

Heidi Balderree proposes the following substitute bill:

Maternal and Infant Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Candice B. Pierucci

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill addresses newborn infant testing.

Highlighted Provisions:

This bill:

- requires the Department of Corrections and the county jails to ensure that each female individual admitted to a correctional facility is tested for pregnancy;

- amends the membership of the Correctional Postnatal and Early Childhood Advisory Board (the board);

- extends the repeal date of the board;

- requires the Department of Health and Human Services (department) to publish a privacy consent form pertaining to newborn infant testing;

- requires that the privacy consent form be provided to a newborn infant's parent or guardian prior to conducting a newborn infant heelstick screen;

- makes hearing loss a required newborn infant test, regardless of the number of annual births that occur at the hospital or setting where the infant was born;

- provides for giving a parent or guardian the option to consent to the department's retention policy for biological samples or genetic data collected through newborn infant testing;

- requires the department to destroy a biological sample or any genetic data collected through newborn infant testing; and

- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-8, as last amended by Laws of Utah 2023, Chapters 119, 420

26B-4-319, as renumbered and amended by Laws of Utah 2023, Chapter 307

63I-1-264, as last amended by Laws of Utah 2024, Third Special Session, Chapter 5

64-13-46, as last amended by Laws of Utah 2024, Chapter 182

64-13-46.1, as renumbered and amended by Laws of Utah 2024, Chapter 182

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

Section 1. Section **17-22-8** is amended to read:

17-22-8 . Care of prisoners -- Funding of services -- Private contractor.

(1) As used in this section, "medication assisted treatment plan" means a prescription plan to use buprenorphine, methadone, or naltrexone to treat substance use withdrawal symptoms or an opioid use disorder.

(2) Except as provided in Subsection (7), a sheriff shall:

(a) receive each individual committed to jail by competent authority;

(b) provide each prisoner with necessary food, clothing, and bedding in the manner prescribed by the county legislative body;

(c) provide each prisoner medical care when:

(i) the prisoner's symptoms evidence a serious disease or injury;

(ii) the prisoner's disease or injury is curable or may be substantially alleviated; and

(iii) the potential for harm to the person by reason of delay or the denial of medical care would be substantial;

(d) provide each prisoner, as part of the intake process, with the option of continuing any of the following medically prescribed methods of contraception:

(i) an oral contraceptive;

(ii) an injectable contraceptive;

(iii) a patch;

(iv) a vaginal ring; or

(v) an intrauterine device, if the prisoner was prescribed the intrauterine device

because the prisoner experiences serious and persistent adverse effects when using the methods of contraception described in Subsections (2)(d)(i) and (ii);~~and~~

(e) cooperate with medical personnel to continue a medication assisted treatment plan

for an inmate if the inmate was an active client before arrest and commitment~~[-]~~ ; and

(f) ensure that each female prisoner younger than 50 years old who has been incarcerated for longer than 72 hours on a state or local criminal offense is offered, which the prisoner may reject, a test for pregnancy.

(3) A sheriff may provide the generic form of a contraceptive described in Subsection (2)(d)(i) or (ii).

(4) A sheriff shall follow the provisions of Section 64-13-46 if a prisoner is pregnant or in postpartum recovery[, including the reporting requirements in Subsection 64-13-45(2)(c)].

(5)(a) Except as provided in Section 17-22-10 and Subsection (5)(b), the expense incurred in providing the services required by this section to prisoners shall be paid from the county treasury.

(b) The expense incurred in providing the services described in Subsection (2)(d) to prisoners shall be paid by the Department of Health and Human Services.

(6) A medication used for a medication assisted treatment plan under Subsection (2)(e):

(a) shall be administered to an inmate in accordance with the inmate's prescription under the direction of the sheriff;

(b) may be paid for by a county; and

(c) may be left or stored at a jail at the discretion of the sheriff.

(7) If the county executive contracts with a private contractor to provide the services required by this section, the sheriff shall provide only those services required of the sheriff by the contract between the county and the private contractor.

