

## 1 HOUSE BILL NO. 375

2 INTRODUCED BY W. MCKAMEY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING INCARCERATION STANDARDS FOR PREGNANT  
5 WOMEN IN DETENTION CENTERS AND STATE PRISONS; REQUIRING A PREGNANCY TEST TO BE  
6 OFFERED TO FEMALE INMATES ON ADMISSION; REQUIRING ACCESS TO CERTAIN PRENATAL CARE,  
7 HEALTH CARE, AND MENTAL HEALTH CARE; REQUIRING TREATMENT FOR OPIOID ABUSE IF  
8 REQUESTED BY A PREGNANT INMATE; LIMITING THE USE OF RESTRAINTS ON A PREGNANT OR  
9 POSTPARTUM INMATE; LIMITING WHEN A PREGNANT OR POSTPARTUM INMATE MAY BE HELD IN AN  
10 ISOLATED HOUSING ASSIGNMENT; REQUIRING DETENTION CENTERS AND STATE PRISONS TO ADOPT  
11 CERTAIN POLICIES OR PROCEDURES; AND REQUIRING CERTAIN ACTIONS TO BE DOCUMENTED IN  
12 THE INMATE'S FILE."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 NEW SECTION. **Section 1. Standards for pregnant inmates.** (1) Detention center staff shall offer a  
17 pregnancy test to a female inmate who is 12 years of age or older and under 50 years of age upon admission  
18 to the detention center. If the inmate refuses the test, the refusal must be documented by detention center staff,  
19 signed by the inmate, and placed in the inmate's file. If the test is positive or if the detention center staff have  
20 actual knowledge that the inmate is pregnant, the inmate must receive:

21 (a) routine prenatal care consistent with the most recent standards promulgated by the American college  
22 of obstetricians and gynecologists. When possible, the detention center shall provide transportation to the  
23 inmate's regular physician.

24 (b) access to increased levels of service for high-risk pregnancies as ordered by the inmate's physician  
25 or other treating physician; and

26 (c) dietary modifications appropriate for pregnant women based on input from a qualified nutritionist and  
27 the inmate's own physician.

28 (2) A detention center shall offer a pregnant inmate who is engaging in opioid abuse or with an opioid  
29 addiction appropriate treatment, including methadone or buprenorphine if necessary.

30 (3) If a pregnant inmate is scheduled for release or is released prior to giving birth, the detention center

1 shall document that the released inmate was provided knowledge of where to access prenatal care in the  
2 community.

3 (4) A detention center shall ensure that a pregnant or postpartum inmate was provided access to mental  
4 health assessments and counseling as appropriate.

5 (5) (a) Restraints may not be used on a pregnant or postpartum inmate unless the detention center has  
6 established that the inmate has a history of escape, is a flight risk, or is a clear threat to harm the inmate or  
7 others. A determination that an inmate is an established flight risk or a clear threat to harm must be documented  
8 by the detention center administrator. Restraints must be removed when the flight risk or threat of harm has been  
9 mitigated.

10 (b) Restraints may not be used during any stage of labor or delivery. Restraints may be used during  
11 postpartum recovery only if the inmate creates a physical safety risk for medical or detention center staff and must  
12 be removed as soon as the safety risk has ended. For the purposes of this subsection (5)(b), the length of  
13 postpartum recovery must be defined by the treating physician. In all cases, restraints must be removed at the  
14 request of the treating physician.

15 (6) A detention center shall adopt and implement policies to contact an appropriately trained treating  
16 physician immediately on an indication from a pregnant inmate that the inmate may be in labor or in need of  
17 medical attention, whether the indication is verbal or otherwise. Upon direction from the treating physician, the  
18 detention center shall immediately transport the inmate to an appropriate health care facility.

19 (7) (a) After a live birth, the detention center shall provide the option for a postpartum inmate to express  
20 breast milk.

21 (b) A detention center shall establish specific policies to store breast milk and to facilitate the pickup of  
22 expressed breast milk by the guardian or caretaker of the nursing child.

23 (8) (a) An inmate who is pregnant or postpartum may not be placed into disciplinary detention,  
24 administrative segregation, special management, medical isolation, or any other form of restrictive housing unless  
25 the detention center administrator makes an individualized determination that there is an imminent risk of serious  
26 harm to the inmate or others and no less restrictive housing option can maintain the inmate's safety and the safety  
27 of the institution.

