



393096

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/14/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Shackling of incarcerated pregnant women.-

(1) SHORT TITLE.-This section may be cited as the "Healthy Pregnancies for Incarcerated Women Act."

(2) DEFINITIONS.-As used in this section, the term:

(a) "Correctional institution" means any facility under the authority of the department, the Department of Juvenile Justice, or a county or municipal detention facility, or operated by a private entity.



393096

13 (b) "Corrections official" means the official who is
14 responsible for oversight of a correctional institution, or his
15 or her designee.

16 (c) "Department" means the Department of Corrections.

17 (d) "Extraordinary circumstance" means a substantial flight
18 risk or some other extraordinary medical or security
19 circumstance that dictates restraints be used to ensure the
20 safety and security of the prisoner, the staff of the
21 correctional institution or medical facility, other prisoners,
22 or the public.

23 (e) "Labor" means the period of time before a birth during
24 which contractions are of sufficient frequency, intensity, and
25 duration to bring about effacement and progressive dilation of
26 the cervix.

27 (f) "Postpartum recovery" means, as determined by her
28 physician, the period immediately following delivery, including
29 the recovery period when a woman is in the hospital or infirmary
30 following birth.

31 (g) "Prisoner" means any person incarcerated or detained in
32 any correctional institution who is accused of, convicted of,
33 sentenced for, or adjudicated delinquent for a violation of
34 criminal law or the terms and conditions of parole, probation,
35 community control, pretrial release, or a diversionary program.
36 For purposes of this section, the term includes any woman
37 detained under the immigration laws of the United States at any
38 correctional institution.

39 (h) "Restraints" means any physical restraint or mechanical
40 device used to control the movement of a prisoner's body or
41 limbs, including, but not limited to, flex cuffs, soft



393096

42 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
43 irons, belly chains, a security or tether chain, or a convex
44 shield.

45 (3) RESTRAINT OF PRISONERS.-

46 (a) Restraints may not be used on a prisoner who is known
47 to be pregnant during labor, delivery, and postpartum recovery,
48 unless the corrections official makes an individualized
49 determination that the prisoner presents an extraordinary
50 circumstance, except that:

51 1. If the doctor, nurse, or other health care professional
52 treating the prisoner requests that restraints not be used, the
53 corrections officer, correctional institution employee, or other
54 officer accompanying the pregnant prisoner shall remove all
55 restraints; and

56 2. Under no circumstances shall leg, ankle, or waist
57 restraints be used on any pregnant prisoner who is in labor or
58 delivery.

59 (b) If restraints are used on a pregnant prisoner pursuant
60 to paragraph (a):

61 1. The type of restraint applied and the application of the
62 restraint must be done in the least restrictive manner
63 necessary; and

64 2. The corrections official shall make written findings
65 within 10 days as to the extraordinary circumstance that
66 dictated the use of the restraints. These findings shall be kept
67 on file by the correctional institution for at least 5 years and
68 be made available for public inspection, except that the
69 identifying information of a prisoner may not be made public
70 without the prisoner's prior written consent.



393096

71 (c) During the third trimester of pregnancy, or when
72 requested by the doctor, nurse, or other health care
73 professional treating the pregnant prisoner:

74 1. Waist restraints that directly constrict the area of
75 pregnancy may not be used.

76 2. If wrist restraints are used, they must be applied in
77 such a way that the pregnant prisoner is able to protect herself
78 in the event of a forward fall; and

79 3. Leg and ankle restraints that restrain the legs close
80 together may not be used when the prisoner is required to walk
81 or stand.

82 4. Use of leg, ankle or waist restraints is subject to the
83 provisions of paragraph (a) (2).

84 (d) In addition to the specific requirements of paragraphs
85 (a)-(c), any restraint of a prisoner who is known to be pregnant
86 must be done in the least restrictive manner necessary in order
87 to mitigate the possibility of adverse clinical consequences.

88 (4) ENFORCEMENT.—

89 (a) Notwithstanding any relief or claims afforded by
90 federal or state law, any prisoner who is restrained in
91 violation of this section may file a complaint within 1 year
92 after the incident.

93 (b) This section does not prevent a woman harmed under this
94 section from filing a complaint under any other relevant
95 provision of federal or state law.

