

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 608
Committee Substitute Favorable 5/6/21
Senate Judiciary Committee Substitute Adopted 8/18/21

Short Title: Dignity for Women Who are Incarcerated. (Public)

Sponsors:

Referred to:

April 21, 2021

A BILL TO BE ENTITLED
AN ACT TO PROMOTE THE DIGNITY OF WOMEN WHO ARE INCARCERATED.
The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

SECTION 1. This act shall be known as the Dignity for Women who are Incarcerated Act.

PART II. DIGNITY FOR WOMEN WHO ARE INCARCERATED IN STATE PRISONS

SECTION 2.(a) Chapter 148 of the General Statutes is amended by adding a new Article to read:

"Article 2B.

"Dignity for Women Incarcerated in Prison Facilities.

"§ 148-25.1. Definitions.

As used in this Article, the following definitions apply:

- (1) Body cavity searches. – The probing of body orifices in search of contraband.
- (2) Correctional facility. – Any unit of the State prison system, juvenile detention facility, or other entity under the authority of the State that has the power to detain or restrain a person under the laws of this State.
- (3) Correctional facility employee. – Any person who is employed by the State and who works at or in a correctional facility.
- (4) Escape risk. – An incarcerated person who is determined to be at high risk for escape based on an individualized risk assessment.
- (5) Important circumstance. – There has been an individualized determination that there are reasonable grounds to believe that the female incarcerated person presents a threat of harming herself, the fetus, or any other person, or an escape risk that cannot be reasonably contained by other means, including the use of additional personnel.
- (6) Incarcerated person. – Any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.
- (7) Menstrual products. – Products that women use during their menstrual cycle. These include tampons and sanitary napkins.



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- 1 (8) Postpartum recovery. – The six-week period following delivery, or longer, as
2 determined by the health care professional responsible for the health and
3 safety of the female incarcerated person.
- 4 (9) Restraints. – Any physical or mechanical device used to restrict or control the
5 movement of an incarcerated person's body, limbs, or both.
- 6 (10) Restrictive housing. – Any type of detention that involves removal from
7 general population and an inability to leave a room or cell for the vast majority
8 of the day. This term shall not include any of the following:
- 9 a. Single-cell accommodations in facilities that provide those
10 accommodations to all incarcerated persons.
- 11 b. Single-cell accommodations in facilities that provide those
12 accommodations to all persons of a certain sex or gender.
- 13 c. Single-cell accommodations provided for medical reasons, except
14 when pregnancy, alone, is the medical reason for the single cell
15 accommodations.
- 16 d. Single-cell accommodations provided when an individualized
17 determination has been made that there are reasonable grounds to
18 believe that there exists a threat of harm to the female incarcerated
19 person or the fetus.
- 20 e. Single-cell accommodations provided at the request of the
21 incarcerated person.
- 22 (11) State of undress. – A situation when an incarcerated person is partially or fully
23 naked, either in the shower, toilet areas, a medical examination room, or while
24 having a body cavity search conducted.

25 **"§ 148-25.2. Care for female incarcerated persons related to pregnancy, childbirth, and**
26 **postpartum recovery.**

27 (a) Limitation on Use of Restraints. – Except as otherwise provided in this subsection,
28 the Department of Public Safety and correctional facility employees shall not apply restraints on
29 a pregnant female incarcerated person during the second and third trimester of pregnancy, during
30 labor and delivery, and during the postpartum recovery period.

31 A female incarcerated person who is in the postpartum recovery period may only be
32 restrained if a correctional facility employee makes an individualized determination that an
33 important circumstance exists. In this case, only wrist handcuffs held in front of the female
34 incarcerated person's body may be used and only when she is ambulatory. The correctional
35 facility employee ordering use of restraints on any female incarcerated person while in the
36 postpartum recovery period shall submit a written report to the warden or administrator of the
37 correctional facility within five days following the use of restraints. The report shall contain the
38 justification for restraining the female incarcerated person during postpartum recovery.

39 Nothing in this subsection shall prohibit the use of handcuffs or wrist restraints held in front
40 of the female incarcerated person's body when in transport outside of the correctional facility,
41 except that these restraints shall not be used in transport when the female incarcerated person is
42 in labor or is suspected to be in labor.