Section 2. Section **26B-4-319** is amended to read:

26B-4-319 . Testing of newborn infants.

(1)(a) Except in the case where parents object on the grounds that they are members of a specified, well-recognized religious organization whose teachings are contrary to the tests required by this section, a newborn infant shall be tested for:

~~[(a)]~~ (i) phenylketonuria (PKU);

~~[(b)]~~ (ii) other heritable disorders which may result in an intellectual or physical disability or death and for which:

~~[(i)]~~ (A) a preventive measure or treatment is available; and

~~[(ii)]~~ (B) there exists a reliable laboratory diagnostic test method;

~~[(c)]~~(i) an infant born in a hospital with 100 or more live births annually, hearing loss; and]

~~[(ii) an infant born in a setting other than a hospital with 100 or more live births annually, hearing loss; and]~~

(iii) hearing loss; and

~~[(d)]~~ (iv) critical congenital heart defects using pulse oximetry.

(b)(i) Prior to conducting newborn infant testing under this section, information shall be provided to the newborn infant's parent or guardian explaining relevant facts and information about newborn infant testing and sample storage under this section.

(ii) Prior to conducting a newborn infant heelstick screen under this section, a copy of the privacy consent form described in Subsection (5) shall be provided to the newborn infant's parent or guardian.

(iii) The department may retain, in accordance with the department's retention policy, a biological sample and any genetic data, as those terms are defined in Section 13-60-102, collected under this section, only if a parent or guardian consents to the retention policy on the privacy consent form.

(c) A biological sample and any genetic data collected under this section shall be destroyed:

(i) according to the department's retention policy; or

(ii) if the newborn infant's parent or guardian does not consent to the department's retention policy, upon completion of the newborn infant's testing under this section.

(2) In accordance with Section 26B-1-209, the department may charge fees for:

(a) materials supplied by the department to conduct tests required under Subsection (1);

(b) tests required under Subsection (1) conducted by the department;

(c) laboratory analyses by the department of tests conducted under Subsection (1); and

(d) the administrative cost of follow-up contacts with the parents or guardians of tested infants.

(3) Tests for hearing loss described in Subsection (1) shall be based on one or more methods approved by the Newborn Hearing Screening Committee created in Section 26B-1-432, including:

(a) auditory brainstem response;

(b) automated auditory brainstem response; and

(c) evoked otoacoustic emissions.

(4) Results of tests for hearing loss described in Subsection (1) shall be reported to:

(a) the department; and

(b) when results of tests for hearing loss under Subsection (1) suggest that additional

diagnostic procedures or medical interventions are necessary:

(i) a parent or guardian of the infant;

(ii) an early intervention program administered by the department in accordance with Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1431 et seq.; and

(iii) the Utah Schools for the Deaf and the Blind, created in Section 53E-8-201.

(5) The department shall publish a privacy consent form containing:

(a) relevant facts and information about:

(i) the purposes for which the department retains biological samples or any genetic data obtained through newborn infant testing; and

(ii) the department's retention policy for biological samples or any genetic data obtained through newborn infant testing; and

(b) the option for a parent or guardian to indicate consent to the department's retention policy.

Section 3. Section **63I-1-264** is amended to read:

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

Section 64-13-46.1, Correctional Postnatal and Early Childhood Advisory Board, is repealed July 1, [2025] 2027.

Section 4. Section **64-13-46** is amended to read:

64-13-46 . Pregnant inmates.

(1) As used in this section:

(a) "Postpartum recovery" means, as determined by the pregnant inmate's physician, the period immediately following delivery, including the entire period the inmate is in the hospital or health care facility after birth.

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

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

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

(2) The department shall ensure that each female inmate younger than 50 years old is offered, which the inmate may reject, a test for pregnancy upon admission, or within a reasonable time after admission, to a correctional facility.

