

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL: CS/SB 1086

INTRODUCER: Criminal Justice Committee and Senator Hill

SUBJECT: Restraint of Incarcerated Pregnant Women

DATE: March 17, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	FAV/CS
2.	O'Callaghan	Stovall	HR	Pre-meeting
3.			CA	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This bill creates the “Healthy Pregnancies for Incarcerated Women Act.” It generally prohibits the use of restraints during labor, delivery, or postpartum recovery on a women who is known to be pregnant and who is incarcerated in a state, local, or privately-operated adult or juvenile facility. However, exceptions are allowed on an individual basis if there is a substantial flight risk or an extraordinary medical or security circumstance that dictates the use of restraints. The bill also sets standards for restraint of pregnant prisoners at other times during the third trimester. A woman who is restrained in violation of the bill’s provisions can file a complaint within 1 year in addition to pursuing any other remedies that are available under state or federal law for harm caused by the restraint.

The bill includes several administrative requirements: (1) any exception must be documented in writing and kept available for public inspection for a period of 5 years; (2) an annual report must be made to the governor’s office of every instance in which restraints were used pursuant to the exception or in violation of the provisions of the bill; and (3) the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) must adopt rules to administer the new law, and each correctional institution must inform female prisoners of the rules and post the policies in the institution where they will be seen by female prisoners.

This bill creates a new section of the Florida Statutes.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

II. Present Situation:

The issue of whether or not pregnant female inmates should be exempted from normal policies regarding use of restraints has been widely debated during the last few years. A number of states have considered legislation prohibiting or limiting the use of restraints for pregnant inmates, and in 2008 the Federal Bureau of Prisons revised its policy to limit the use of restraints. The National Commission on Correctional Health Care Board of Directors recently adopted a position paper on restraint of pregnant inmates. The introduction states:

Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.¹

Department of Corrections Policy

DOC is responsible for the health care of inmates in its custody² and treats more than 80 pregnant inmates per year.³ Florida refers each pregnant inmate to an OB/GYN physician to provide prenatal care and to follow her throughout her pregnancy. Inmates receive prenatal counseling, vitamins, and exams. They also receive an extra nutritional meal each day⁴

DOC has an established procedure regarding the use of restraints. Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.
- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A

¹Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html , last viewed March 10, 2011.

² Section 945.6034, F.S.

³ DOC Analysis of Senate Bill 1086 (March 10, 2011), page 4.

⁴ Guidelines for the care and treatment of pregnant inmates are defined in DOC Procedure 506.201 (*Pregnant Inmates and the Placement of Newborn Infants*) and Health Services Bulletin 15.03.39 (*Health Care for Pregnant Inmates*).

correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or can perform other needs that require movement.⁵

DOC reports that its procedures for the use of restraints on pregnant inmates are consistent with national guidelines. It also reports that there were no formal medical grievances submitted regarding the application of restraints during pregnancy from January 1, 2009 to the present.⁶

Department of Juvenile Justice Policy

DJJ policy is that pregnant youth must be handcuffed in the front when they are transported outside the secure area. Leg restraints, waist chains, and restraint belts cannot be used on pregnant youth.⁷ There is no formal rule addressing the use of restraints during labor and delivery. However, the practice is for restraints to be removed during labor and delivery and whenever requested by the treating health care professional.⁸

III. Effect of Proposed Changes:

The bill generally prohibits corrections officials from using restraints on a prisoner who is known to be pregnant during labor, delivery, or postpartum recovery. It also regulates the use of restraints during the third trimester. The following are summarized definitions of terms used in the bill:

- “Corrections official” refers to the person who is responsible for oversight of a correctional facility, or his or her designee.
- “Restraints” include any physical restraint or mechanical device used to control the movement of the body or limbs. Examples include flex cuffs, soft restraints, hard metal handcuffs, black boxes, chubb cuffs, leg irons, belly chains, security chairs, and convex shields.
- “Prisoner” includes any person who is incarcerated or detained in a correctional institution at any time in relation to a criminal offense, including both pre-trial and post-trial actions. It also includes any woman who is detained in a correctional institution under federal immigration laws.
- “Correctional institutions” include any facility under the authority of DOC or DJJ as well as county and municipal detention facilities. It includes facilities operated by private entities.
- “Labor” is the time before birth when contractions bring about effacement and progressive cervical dilation.
- “Postpartum recovery” is the time immediately following delivery, including recovery time in the hospital or infirmary. The duration of postpartum recovery is determined by the physician.

Despite the general rule, restraints can be used during labor, delivery or post-partum recovery if the corrections official makes an individualized determination of extraordinary circumstances that require their use. This is permissible in two situations: (1) when the prisoner presents a

⁵ DOC Procedure 506.201, section 12, and DOC Analysis, page 2.

⁶ DOC Analysis, pages 2 and 4.

⁷ DJJ Basic Curricula (PAR) 63H-1.001-.016(10).

⁸ DJJ Analysis of Senate Bill 1086 (2011), pages 1-2.

substantial flight risk; or (2) when there is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, corrections or medical staff, other prisoners, or the public. However, there are situations that override the exceptions: (1) the corrections official accompanying the prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and (2) use of leg and waist restraint are completely prohibited during labor and delivery.

The corrections official who authorizes the use of restraints due to an extraordinary circumstance must document the reasons for the exception within 10 days of their use. The correctional institution must maintain this documentation on file and available for public inspection for at least 5 years. However, the prisoner's identifying information may not be made public without the prisoner's consent.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to sit or stand.

In addition to the specific requirements during the third trimester and during labor, delivery, and post-partum recovery, the bill provides that any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary. The purpose of this general requirement is to reduce the possibility of adverse clinical consequences.

The secretaries of DOC and DJJ and the official responsible for any local correctional facility where a pregnant prisoner was restrained pursuant to an exception, or in violation of the provisions of the bill, during the previous year must submit a written report to the Executive Office of the Governor with an account of every instance in which restraint was used.

The bill requires DOC and DJJ to adopt rules to administer the new law, and each correctional institution must inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prison handbook, and post the policies in appropriate places within the institution that are visible to female prisoners.

The bill also specifies that a woman who is harmed may file a complaint within one year in addition to any other remedies that might be available under state or federal law. However, it is not clear to whom such a complaint would be directed or what relief would be available.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The requirement for correctional institutions to keep records of incidents in which extraordinary circumstances dictated the use of restraints includes a prohibition against releasing the name of the prisoner without her consent. This appears to be consistent with existing public records exemptions found in s. 945.10, F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

It does not appear that the bill would have a significant fiscal impact on the government sector. In its analysis of the bill, DOC notes that staff will have to maintain files and prepare the annual report to the Governor but does not quantify any costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 14, 2011:

- Clarifies that the bill is only intended to apply to restraint of pregnant inmates during specified times in the latter stages of pregnancy.
- Establishes regulations for restraint of pregnant women during the third trimester.
- Modifies annual report requirement to apply only to instances when an exception is made to allow restraint or when the requirements are violated, not to all instances of shackling during pregnancy.
- Clarifies that the bill applies to correctional facilities operated by private companies.

- B. **Amendments:**

None.