43 Nothing in this subsection shall prohibit the use of medical restraints by a licensed health
44 care professional to ensure the medical safety of a pregnant female incarcerated person.

45 (b) Body Cavity Searches. – No correctional facility employee, other than a certified
46 health care professional, shall conduct body cavity searches of a female incarcerated person who
47 is pregnant or in the postpartum recovery period unless the correctional facility employee has
48 probable cause to believe that the female incarcerated person is concealing contraband that
49 presents an immediate threat of harm to the female incarcerated person, the fetus, or another
50 person. In this case, the correctional facility employee shall submit a written report to the warden
51 or administrator of the correctional facility within five days following the body cavity search.

1 containing the justification for the body cavity search and the presence or absence of any
2 contraband.

3 (c) Nutrition. – The Department of Public Safety and the administrator of the correctional
4 facility shall ensure that pregnant female incarcerated persons are provided sufficient food and
5 dietary supplements and are provided access to food at appropriate times of day, as ordered by a
6 physician, a physician staff member, or a correctional facility nutritionist to meet generally
7 accepted prenatal nutritional guidelines for pregnant female incarcerated persons. While in the
8 hospital, pregnant female incarcerated persons and female incarcerated persons in the postpartum
9 recovery period shall have access to the full range of meal options provided by the hospital to
10 ensure that each meal meets the female incarcerated person's nutritional needs.

11 (d) Restrictive Housing. – The Department of Public Safety and the administrator of the
12 correctional facility shall not place any pregnant female incarcerated person, or any female
13 incarcerated person who is in the postpartum recovery period, in restrictive housing unless a
14 correctional facility employee makes an individualized determination that an important
15 circumstance exists. In this case, the correctional facility employee authorizing the placement of
16 the female incarcerated person in restrictive housing shall submit a written report to the warden
17 or administrator of the correctional facility within five days following the transfer. The report
18 shall contain the justification for confining the female incarcerated person in restrictive housing.

19 (e) Bed Assignments. – The Department of Public Safety and the administrator of the
20 correctional facility shall not assign any female incarcerated person who is pregnant or in
21 postpartum recovery to any bed that is elevated more than 3 feet from the floor of the correctional
22 facility.

23 (f) Cost of Care. – While a pregnant female incarcerated person is incarcerated, the
24 pregnant female incarcerated person shall be provided necessary prenatal, labor, and delivery
25 care as needed at no cost to the pregnant female incarcerated person.

26 (g) Bonding Period. – Following the delivery of a newborn by a female incarcerated
27 person, the Department of Public Safety or the administrator of the correctional facility shall
28 permit the newborn to remain with the female incarcerated person while the female incarcerated
29 person is in the hospital, unless the medical provider has a reasonable belief that remaining with
30 the female incarcerated person poses a health or safety risk to the newborn.

31 (h) Nutritional and Hygiene Products During the Postpartum Period. – During the period
32 of postpartum recovery, the Department of Public Safety and the administrator of the correctional
33 facility shall make available the necessary nutritional and hygiene products, including sanitary
34 napkins, underwear, and hygiene products for the postpartum female incarcerated person. The
35 products shall be provided at no cost to the female incarcerated person.

36 (i) Placement of Female Incarcerated Person. – To the greatest extent practicable, after
37 accounting for security and capacity, the Department of Public Safety shall place a female
38 incarcerated person who is in the custody of the State prison system and who is the mother of a
39 minor child under the age of 1 within 250 miles of the child's permanent address of record.

40 (j) Visitation of Incarcerated Mothers. – The Department of Public Safety shall authorize
41 visitation of incarcerated mothers held in State prisons with low- or minimum-security
42 classifications, who are mothers of a minor child under the age of 1, by the incarcerated mother's
43 minor child under the age of 1. These visitations shall be allowed at least twice per week unless
44 a correctional facility employee has a reasonable belief that the child may be harmed during
45 visitation. These visitations shall be allowed by contact visit. The employee denying visitation
46 shall submit a written report to the warden or administrator of the correctional facility within five
47 days following the denial of visitation. The report shall contain the justification for denying the
48 visitation.

