

By the Committee on Criminal Justice; and 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 use of restraints on a prisoner
5 known to be pregnant during labor, delivery, and
6 postpartum recovery unless a corrections official
7 makes an individualized determination that the
8 prisoner presents an extraordinary circumstance
9 requiring restraints; providing that a doctor, nurse,
10 or other health care professional treating the
11 prisoner may request that restraints not be used, in
12 which case the corrections officer or other official
13 accompanying the prisoner shall remove all restraints;
14 requiring that any restraint applied must be done in
15 the least restrictive manner necessary; requiring the
16 corrections official to make written findings within
17 10 days as to the extraordinary circumstance that
18 dictated the use of restraints; restricting the use of
19 waist, wrist, or leg and ankle restraints during the
20 third trimester of pregnancy or when requested by a
21 doctor, nurse, or other health care professional
22 treating the prisoner; providing that the use of
23 restraints at any time after it is known that a
24 prisoner is pregnant must be by the least restrictive
25 manner necessary in order to mitigate the possibility
26 of adverse clinical consequences; requiring that the
27 findings be kept on file by the correctional
28 institution or detention facility for at least 5 years
29 and be made available for public inspection under

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30 certain circumstances; authorizing any woman who is
31 restrained in violation of the act to file a complaint
32 within a specified period; providing that these
33 remedies do not prevent a woman harmed from filing a
34 complaint under any other relevant provision of
35 federal or state law; directing the Department of
36 Corrections and the Department of Juvenile Justice to
37 adopt rules; requiring correctional institutions and
38 detention facilities to inform female prisoners of the
39 rules upon admission, include the policies and
40 practices in the prisoner handbook, and post the
41 policies and practices in the correctional institution
42 or detention facility; requiring the Secretary of
43 Corrections, the Secretary of Juvenile Justice, and
44 county and municipal corrections officials to annually
45 file written reports with the Executive Office of the
46 Governor detailing each incident of restraint in
47 violation of law or as an authorized exception;
48 providing an effective date.

49
50 WHEREAS, restraining a pregnant prisoner can pose undue
51 health risks and increase the potential for physical harm to the
52 woman and her pregnancy, and

53 WHEREAS, the vast majority of female prisoners in this
54 state are nonviolent offenders, and

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

57 WHEREAS, freedom from physical restraints is especially
58 critical during labor, delivery, and postpartum recovery after

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59 delivery as women often need to move around during labor and
60 recovery, including moving their legs as part of the birthing
61 process, and

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

65 WHEREAS, the Federal Bureau of Prisons, the United States
66 Marshals Service, the American Correctional Association, the
67 American College of Obstetricians and Gynecologists, and the
68 American Public Health Association all oppose restraining women
69 during labor, delivery, and postpartum recovery because it is
70 unnecessary and dangerous to a woman's health and well-being,
71 NOW, THEREFORE,

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. Shackling of incarcerated pregnant women.-

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

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

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

83 (b) "Corrections official" means the official who is
84 responsible for oversight of a correctional institution, or his
85 or her designee.

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

87 (d) "Extraordinary circumstance" means a substantial flight

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88 risk or some other extraordinary medical or security
89 circumstance that dictates restraints be used to ensure the
90 safety and security of the prisoner, the staff of the
91 correctional institution or medical facility, other prisoners,
92 or the public.

93 (e) "Labor" means the period of time before a birth during
94 which contractions are of sufficient frequency, intensity, and
95 duration to bring about effacement and progressive dilation of
96 the cervix.

97 (f) "Postpartum recovery" means, as determined by her
98 physician, the period immediately following delivery, including
99 the recovery period when a woman is in the hospital or infirmary
100 following birth.

101 (g) "Prisoner" means any person incarcerated or detained in
102 any correctional institution who is accused of, convicted of,
103 sentenced for, or adjudicated delinquent for a violation of
104 criminal law or the terms and conditions of parole, probation,
105 community control, pretrial release, or a diversionary program.
106 For purposes of this section, the term includes any woman
107 detained under the immigration laws of the United States at any
108 correctional institution.

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

115 (3) RESTRAINT OF PRISONERS.—

116 (a) Restraints may not be used on a prisoner who is known

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117 to be pregnant during labor, delivery, and postpartum recovery,
118 unless the corrections official makes an individualized
119 determination that the prisoner presents an extraordinary
120 circumstance, except that:

121 1. If the doctor, nurse, or other health care professional
122 treating the prisoner requests that restraints not be used, the
123 corrections officer, correctional institution employee, or other
124 officer accompanying the pregnant prisoner shall remove all
125 restraints; and

126 2. Under no circumstances shall leg, ankle, or waist
127 restraints be used on any pregnant prisoner who is in labor or
128 delivery.

129 (b) If restraints are used on a pregnant prisoner pursuant
130 to paragraph (a):

131 1. The type of restraint applied and the application of the
132 restraint must be done in the least restrictive manner
133 necessary; and

134 2. The corrections official shall make written findings
135 within 10 days as to the extraordinary circumstance that
136 dictated the use of the restraints. These findings shall be kept
137 on file by the correctional institution for at least 5 years and
138 be made available for public inspection, except that the
139 identifying information of a prisoner may not be made public
140 without the prisoner's prior written consent.

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

144 1. Waist restraints that directly constrict the area of
145 pregnancy may not be used;

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

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

152 4. Use of leg, ankle, or waist restraints is subject to the
153 provisions of subparagraph (a)2.

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

158 (4) ENFORCEMENT.—

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

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

166 (5) NOTICE TO PRISONERS.—

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

170 (b) Each correctional institution shall inform female
171 prisoners of the rules developed pursuant to paragraph (a) upon
172 admission to the correctional institution, including the
173 policies and practices in the prisoner handbook, and post the
174 policies and practices in locations in the correctional

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175 institution where such notices are commonly posted and will be
176 seen by female prisoners, including common housing areas and
177 medical care facilities.

178 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary
179 of Corrections, the Secretary of Juvenile Justice, and the
180 corrections official of each municipal and county detention
181 facility where a pregnant prisoner has been restrained pursuant
182 to paragraph (3)(a), or in violation of subsection (3), during
183 the previous year shall submit a written report to the Executive
184 Office of the Governor which includes an account of every such
185 instance. The written reports may not contain identifying
186 information of any prisoner. Such reports shall be made
187 available for public inspection.

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