

REFERENCE TITLE: prisoners; medical treatment; pregnancy; requirements

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HB 2639

Introduced by
Representative Salman: Senator Burch

AN ACT

AMENDING SECTION 31-201.01, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 31-202; REPEALING SECTION 31-236, ARIZONA REVISED STATUTES; AMENDING TITLE 31, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 31-236; AMENDING SECTION 31-601, ARIZONA REVISED STATUTES; RELATING TO PRISONERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 31-201.01, Arizona Revised Statutes, is amended
3 to read:

4 31-201.01. Duties of the director; tort actions; medical
5 treatment costs; state immunity; definitions

6 A. The director shall hold in custody all persons who are sentenced
7 to the department under the law and shall hold such persons for the term
8 directed by the court, subject to law.

9 B. In addition to the medical and health services to be provided
10 pursuant to subsection D of this section, the director, in cooperation
11 with the department of health services, may provide to prisoners
12 psychiatric care and treatment pursuant to sections 31-226 and 31-226.01.

13 C. The director may institute and pursue programs that promote the
14 rehabilitation of the prisoners in the director's charge.

15 D. The director shall provide medical and health services for the
16 prisoners. The director may contract for professional services to assist
17 the director in carrying out this responsibility on behalf of the state,
18 except that all records made and retained in connection with the services
19 provided by this subsection shall be made and retained only by duly
20 authorized or qualified medical and professional personnel and not by any
21 prisoner. Such records when not in use shall be retained in a safe and
22 secure place.

23 E. If a victim of a person for whom a cost of incarceration has
24 been calculated notifies the state that full restitution has not been made
25 by the person for whom a cost of incarceration has been calculated, the
26 state shall interplead with the superior court the disputed amount and set
27 off the amounts owed the state from the remaining obligation.

28 F. Any and all causes of action that may arise out of tort caused
29 by the director, prison officers or employees of the department, within
30 the scope of their legal duty, shall run only against the state.

31 G. The director shall establish by rule reasonable medical and
32 health service fees for the medical and health services that are provided
33 pursuant to subsection D of this section. Except as provided in
34 subsection I of this section, every inmate shall be charged a reasonable
35 medical and health services fee for each medical visit an inmate makes
36 pursuant to a health needs request form or for emergency treatment.

37 H. Except as provided in subsection I of this section, the director
38 may charge each inmate a reasonable fee for prescriptions, medication or
39 prosthetic devices.

40 I. The director shall exempt the following inmates or medical
41 visits by inmates from payment of medical and health services fees and
42 fees for prescriptions, medication or prosthetic devices:

43 1. Medical visits initiated by the medical or mental health staff
44 of the department.

- 1 2. Medical visits to a physician by inmates who are referred by a
2 physician assistant or nurse practitioner.
- 3 3. Inmates at reception centers.
- 4 4. Juvenile inmates.
- 5 5. Pregnant inmates.
- 6 6. Seriously mentally ill inmates. For the purposes of this
7 paragraph, "seriously mentally ill inmates" means inmates who as a result
8 of a mental disorder as defined in section 36-501 exhibit emotional or
9 behavioral functioning which is so impaired as to interfere substantially
10 with their capacity to remain in the general prison population without
11 supportive treatment or services of a long-term or indefinite duration and
12 whose mental disability is severe and persistent, resulting in a long-term
13 limitation of their functional capacities for primary activities of daily
14 living, including interpersonal relationships, self-care, employment and
15 recreation.
- 16 7. Inmates with developmental disabilities who are housed in a
17 special programs unit.
- 18 8. Inmates who are housed in unit 8 at the Florence prison
19 facility.
- 20 9. Inmates who are inpatients at the Alhambra prison facility
21 special programs psychiatric hospital.
- 22 10. Inmates who are inpatients at the Flamenco prison facility
23 mental health treatment unit.
- 24 11. Inmates who are undergoing administrative physical examinations
25 for statewide driver status and fire fighting crews.
- 26 12. Inmates who are undergoing follow-up medical treatment for
27 chronic diseases.
- 28 J. An inmate shall not be refused medical treatment for financial
29 reasons.
- 30 K. All monies received by the department for medical and health
31 service fees shall be deposited in the general fund.
- 32 L. A person who is convicted of a felony offense and who is
33 incarcerated while awaiting sentence or while serving a sentence imposed
34 by a court of law may not bring a cause of action seeking damages or
35 equitable relief from the state or its political subdivisions, agencies,
36 officers or employees for injuries suffered while in the custody of the
37 state or its political subdivisions or agencies unless the complaint
38 alleges specific facts from which the court may conclude that the
39 plaintiff suffered serious physical injury or the claim is authorized by a
40 federal statute.
- 41 M. The director shall establish criteria for reasonable deductions
42 from monies credited to the prisoner's spendable account to repay the cost
43 of:
 - 44 1. State property that the inmate wilfully damages or destroys
45 during the inmate's incarceration.