49 (k) Reporting. – The warden or administrator of the correctional facility shall compile a
50 monthly summary of all written reports received pursuant to this section and G.S. 148-25.3. The

warden or administrator of the correctional facility shall submit the summary to the Chief Deputy Secretary of Adult Correction and Juvenile Justice.

"§ 148-25.3. Inspection by correctional facility employees.

(a) Inspections When a Female Incarcerated Person is in the State of Undress. – To the greatest extent practicable and consistent with safety and order in a correctional facility, there shall be a limitation on inspections by male correctional facility employees when a female incarcerated person is in a state of undress. Nothing in this section shall limit the ability of a male correctional facility employee from conducting inspections when a female incarcerated person may be in a state of undress if no female correctional facility employees are available within a reasonable period of time.

(b) Documentation Requirement. – If a male correctional facility employee deems it is appropriate to conduct an inspection or search while a female incarcerated person is in a clear state of undress in an area such as the shower, the medical examination room, toilet areas, or while a female incarcerated person is having a body cavity search, the male correctional facility employee shall submit a written report to the warden or administrator of the correctional facility within five days following the inspection or search, containing the justification for a male correctional facility employee to inspect the female incarcerated person while in a state of undress.

"§ 148-25.4. Access to menstrual products.

Access to Menstrual Products. – The Department of Public Safety and the administrator of the correctional facility shall ensure that sufficient menstrual products are available at the correctional facility for all female incarcerated persons who have an active menstrual cycle. Female incarcerated persons who menstruate shall be provided menstrual products as needed at no cost to the female incarcerated person.

"§ 148-25.5. Training and technical assistance.

(a) Correctional Facility Employee Training. – The Department of Public Safety shall develop, in consultation with the Department of Health and Human Services, Divisions of Public Health and Mental Health, Developmental Disabilities, and Substance Abuse Services, and shall provide to all State prison employees who have significant regular contact with pregnant female incarcerated persons training related to the physical and mental health of pregnant female incarcerated persons and fetuses, including:

- (1) General care of pregnant women.
- (2) The impact of restraints on pregnant female incarcerated persons and fetuses.
- (3) The impact of being placed in restrictive housing on pregnant female incarcerated persons.
- (4) The impact of body cavity searches on pregnant female incarcerated persons.

Training materials and curricula developed pursuant to this subsection shall be made available to administrators of local confinement facilities.

(b) Educational Programming for Pregnant Female Incarcerated Persons. – The Department of Public Safety shall develop and provide educational programming to pregnant female incarcerated persons held in State prisons related to:

- (1) Prenatal care.
- (2) Pregnancy-specific hygiene.
- (3) Parenting skills.
- (4) The impact of alcohol and drugs on the fetus.
- (5) General health of children.

Training materials and curricula developed pursuant to this subsection shall be made available to administrators of local confinement facilities."

SECTION 2.(b) G.S. 143B-702 reads as rewritten:

"§ 143B-702. Division of Adult Correction and Juvenile Justice of the Department of Public Safety – rules and regulations.

(a) The Division of Adult Correction and Juvenile Justice of the Department of Public Safety shall adopt rules and regulations related to the conduct, supervision, rights and privileges of persons in its custody or under its supervision. Such rules and regulations shall be filed with and published by the office of the Attorney General and shall be made available by the Division for public inspection. The rules and regulations shall include a description of the organization of the Division. A description or copy of all forms and instructions used by the Division, except those relating solely to matters of internal management, shall also be filed with the office of the Attorney General.

(b) The rules and regulations adopted under this section shall be subject to the requirements of Article 2B of Chapter 148 of the General Statutes."

PART III. DIGNITY FOR WOMEN WHO ARE INCARCERATED IN LOCAL CONFINEMENT FACILITIES

SECTION 3.(a) Article 10 of Chapter 153A of the General Statutes is amended by adding a new Part to read:

"Part 2B. Dignity for Women Incarcerated in Local Confinement Facilities.

"§ 153A-229.1. Definitions.

