:

(a) General care of pregnant women;
(b) The impact of restraints on pregnant inmates and fetuses;

(c) The impact of being placed in restrictive housing on pregnant inmates; and

(d) The impact of invasive searches on pregnant inmates.

(2) The Department of Corrections shall develop and provide educational programming for pregnant inmates related to:

(a) Prenatal care;

(b) Pregnancy-specific hygiene;

(c) Parenting skills;

(d) The impact of alcohol and drugs on the fetus; and

(e) General health of child.

SECTION 10. This act shall take effect and be in force from and after July 1, 2019.