1 2. Medical treatment for injuries that the inmate inflicts on
2 himself or others.

3 3. Searching for and apprehending an inmate who escapes or attempts
4 to escape.

5 4. Quelling a riot or other disturbance in which the inmate is
6 unlawfully involved.

7 5. Fees prescribed by title 28 or the department of
8 transportation's rules for the issuance of either a driver license or a
9 nonoperating identification license to the inmate, if eligible.

10 N. On request of a female inmate, the director shall provide female
11 inmates with a sufficient supply of feminine hygiene products **THAT MEET**
12 **APPLICABLE INDUSTRY STANDARDS**. Notwithstanding any other law, the
13 director may not charge female inmates for feminine hygiene products.

14 O. For the purposes of this section:

15 1. "Feminine hygiene products" includes tampons, sanitary napkins,
16 menstrual sponges, menstrual cups and similar items that are used for a
17 menstrual cycle.

18 2. "Reasonable fee" means an amount not to exceed \$5.

19 3. "Serious physical injury" means an impairment of physical
20 condition that creates a substantial risk of death or that causes serious
21 disfigurement, prolonged impairment of health or prolonged loss or
22 impairment of the function of any bodily organ.

23 Sec. 2. Title 31, chapter 2, article 1, Arizona Revised Statutes,
24 is amended by adding section 31-202, to read:

25 31-202. Non-life-threatening medical conditions; refusal of
26 medical treatment; procedures

27 THE DEPARTMENT'S HEALTH CARE STAFF SHALL DO ALL OF THE FOLLOWING IF
28 A PRISONER REFUSES MEDICAL TREATMENT AFTER BEING DIAGNOSED WITH A MEDICAL
29 CONDITION THAT IS NOT LIFE-THREATENING:

30 1. EXPLAIN TO THE PRISONER THE CONSEQUENCES OF NOT RECEIVING
31 MEDICAL TREATMENT.

32 2. COMPLETE A REFUSAL TO SUBMIT TO MEDICAL TREATMENT FORM THAT
33 THOROUGHLY DOCUMENTS THE MEDICAL CONDITION, THE CONSEQUENCES OF NOT
34 RECEIVING TREATMENT AND ANY OTHER RELEVANT INFORMATION IN THE PRESENCE OF
35 THE PRISONER AND DO BOTH OF THE FOLLOWING:

36 (a) HAVE THE PRISONER SIGN THE COMPLETED FORM. IF THE PRISONER
37 REFUSES TO SIGN THE FORM, TWO DEPARTMENT HEALTH CARE STAFF MEMBERS MUST
38 WITNESS THE REFUSAL AND SIGN THE FORM WITH A NOTATION THAT THE PRISONER
39 REFUSED TO SIGN THE COMPLETED FORM.

40 (b) PLACE THE COMPLETED FORM IN THE PRISONER'S MEDICAL RECORD.

41 3. HONOR A PRISONER'S PREFERENCE TO REFUSE MEDICAL TREATMENT.