As used in this Article, the following definitions apply:

- (1) Body cavity searches. – The probing of body orifices in search of contraband.
- (2) Escape risk. – An incarcerated person who is determined to be at high risk for escape based on an individualized risk assessment.
- (3) Facility employee. – Any person who is employed by the local government and who works at or in a local confinement facility.
- (4) Important circumstance. – There has been an individualized determination that there are reasonable grounds to believe that the female incarcerated person presents a threat of harming herself, the fetus, or any other person, or an escape risk that cannot be reasonably contained by other means, including the use of additional personnel.
- (5) Incarcerated person. – Any person incarcerated or detained in a local confinement facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.
- (6) Local confinement facility. – "Local confinement facility" includes a county or city jail, a local lockup, a regional or district jail, a juvenile detention facility, a detention facility for adults operated by a local government, and any other facility operated by a local government for confinement of persons awaiting trial or serving sentences except that it shall not include a county satellite jail/work release unit governed by Part 3 of Article 10 of Chapter 153A of the General Statutes.
- (7) Menstrual products. – Products that women use during their menstrual cycle. These include tampons and sanitary napkins.
- (8) Postpartum recovery. – The six-week period following delivery, or longer, as determined by the health care professional responsible for the health and safety of the female incarcerated person.
- (9) Restraints. – Any physical or mechanical device used to restrict or control the movement of an incarcerated person's body, limbs, or both.
- (10) Restrictive housing. – Any type of detention that involves removal from general population and an inability to leave a room or cell for the vast majority of the day. This term shall not include any of the following:
 - a. Single-cell accommodations in facilities that provide those accommodations to all incarcerated persons.

- b. Single-cell accommodations in facilities that provide those accommodations to all persons of a certain sex or gender.
- c. Single-cell accommodations provided for medical reasons, except when pregnancy, alone, is the medical reason for the single-cell accommodations.
- d. Single-cell accommodations provided when an individualized determination has been made that there are reasonable grounds to believe that there exists a threat of harm to the female incarcerated person or the fetus.
- e. Single-cell accommodations provided at the request of the incarcerated person.

(11) State of undress. – A situation when an incarcerated person is partially or fully naked, either in the shower, toilet areas, a medical examination room, or while having a body cavity search conducted.

§ 153A-229.2. Care for female incarcerated persons related to pregnancy, childbirth, and postpartum recovery.

(a) Limitation on Use of Restraints. – Except as otherwise provided in this subsection, facility employees shall not apply restraints on a pregnant female incarcerated person during the second and third trimester of pregnancy, during labor and delivery, and during the postpartum recovery period.

A female incarcerated person who is in the postpartum recovery period may only be restrained if a facility employee makes an individualized determination that an important circumstance exists. In this case, only wrist handcuffs held in front of the female incarcerated person's body may be used and only when she is ambulatory. The facility employee ordering use of restraints on any female incarcerated person while in the postpartum recovery period shall submit a written report to the sheriff or administrator of the local confinement facility within five days following the use of restraints. The report shall contain the justification for restraining the female incarcerated person during postpartum recovery.

Nothing in this subsection shall prohibit the use of handcuffs or wrist restraints held in front of the female incarcerated person's body when in transport outside of the local confinement facility, except that these restraints shall not be used in transport when the female incarcerated person is in labor or is suspected to be in labor.

Nothing in this subsection shall prohibit the use of medical restraints by a licensed health care professional to ensure the medical safety of a pregnant female incarcerated person.

(b) Body Cavity Searches. – No facility employee, other than a certified health care professional, shall conduct body cavity searches of a female incarcerated person who is pregnant or in the postpartum recovery period unless the facility employee has probable cause to believe that the female incarcerated person is concealing contraband that presents an immediate threat of harm to the female incarcerated person, the fetus, or another person. In this case, the facility employee shall submit a written report to the sheriff or administrator of the local confinement facility within five days following the body cavity search, containing the justification for the body cavity search and the presence or absence of any contraband.

(c) Nutrition. – The sheriff or the administrator of the local confinement facility shall ensure that pregnant female incarcerated persons are provided sufficient food and dietary supplements and are provided access to food at appropriate times of day, as ordered by a physician, a physician staff member, or a local confinement facility nutritionist to meet generally accepted prenatal nutritional guidelines for pregnant female incarcerated persons. While in the hospital, pregnant female incarcerated persons and female incarcerated persons in the postpartum recovery period shall have access to the full range of meal options provided by the hospital to ensure that each meal meets the female incarcerated person's nutritional needs.

