

CHAPTER 85

(SB 84)

AN ACT relating to the housing of inmates.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *No inmate housed in a jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center who is known to be pregnant or in the immediate postpartum period shall be placed in restrictive housing, in administrative segregation, or in solitary confinement for medical observation. This prohibition shall not include placing an inmate in a cell or hospital room by herself.*
- (2) *As used in this section, "immediate postpartum period" means the six (6) week period following childbirth by the inmate. However, the six (6) week period may be extended by a physician should the inmate experience birth-related complications.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

For any inmate housed in a jail, penitentiary, or local or state correctional or detention facility, residential center, or reentry center who is known to be pregnant:

- (1) *The facility shall provide the inmate notice of, access to, and a written application for community-based programs serving pregnant, birthing, or lactating inmates. At a minimum, the notice shall contain how to qualify for the programs as well as timelines for applying and the process for appealing a denial. If a community-based program accepts the inmate but is denied access to the facility, the facility shall provide to the inmate, in writing within fifteen (15) days of the request, the safety or security concerns for the inmate, infant, public, or staff that led to the denial.*
- (2) *The facility shall refer the inmate to a social worker who shall:*
 - (a) *Discuss with the inmate the options available for feeding, placement, and care of the infant, including the benefits of lactation;*
 - (b) *Provide the inmate access to a phone to contact family regarding placement of the infant; and*
 - (c) *Oversee the placement of the infant.*
- (3) *For up to seventy-two (72) hours after the birth, the facility shall ensure that:*
 - (a) *The infant is allowed to remain with the inmate, unless a medical professional determines that doing so would pose a health or safety risk to the inmate or infant; and*
 - (b) *The inmate has access to nutritional or hygiene-related products necessary to care for the infant, including but not limited to diapers. Such products shall be provided free of charge to indigent inmates.*

➔Section 3. KRS 439.3110 is amended to read as follows:

- (1) As used in this section:
 - (a) "Eligible person" means a person who is:
 1. A pregnant woman;
 2. Reasonably believed by a court or the department to have a substance use disorder;
 3. Not charged or convicted of an offense that would qualify the person as a violent offender under KRS 439.3401; and
 4. Not charged or convicted of an offense under KRS Chapter 510, KRS 529.100 involving commercial sexual activity, KRS 530.020, 530.064(1)(a), 531.310, or 531.320; and
 - (b) "Pregnancy release conditions" means conditions of release set by a court or the department for eligible persons which shall include:

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1. Completing inpatient residential treatment for substance use disorders;
 2. Not being charged with a new local, state, or federal misdemeanor or felony offense;
 3. If not yet sentenced, appearing for all required court appearances;
 4. If not yet sentenced, avoiding all contact with any alleged victim and any potential witness who may testify concerning the charge, unless or until the court removes this condition; and
 5. If not yet sentenced, maintaining a current address with the court.
- (2) Except as provided in subsection (3) of this section and notwithstanding any other statute to the contrary, when an eligible person is charged or convicted of any violation of KRS Chapter 218A, the person shall be released from custody upon her own recognizance so long as the person successfully meets the pregnancy release conditions. If the pregnancy release conditions are violated, the eligible person shall be returned to custody to await sentencing or to serve the sentence for the original conviction under KRS Chapter 218A as well as the sentence for any subsequent charges or convictions, if any.

~~{(3) If an eligible person is housed in a jail that provides treatment for substance use disorders or in a jail that transports prisoners for treatment, this section shall not apply.}~~

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) ***The department shall provide an annual restricted housing report to the Legislative Research Commission and the Judiciary Committee by January 31. The report shall include for the preceding year:***
- (a) ***The age, gender, and ethnicity of every inmate placed in restricted housing;***
 - (b) ***The reason each inmate was placed in restricted housing; and***
 - (c) ***The dates each inmate was placed in and released from restricted housing.***
- (2) ***The annual restricted housing report shall be published on the Legislative Research Commission's Web site.***

Signed by Governor March 23, 2021.