42 4. CONTINUE TO RESPOND TO FUTURE MEDICAL CONDITIONS INVOLVING THE
43 SAME PRISONER.

44 Sec. 3. Repeal

45 Section 31-236, Arizona Revised Statutes, is repealed.

1 Sec. 4. Title 31, chapter 2, article 2, Arizona Revised Statutes,
2 is amended by adding a new section 31-236, to read:

3 31-236. Prisoners; strip search; pat search; procedures;
4 definition

5 A. A STRIP SEARCH MAY ONLY BE PERFORMED BY A CORRECTIONAL OFFICER
6 WHO IS OF THE SAME GENDER AS THE PRISONER AND IN A ROOM THAT IS DESIGNATED
7 BY THE WARDEN, DEPUTY WARDEN OR PRISON ADMINISTRATOR FOR STRIP SEARCHES.
8 IF A REASON EXISTS FOR A STRIP SEARCH TO BE DONE IMMEDIATELY, THE SHIFT
9 COMMANDER OR DUTY OFFICER MAY AUTHORIZE THE USE OF A PRIVATE AREA OTHER
10 THAN THE DESIGNATED STRIP SEARCH ROOM. EXCEPT DURING AN INSPECTION OF THE
11 HAIR ON A PRISONER'S HEAD, A CORRECTIONAL OFFICER MAY NOT TOUCH ANY PART
12 OF THE PRISONER'S BODY DURING A STRIP SEARCH.

13 B. A PAT SEARCH MAY ONLY BE PERFORMED BY A CORRECTIONAL OFFICER WHO
14 IS OF THE SAME GENDER AS THE PRISONER, EXCEPT THAT IN AN EMERGENCY
15 SITUATION, A CORRECTIONAL OFFICER OF THE OPPOSITE GENDER MAY CONDUCT A PAT
16 SEARCH IF BOTH OF THE FOLLOWING APPLY:

17 1. THE FOLLOWING INFORMATION IS DOCUMENTED IN THE CORRECTIONAL
18 SERVICE LOG:

19 (a) THE NAME OF THE CORRECTIONAL OFFICER WHO CONDUCTS THE PAT
20 SEARCH.

21 (b) THE NAME OF ANY CORRECTIONAL OFFICER WHO WITNESSES THE PAT
22 SEARCH.

23 (c) THE CORRECTIONAL OFFICER'S BADGE NUMBER.

24 (d) THE PRISONER'S NAME AND STATE DEPARTMENT OF CORRECTIONS NUMBER.

25 (e) THE REASON FOR THE CROSS GENDER PAT SEARCH.

26 2. WHEN POSSIBLE, THE PAT SEARCH IS CONDUCTED IN THE PRESENCE OF AT
27 LEAST ONE ADDITIONAL CORRECTIONAL OFFICER.

28 C. FOR THE PURPOSES OF THIS SECTION, "PAT SEARCH" MEANS A SEARCH
29 THAT IS CONDUCTED BY A CORRECTIONAL OFFICER WHO PATS DOWN OR FRISKS THE
30 BODY OF A CLOTHED PRISONER.

31 Sec. 5. Section 31-601, Arizona Revised Statutes, is amended to
32 read:

33 31-601. Pregnant prisoners; restraints; written findings;
34 rules; appropriate food and dietary supplements;
35 restrictive housing; bed placement; training;
36 reporting; definitions

37 A. After a correctional institution receives information that a
38 prisoner or detainee is pregnant or after a prisoner's or detainee's
39 pregnancy diagnosis, a correctional institution shall not use restraints
40 on ~~a~~ THE prisoner or detainee for the duration of the pregnancy and for
41 thirty days following the delivery of ~~a~~ THE child, including when the
42 prisoner or detainee is being transported for delivery or during labor,
43 delivery and postpartum recovery, unless either of the following applies:

44 1. Attending medical staff requests the use of restraints.

1 2. The corrections official makes an individualized determination
2 that the prisoner or detainee presents an extraordinary circumstance.

