

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

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

46  
47 WHEREAS, restraining a pregnant prisoner can pose undue  
48 health risks and increase the potential for physical harm to the  
49 woman and her pregnancy, and

50 WHEREAS, the vast majority of female prisoners in this  
51 state are nonviolent offenders, and

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

54 WHEREAS, freedom from physical restraints is especially  
55 critical during labor, delivery, and postpartum recovery after  
56 delivery as women often need to move around during labor and

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57 recovery, including moving their legs as part of the birthing  
 58 process, and

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

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

69

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

71

72 Section 1. Shackling of incarcerated pregnant women.-

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

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

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

80 (b) "Corrections official" means the official who is  
 81 responsible for oversight of a correctional institution, or his  
 82 or her designee.

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

84 (d) "Extraordinary circumstance" means a substantial

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

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

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

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

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

112 (3) RESTRAINT OF PRISONERS.—

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113 (a) Restraints may not be used on a prisoner who is known  
114 to be pregnant during labor, delivery, and postpartum recovery,  
115 unless the corrections official makes an individualized  
116 determination that the prisoner presents an extraordinary  
117 circumstance, except that:

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

123 2. Under no circumstances shall leg, ankle, or waist  
124 restraints be used on any pregnant prisoner who is in labor or  
125 delivery.

126 (b) If restraints are used on a pregnant prisoner pursuant  
127 to paragraph (a):

128 1. The type of restraint applied and the application of  
129 the restraint must be done in the least restrictive manner  
130 necessary; and

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

139 (c) During the third trimester of pregnancy, or when  
140 requested by the doctor, nurse, or other health care

141 professional treating the pregnant prisoner:

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

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

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

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

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

156 (4) ENFORCEMENT.—

157 (a) Notwithstanding any relief or claims afforded by  
 158 federal or state law, any prisoner who is restrained in  
 159 violation of this section may file a grievance with the  
 160 correctional institution within 1 year after the incident.

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

164 (5) NOTICE TO PRISONERS.—

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

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169        (b) Each correctional institution shall inform female  
170 prisoners of the rules developed pursuant to paragraph (a) upon  
171 admission to the correctional institution, including the  
172 policies and practices in the prisoner handbook, and post the  
173 policies and practices in locations in the correctional  
174 institution where such notices are commonly posted and will be  
175 seen by female prisoners, including common housing areas and  
176 medical care facilities.

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

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