~~[(2)]~~ (3) Subject to Subsections ~~[(3) and (4)]~~ (4) and (5), if the staff of a correctional facility

165 knows or has reason to believe that an inmate is pregnant or is in postpartum recovery,
166 the staff shall, when restraining the inmate at any time or location, use the least
167 restrictive restraints necessary to ensure the safety and security of the inmate and others.

168 ~~[(3)]~~ (4) A correctional staff member may not use restraints on an inmate during the third
169 trimester of pregnancy, labor, or childbirth unless a correctional staff member makes an
170 individualized determination that there are compelling grounds to believe that the inmate
171 presents:

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

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

176 ~~[(4)]~~ (5) Notwithstanding Subsection ~~[(3)]~~ (4), under no circumstances may shackles, leg
177 restraints, or waist restraints be used on an inmate during the third trimester of
178 pregnancy, labor, childbirth, or postpartum recovery.

179 ~~[(5)]~~ (6) Correctional staff present during labor or childbirth shall:

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

182 (b) be female, if practicable.

183 ~~[(6)]~~ (7) If a correctional staff member authorizes restraints under Subsection ~~[(2) or (3)]~~ (3)
184 or (4), the correctional staff member shall make a written record of the authorization and
185 use of the restraints that includes:

186 (a) an explanation of the grounds for the correctional staff member's authorization on the
187 use of restraints;

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

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

190 ~~[(7)]~~ (8) The record described in Subsection ~~[(6)]~~ (7):

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

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

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

195 ~~[(8)]~~ (9) For a minimum of 48 hours after an inmate has given birth, a correctional facility
196 shall, if directed by the inmate's physician, allow the infant to remain with the inmate at
197 the health care facility.

198 ~~[(9)]~~ (10) A correctional facility shall provide:

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

(i) arrange childcare;

(ii) establish a reunification plan; and

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

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

~~[(10)]~~ (11) The department may not create or operate a nursery in a correctional facility to provide space for a female inmate and the inmate's child.

Section 5. Section ~~64-13-46.1~~ is amended to read:

64-13-46.1 . Correctional Postnatal and Early Childhood Advisory Board --

Duties -- Rulemaking.

(1) As used in this part:

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

(b) "Correctional facility" means a facility operated by the department or a county sheriff that houses inmates in a secure setting.

(c) "Incarcerated mother" means an inmate who:

(i) has recently given birth before entering a correctional facility;

(ii) is pregnant and incarcerated in a correctional facility; or

(iii) has given birth while incarcerated in a correctional facility.

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

(a) two individuals from the department, appointed by the executive director;

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

(c) one individual appointed by the president of the Utah Sheriffs' Association;

(d) one individual representing the Administrative Office of the Courts appointed by the Judicial Council;

(e) one individual appointed by the Statewide Association of Public Attorneys and Prosecutors;

(f) one individual appointed by the Utah Association of Criminal Defense Lawyers; and

~~[(d)]~~ (g) four individuals appointed by the executive director of the Department of Health and Human Services, including:

(i) ~~[two]~~ one pediatric healthcare ~~[providers]~~ provider;

(ii) one individual with expertise in early childhood development;

(iii) one individual employed by the Division of Child and Family Services; and

~~[(iii)]~~ (iv) one individual with experience advocating for incarcerated women.

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

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

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

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

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

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

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

(a) Section 63A-3-106;

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

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

(7) The advisory board shall:

(a) review research regarding childhood development and best practices for placing infants and incarcerated mothers in a diversion program not located in a correctional facility;

(b) study the costs of implementing a diversion program for infants and incarcerated mothers removed from a correctional facility;

(c) create a provisional plan for implementing a diversion program for infants and incarcerated mothers removed from a correctional facility; and

(d) advise and make recommendations to the department and county sheriffs regarding rules and policies for placing an infant or incarcerated mother in a diversion program not located in a correctional facility.

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

- 267 (a) the Law Enforcement and Criminal Justice Interim Committee; and
268 (b) the [~~Executive Offices and~~]Criminal Justice Appropriations Subcommittee.

269 Section 6. **Effective Date.**

270 This bill takes effect on May 7, 2025.