3 B. Leg restraints, waist restraints or restraints that hinder the
4 ability of the physician to move the prisoner or detainee, as determined
5 by the physician, shall not be used on any prisoner or detainee who is in
6 labor or delivery.

7 C. If restraints are used on a prisoner or detainee pursuant to
8 subsection A of this section:

9 1. The type of restraint applied and the application of the
10 restraint must be done in the least restrictive manner necessary.

11 2. The corrections official shall make written findings within
12 seventy-two hours as to the extraordinary circumstance that dictated the
13 use of the restraints. These findings shall be kept on file by the
14 correctional institution for at least two years and made available for
15 public inspection unless otherwise ~~dictated~~ PRESCRIBED by state or federal
16 law.

17 D. THE STATE DEPARTMENT OF CORRECTIONS AND ANY OF THE DEPARTMENT'S
18 EMPLOYEES, AGENTS AND CONTRACTORS MAY NOT COMPEL, COERCE OR REQUEST A
19 PREGNANT PRISONER OR DETAINEE TO ELECTIVELY INDUCE LABOR. BEFORE A
20 PRISONER OR DETAINEE AGREES TO INDUCE LABOR, THE PRISONER OR DETAINEE MUST
21 SIGN A WRITTEN NOTICE THAT STATES THAT THE STATE DEPARTMENT OF CORRECTIONS
22 AND ANY OF THE DEPARTMENT'S EMPLOYEES, AGENTS AND CONTRACTORS MAY NOT
23 COMPEL, COERCE OR REQUEST THE PRISONER OR DETAINEE TO AGREE TO LABOR
24 INDUCTION.

25 ~~D.~~ E. Notwithstanding subsection A of this section, a security
26 tether chain that is attached to the bed frame and the prisoner's or
27 detainee's ankle may be used during postpartum recovery. The security
28 tether chain shall be long enough for the prisoner or detainee to reach
29 the bathroom in a private or semi-private room or to exit the bed and
30 stand in any other recovery setting.

31 ~~E.~~ F. Unless the correctional employee is a licensed health care
32 professional, the correctional employee may not conduct a body cavity
33 search on a pregnant prisoner or detainee unless the correctional employee
34 has a reasonable belief that the pregnant prisoner or detainee is
35 concealing contraband. The correctional employee shall submit a written
36 report to the person in charge of the correctional institution within
37 seventy-two hours after a body cavity search for contraband that provides
38 the justification for the search and whether any contraband was found.

39 ~~F.~~ G. ~~When ordered by the attending medical staff or a~~
40 ~~nutritionist~~ A correctional institution shall ensure that a pregnant
41 prisoner or detainee is provided sufficient food and dietary supplements
42 that meet generally accepted prenatal nutritional guidelines SET BY THE
43 AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS for pregnant women.
44 During the first seventy-two hours after the prisoner or detainee gives
45 birth, the correctional institution shall provide all necessary hygiene

1 and nutritional products WITHOUT COST to the prisoner or detainee. ~~If the~~
2 ~~prisoner or detainee is indigent, the correctional institution shall~~
3 ~~provide the products without cost to the prisoner or detainee.~~

4 ~~G.~~ H. A correctional institution may not place a pregnant prisoner
5 or detainee or a prisoner or detainee who has given birth within the past
6 thirty days in restrictive housing unless a corrections official makes an
7 individualized determination that the prisoner or detainee presents an
8 extraordinary circumstance. The corrections official shall provide
9 written findings within seventy-two hours as to the extraordinary
10 circumstance that dictates the placement in restrictive housing. The
11 correctional institution shall keep these findings on file for at least
12 two years and make the findings available for public inspection unless
13 otherwise dictated by state or federal law.

14 ~~H.~~ I. A correctional institution may not place a pregnant prisoner
15 or detainee or a prisoner or detainee who has given birth within the past
16 thirty days in a bed that is elevated more than three feet from the floor
17 of the correctional institution.