28 (b) Within 24 hours of placement in the restrictive housing setting, a treating physician and a mental  
29 health care provider shall both document whether the housing is medically appropriate and the least restrictive  
30 setting that can ensure the inmate's safety and the safety of others. Every 24 hours after the initial review, the

1 detention center administrator, a treating physician, and a mental health care provider shall each review and  
2 document that the pregnant inmate remains in the restrictive housing setting and that the inmate will be removed  
3 to a less restrictive setting as soon as it is safe to do so.

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5 **NEW SECTION. Section 2. Standards for pregnant inmates.** (1) State prison staff shall offer a  
6 pregnancy test to a female inmate who is 12 years of age or older and under 50 years of age upon admission  
7 to the state prison. If the inmate refuses the test, the refusal must be documented by staff, signed by the inmate,  
8 and placed in the inmate's file. If the test is positive or if the state prison staff have actual knowledge that the  
9 inmate is pregnant, the inmate must receive:

10 (a) routine prenatal care consistent with the most recent standards promulgated by the American college  
11 of obstetricians and gynecologists. When possible, the state prison shall provide transportation to the inmate's  
12 regular physician.

13 (b) access to increased levels of service for high-risk pregnancies as ordered by the inmate's physician  
14 or other treating physician; and

15 (c) dietary modifications appropriate for pregnant women based on input from a qualified nutritionist and  
16 the inmate's own physician.

17 (2) A state prison shall offer a pregnant inmate who is engaging in opioid abuse or with an opioid  
18 addiction appropriate treatment, including methadone or buprenorphine if necessary.

19 (3) If a pregnant inmate is scheduled for release or is released prior to giving birth, the state prison shall  
20 document that the released inmate was provided knowledge of where to access prenatal care in the community.

21 (4) A state prison shall ensure that a pregnant or postpartum inmate was provided access to mental  
22 health assessments and counseling as appropriate.

23 (5) (a) Restraints may not be used on a pregnant or postpartum inmate unless the state prison has  
24 established that the inmate has a history of escape or is a flight risk. A determination that an inmate is an  
25 established flight risk must be approved in writing by the prison warden or the warden's designee and  
26 documented in writing.

27 (b) Restraints may not be used during any stage of labor or delivery. Restraints may be used during  
28 postpartum recovery only if the inmate creates a physical safety risk for medical or corrections staff and must be  
29 removed as soon as the safety risk has ended. For the purposes of this subsection (5)(b), the length of  
30 postpartum recovery must be defined by the treating physician. In all cases, restraints must be removed at the

1 request of the treating physician.

2 (6) A state prison shall adopt and implement policies to contact an appropriately trained treating physician  
3 immediately on an indication from a pregnant inmate that the inmate may be in labor or in need of medical  
4 attention, whether the indication is verbal or otherwise. Upon direction from the treating physician, the state prison  
5 shall immediately transport the inmate to an appropriate health care facility.

6 (7) (a) After a live birth, the state prison shall provide the option for a postpartum inmate to express breast  
7 milk.

8 (b) A state prison shall establish specific procedures to store breast milk and to facilitate the pickup of  
9 expressed breast milk by the guardian or caretaker of the nursing child.

10 (8) (a) An inmate who is pregnant or postpartum may not be placed into disciplinary detention,  
11 administrative segregation, special management, medical isolation, or any other form of restrictive housing unless  
12 the prison warden or the warden's designee makes an individualized determination that there is an imminent risk  
13 of serious harm to the inmate or others and no less restrictive housing option can maintain the inmate's safety  
14 and the safety of the institution.

15 (b) Within 24 hours of placement in the restrictive housing setting, a treating physician and a mental  
16 health care provider shall both document whether the housing is medically appropriate and the least restrictive  
17 setting that can ensure the inmate's safety and the safety of others. Every 24 hours after the initial review, the  
18 prison warden or the warden's designee, a treating physician, and a mental health care provider shall each review  
19 and document that the pregnant inmate remains in the restrictive housing setting and that the inmate will be  
20 removed to a less restrictive setting as soon as it is safe to do so.

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22 **NEW SECTION. Section 3. Codification instruction.** (1) [Section 1] is intended to be codified as an  
23 integral part of Title 7, chapter 32, part 22, and the provisions of Title 7, chapter 32, part 22, apply to [section 1].

24 (2) [Section 2] is intended to be codified as an integral part of Title 53, chapter 30, part 1, and the  
25 provisions of Title 53, chapter 30, part 1, apply to [section 2].

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