96 (5) NOTICE TO PRISONERS.—

97 (a) By September 1, 2011, the department and the Department
98 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
99 and 120.54, Florida Statutes, to administer this section.



393096

100 (b) Each correctional institution shall inform female
101 prisoners of the rules developed pursuant to paragraph (a) upon
102 admission to the correctional institution, including the
103 policies and practices in the prisoner handbook, and post the
104 policies and practices in locations in the correctional
105 institution where such notices are commonly posted and will be
106 seen by female prisoners, including common housing areas and
107 medical care facilities.

108 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary
109 of Corrections, the Secretary of Juvenile Justice, and the
110 corrections official of each municipal and county detention
111 facility where a pregnant prisoner had been shackled during that
112 previous year shall submit a written report to the Executive
113 Office of the Governor which includes an account of every
114 instance using restraints pursuant to this section. The written
115 reports may not contain identifying information of any prisoner.
116 Such reports shall be made available for public inspection.

117 Section 2. This act shall take effect July 1, 2011.

118
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete everything before the enacting clause
122 and insert:

123 A bill to be entitled
124 An act relating to the restraint of incarcerated
125 pregnant women; providing a short title; defining
126 terms; prohibiting use of restraints on a prisoner
127 known to be pregnant during labor, delivery, and
128 postpartum recovery unless a corrections official



393096

129 makes an individualized determination that the
130 prisoner presents an extraordinary circumstance
131 requiring restraints; providing that a doctor, nurse,
132 or other health care professional treating the
133 prisoner may request that restraints not be used, in
134 which case the corrections officer or other official
135 accompanying the prisoner shall remove all restraints;
136 requiring that any restraint applied must be done in
137 the least restrictive manner necessary; requiring the
138 corrections official to make written findings within
139 10 days as to the extraordinary circumstance that
140 dictated the use of restraints; restricting the use of
141 waist, wrist, or leg and ankle restraints during the
142 third trimester of pregnancy or when requested by a
143 doctor, nurse, or other health care professional
144 treating the prisoner; providing that the use of
145 restraints at any time after it is known that a
146 prisoner is pregnant must be by the least restrictive
147 manner necessary in order to mitigate the possibility
148 of adverse clinical consequences; requiring that the
149 findings be kept on file by the correctional
150 institution or detention facility for at least 5 years
151 and be made available for public inspection under
152 certain circumstances; authorizing any woman who is
153 restrained in violation of the act to file a complaint
154 within a specified period; providing that these
155 remedies do not prevent a woman harmed from filing a
156 complaint under any other relevant provision of
157 federal or state law; directing the Department of



393096

158 Corrections and the Department of Juvenile Justice to
159 adopt rules; requiring correctional institutions and
160 detention facilities to inform female prisoners of the
161 rules upon admission, including the policies and
162 practices in the prisoner handbook, and post the
163 policies and practices in the correctional institution
164 or detention facility; requiring the Secretary of
165 Corrections, the Secretary of Juvenile Justice, and
166 county and municipal corrections officials to annually
167 file written reports with the Executive Office of the
168 Governor detailing each incident of shackling;
169 providing an effective date.

170
171 WHEREAS, restraining a pregnant prisoner can pose undue
172 health risks and increase the potential for physical harm to the
173 woman and her pregnancy, and

174 WHEREAS, the vast majority of female prisoners in this
175 state are nonviolent offenders, and

176 WHEREAS, the impact of such harm to a pregnant woman can
177 negatively affect her pregnancy, and

178 WHEREAS, freedom from physical restraints is especially
179 critical during labor, delivery, and postpartum recovery after
180 delivery as women often need to move around during labor and
181 recovery, including moving their legs as part of the birthing
182 process, and

183 WHEREAS, restraints on a pregnant woman can interfere with
184 the medical staff's ability to appropriately assist in
185 childbirth or to conduct sudden emergency procedures, and

186 WHEREAS, the Federal Bureau of Prisons, the United States



393096

187 Marshals Service, the American Correctional Association, the
188 American College of Obstetricians and Gynecologists, and the
189 American Public Health Association all oppose restraining women
190 during labor, delivery, and postpartum recovery because it is
191 unnecessary and dangerous to a woman's health and well-being,
192 NOW, THEREFORE,