18 ~~I.~~ J. The corrections official shall compile a monthly summary of
19 the WRITTEN FINDINGS AND reports that are received pursuant to subsections
20 C, ~~F~~ and ~~G~~ H of this section. The corrections official shall provide
21 the WRITTEN FINDINGS AND reports to the director of the state department
22 of corrections each month.

23 ~~J.~~ K. The correctional institution shall allow a newborn baby to
24 remain with the mother for seventy-two hours following the delivery unless
25 the attending medical staff has a reasonable belief that remaining with
26 the mother poses a health or safety risk to the newborn baby.

27 ~~K.~~ L. ~~Within thirty days after the effective date of this~~
28 ~~amendment to this section,~~ All correctional institutions in this state
29 shall adopt rules or policies pursuant to this section.

30 ~~L.~~ M. The state department of corrections shall develop and
31 provide to all:

32 1. Correctional employees who have contact with pregnant prisoners
33 or detainees training that is related to the physical and mental health of
34 a pregnant prisoner or detainee and the fetus, including all of the
35 following:

36 (a) General care of a pregnant woman.

37 (b) The impact of restraints on a pregnant prisoner or detainee and
38 the fetus.

39 (c) The impact on pregnant prisoners or detainees who are placed in
40 restrictive housing.

41 (d) The impact of an invasive body cavity search on a pregnant
42 prisoner or detainee.

43 2. Pregnant prisoners and detainees the following educational
44 programming:

45 (a) Prenatal care.

- 1 (b) Pregnancy-specific hygiene.
- 2 (c) AN IN-PERSON BIRTHING CLASS.
- 3 (d) WRITTEN EDUCATIONAL MATERIALS THAT EXPLAIN THE DIFFERENT
- 4 BIRTHING OPTIONS THAT MAY BE AVAILABLE, INCLUDING INFORMATION ON INDUCING
- 5 LABOR AND NOT INDUCING LABOR.
- 6 ~~(c)~~ (e) Parenting skills.
- 7 ~~(d)~~ (f) The impact of alcohol and drugs on the fetus.
- 8 ~~(e)~~ (g) General health topics for children.
- 9 ~~M.~~ N. For the purposes of this section:
 - 10 1. "Correctional institution" means any entity under the authority
 - 11 of any state or county law enforcement agency that has the power to detain
 - 12 or restrain a person under the laws of this state, including a juvenile
 - 13 detention center.
 - 14 2. "Corrections official" means the official who is responsible for
 - 15 oversight of a correctional institution or the official's designee.
 - 16 3. "Detainee" includes any female person who is detained under the
 - 17 immigration laws of the United States at any correctional institution.
 - 18 4. "Extraordinary circumstance" means a substantial flight risk or
 - 19 some other medical or security circumstance that dictates restraints be
 - 20 used to ensure the safety and security of the prisoner or detainee, the
 - 21 staff of the correctional institution or medical facility, other prisoners
 - 22 or detainees or the public.
 - 23 5. "Labor" means, as determined by a physician, nurse, physician's
 - 24 assistant or other medical practitioner, the period of time before a birth
 - 25 during which contractions are of sufficient frequency, intensity and
 - 26 duration to bring about effacement and progressive dilation of the cervix.
 - 27 6. "Postpartum recovery" means, as determined by the woman's
 - 28 physician, the period immediately following delivery and directly related
 - 29 to the birth, including the period a woman is in the hospital or infirmary
 - 30 after birth.
 - 31 7. "Prisoner" means any female person who is incarcerated or
 - 32 detained in any correctional institution and who is accused of, convicted
 - 33 of, sentenced for or adjudicated delinquent for a violation of a criminal
 - 34 law or the terms and conditions of community supervision, probation,
 - 35 pretrial release or diversionary programs.
 - 36 8. "Restraints" means any physical restraint or mechanical device
 - 37 used to control the movement of a prisoner's or detainee's body or limbs,
 - 38 including flex cuffs, soft restraints, hard metal handcuffs, a black box,
 - 39 chubb cuffs, leg irons, belly chains, a security tether chain or a convex
 - 40 shield.