

By Senator Hill

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1 A bill to be entitled
2 An act relating to the restraint of incarcerated
3 pregnant women; providing a short title; defining
4 terms; prohibiting a correctional institution or
5 county or municipal detention facility from using
6 restraints on a prisoner known to be pregnant unless a
7 corrections official makes an individualized
8 determination that the prisoner presents an
9 extraordinary circumstance requiring restraints;
10 providing that a doctor, nurse, or other health care
11 professional treating the prisoner may request that
12 restraints not be used, in which case the corrections
13 official accompanying the prisoner shall remove all
14 restraints; requiring that any restraint applied must
15 be done in the least restrictive manner necessary;
16 requiring the corrections official to make written
17 findings within 10 days as to the extraordinary
18 circumstance that dictated the use of restraints;
19 requiring that the findings be kept on file by the
20 correctional institution or detention facility for at
21 least 5 years and be made available for public
22 inspection under certain circumstances; authorizing
23 any woman who is restrained in violation of the act to
24 file a complaint within a specified period; providing
25 that these remedies do not prevent a woman harmed from
26 filing a complaint under any other relevant provision
27 of federal or state law; directing the Department of
28 Corrections and the Department of Juvenile Justice to
29 adopt rules; requiring correctional institutions and

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30 detention facilities to inform prisoners of the rules
31 upon admission, including the policies and practices
32 in the prisoner handbook, and post the policies and
33 practices in the correctional institution or detention
34 facility; requiring the Secretary of Corrections, the
35 Secretary of Juvenile Justice, and county and
36 municipal corrections officials to annually file
37 written reports with the Executive Office of the
38 Governor detailing each incident of shackling;
39 providing an effective date.

40
41 WHEREAS, restraining a pregnant prisoner can pose undue
42 health risks and increase the potential for physical harm to the
43 woman and her pregnancy, and

44 WHEREAS, the vast majority of female prisoners in this
45 state are nonviolent offenders, and

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

48 WHEREAS, freedom from physical restraints is especially
49 critical during labor, delivery, and postpartum recovery after
50 delivery as women often need to move around during labor and
51 recovery, including moving their legs as part of the birthing
52 process, and

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

56 WHEREAS, the Federal Bureau of Prisons, the United States
57 Marshals Service, the American Correctional Association, the
58 American College of Obstetricians and Gynecologists, and the

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59 American Public Health Association all oppose restraining women
60 during labor, delivery, and postpartum recovery because it is
61 unnecessary and dangerous to a woman's health and well-being,
62 NOW, THEREFORE,

63
64 Be It Enacted by the Legislature of the State of Florida:

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66 Section 1. Shackling of incarcerated pregnant women.-

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

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

70 (a) "Correctional institution" means any facility under the
71 authority of the department, the Department of Juvenile Justice,
72 or a county or municipal detention facility.

73 (b) "Corrections official" means the official who is
74 responsible for oversight of a correctional institution, or his
75 or her designee.

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

77 (d) "Extraordinary circumstance" means a substantial flight
78 risk or some other extraordinary medical or security
79 circumstance that dictates restraints be used to ensure the
80 safety and security of the prisoner, the staff of the
81 correctional institution or medical facility, other prisoners,
82 or the public.

83 (e) "Labor" means the period of time before a birth during
84 which contractions are of sufficient frequency, intensity, and
85 duration to bring about effacement and progressive dilation of
86 the cervix.

87 (f) "Postpartum recovery" means, as determined by her

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88 physician, the period immediately following delivery, including
89 the recovery period when a woman is in the hospital or infirmary
90 following birth.

91 (g) "Prisoner" means any person incarcerated or detained in
92 any correctional institution who is accused of, convicted of,
93 sentenced for, or adjudicated delinquent for a violation of
94 criminal law or the terms and conditions of parole, probation,
95 community control, pretrial release, or a diversionary program.
96 For purposes of this section, the term includes any woman
97 detained under the immigration laws of the United States at any
98 correctional institution.

99 (h) "Restraints" means any physical restraint or mechanical
100 device used to control the movement of a prisoner's body or
101 limbs, including, but not limited to, flex cuffs, soft
102 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
103 irons, belly chains, a security or tether chain, or a convex
104 shield.

105 (3) RESTRAINT OF PRISONERS.-

106 (a) A corrections official may not use restraints on a
107 prisoner known to be pregnant, including during labor, transport
108 to a medical facility, delivery, and postpartum recovery, unless
109 the corrections official makes an individualized determination
110 that the prisoner presents an extraordinary circumstance, except
111 that:

112 1. If the doctor, nurse, or other health care professional
113 treating the prisoner requests that restraints not be used, the
114 corrections official accompanying the pregnant prisoner shall
115 remove all restraints; and

116 2. Under no circumstances shall leg or waist restraints be

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117 used on any pregnant prisoner who is in labor or delivery.

118 (b) If restraints are used on a pregnant prisoner pursuant
119 to paragraph (a):

120 1. The type of restraint applied and the application of the
121 restraint must be done in the least restrictive manner
122 necessary; and

123 2. The corrections official shall make written findings
124 within 10 days as to the extraordinary circumstance that
125 dictated the use of the restraints. These findings shall be kept
126 on file by the correctional institution for at least 5 years and
127 be made available for public inspection, except that the
128 identifying information of a prisoner may not be made public
129 without the prisoner's prior written consent.

130 (4) ENFORCEMENT.—

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

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

138 (5) NOTICE TO PRISONERS.—

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

142 (b) Each correctional institution shall inform prisoners of
143 the rules developed pursuant to paragraph (a) upon admission to
144 the correctional institution, including the policies and
145 practices in the prisoner handbook, and post the policies and

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146 practices in locations in the correctional institution where
147 such notices are commonly posted, including common housing areas
148 and medical care facilities.

149 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary
150 of Corrections, the Secretary of Juvenile Justice, and the
151 corrections official of each municipal and county detention
152 facility where a pregnant prisoner had been shackled during that
153 previous year shall submit a written report to the Executive
154 Office of the Governor which includes an account of every
155 instance using restraints pursuant to this section. The written
156 reports may not contain identifying information of any prisoner.
157 Such reports shall be made available for public inspection.

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