

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

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

37 |  
38 | WHEREAS, restraining a pregnant prisoner can pose undue  
39 | health risks and increase the potential for physical harm to the  
40 | woman and her pregnancy, and

41 | WHEREAS, the vast majority of female prisoners in this  
42 | state are nonviolent offenders, and

43 | WHEREAS, the impact of such harm to a pregnant woman can  
44 | negatively affect her pregnancy, and

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

50 | WHEREAS, restraints on a pregnant woman can interfere with  
51 | the medical staff's ability to appropriately assist in  
52 | childbirth or to conduct sudden emergency procedures, and

53 | WHEREAS, the Federal Bureau of Prisons, the United States  
54 | Marshals Service, the American Correctional Association, the  
55 | American College of Obstetricians and Gynecologists, and the  
56 | American Public Health Association all oppose restraining women

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57 during labor, delivery, and postpartum recovery because it is  
58 unnecessary and dangerous to a woman's health and well-being,  
59 NOW, THEREFORE,

60

61 Be It Enacted by the Legislature of the State of Florida:

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63 Section 1. Shackling of incarcerated pregnant women.—

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

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

67 (a) "Correctional institution" means any facility under  
68 the authority of the department, the Department of Juvenile  
69 Justice, or a county or municipal detention facility.

70 (b) "Corrections official" means the official who is  
71 responsible for oversight of a correctional institution, or his  
72 or her designee.

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

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

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

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

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85 physician, the period immediately following delivery, including  
86 the recovery period when a woman is in the hospital or infirmary  
87 following birth.

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

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

102 (3) RESTRAINT OF PRISONERS.—

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

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

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113 2. Under no circumstances shall leg or waist restraints be  
114 used on any pregnant prisoner who is in labor or delivery.

115 (b) If restraints are used on a pregnant prisoner pursuant  
116 to paragraph (a):

117 1. The type of restraint applied and the application of  
118 the restraint must be done in the least restrictive manner  
119 necessary; and

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

127 (4) ENFORCEMENT.—

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

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

135 (5) NOTICE TO PRISONERS.—

136 (a) By September 1, 2011, the department and the  
137 Department of Juvenile Justice shall adopt rules pursuant to ss.  
138 120.536(1) and 120.54, Florida Statutes, to administer this  
139 section.

140 (b) Each correctional institution shall inform prisoners

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141 of the rules developed pursuant to paragraph (a) upon admission  
142 to the correctional institution, including the policies and  
143 practices in the prisoner handbook, and post the policies and  
144 practices in locations in the correctional institution where  
145 such notices are commonly posted, including common housing areas  
146 and medical care facilities.

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

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