(d) Restrictive Housing. – The sheriff or the administrator of the local confinement facility shall not place any pregnant female incarcerated person, or any female incarcerated person who is in the postpartum recovery period, in restrictive housing unless a local confinement facility employee makes an individualized determination that an important circumstance exists. In this case, the facility employee authorizing the placement of the female incarcerated person in restrictive housing shall submit a written report to the sheriff or administrator of the local confinement facility within five days following the transfer. The report shall contain the justification for confining the female incarcerated person in restrictive housing.

(e) Bed Assignments. – The sheriff or the administrator of the local confinement facility shall not assign any female incarcerated person who is pregnant or in postpartum recovery to any bed that is elevated more than 3 feet from the floor of the local confinement facility.

(f) Cost of Care. – While a pregnant female incarcerated person is incarcerated, the pregnant female incarcerated person shall be provided necessary prenatal, labor, and delivery care as needed at no cost to the pregnant female incarcerated person.

(g) Bonding Period. – Following the delivery of a newborn by a female incarcerated person, the administrator of the local confinement facility shall permit the newborn to remain with the female incarcerated person while the female incarcerated person is in the hospital, unless the medical provider has a reasonable belief that remaining with the female incarcerated person poses a health or safety risk to the newborn.

(h) Nutritional and Hygiene Products During the Postpartum Period. – During the period of postpartum recovery, the sheriff or administrator of the local confinement facility shall make available the necessary nutritional and hygiene products, including sanitary napkins, underwear, and hygiene products for the postpartum female incarcerated person. The products shall be provided at no cost to the female incarcerated person.

(i) Reporting. – The sheriff or administrator of the local confinement facility shall compile a monthly summary of all written reports received pursuant to this section and G.S. 148-25.3.

"§ 153A-229.3. Inspection by facility employees.

(a) Inspections When a Female Incarcerated Person is in the State of Undress. – To the greatest extent practicable and consistent with safety and order in a local confinement facility, there shall be a limitation on inspections by male facility employees when a female incarcerated person is in a state of undress. Nothing in this section shall limit the ability of a male facility employee from conducting inspections when a female incarcerated person may be in a state of undress if no female facility employees are available within a reasonable period of time.

(b) Documentation Requirement. – If a male facility employee deems it is appropriate to conduct an inspection or search while a female incarcerated person is in a clear state of undress in an area such as the shower, the medical examination room, toilet areas, or while a female incarcerated person is having a body cavity search, the male local confinement facility employee shall submit a written report to the sheriff or administrator of the local confinement facility within five days following the inspection or search, containing the justification for a male facility employee to inspect the female incarcerated person while in a state of undress.

"§ 153A-229.4. Access to menstrual products.

Access to Menstrual Products. – The sheriff or the administrator of the local confinement facility shall ensure that sufficient menstrual products are available at the local confinement facility for all female incarcerated persons who have an active menstrual cycle. Female incarcerated persons who menstruate shall be provided menstrual products as needed at no cost to the female incarcerated person."

SECTION 3.(b) G.S. 153A-221 reads as rewritten:

"§ 153A-221. Minimum standards.

(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the

standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for all of the following:

- (1) Secure and safe physical facilities.
- (2) Jail design.
- (3) Adequacy of space per prisoner.
- (4) Heat, light, and ventilation.
- (5) Supervision of prisoners.
- (6) Personal hygiene and comfort of prisoners.
- (7) Medical care for prisoners, including mental health, behavioral health, intellectual and other developmental disability, and substance abuse services.
- (8) Sanitation.
- (9) Food allowances, food preparation, and food handling.
- (10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners.

...

(e) A local confinement facility shall be subject to the requirements of Part 2B of Article 10 of Chapter 153A of the General Statutes."

PART IV. EFFECTIVE DATE

SECTION 4. This act becomes effective December 1, 2021, and applies to individuals in custody on or after that date.