

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Reed offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Shackling of incarcerated pregnant women.-

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

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

10 (a) "Correctional institution" means any facility under
11 the authority of the department or the Department of Juvenile
12 Justice, a county or municipal detention facility, or a
13 detention facility operated by a private entity.

14 (b) "Corrections official" means the official who is
15 responsible for oversight of a correctional institution, or his
16 or her designee.

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

18 (d) "Extraordinary circumstance" means a substantial
19 flight risk or some other extraordinary medical or security

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20 circumstance that dictates restraints be used to ensure the
21 safety and security of the prisoner, the staff of the
22 correctional institution or medical facility, other prisoners,
23 or the public.

24 (e) "Labor" means the period of time before a birth during
25 which contractions are of sufficient frequency, intensity, and
26 duration to bring about effacement and progressive dilation of
27 the cervix.

28 (f) "Postpartum recovery" means, as determined by her
29 physician, the period immediately following delivery, including
30 the recovery period when a woman is in the hospital or infirmary
31 following birth, up to 24 hours after delivery unless the
32 physician after consultation with the department or correctional
33 institution recommends a longer period of time.

34 (g) "Prisoner" means any person incarcerated or detained
35 in any correctional institution who is accused of, convicted of,
36 sentenced for, or adjudicated delinquent for a violation of
37 criminal law or the terms and conditions of parole, probation,
38 community control, pretrial release, or a diversionary program.
39 For purposes of this section, the term includes any woman
40 detained under the immigration laws of the United States at any
41 correctional institution.

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

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48 (3) RESTRAINT OF PRISONERS.—

49 (a) Restraints may not be used on a prisoner who is known
50 to be pregnant during labor, delivery, and postpartum recovery,
51 unless the corrections official makes an individualized
52 determination that the prisoner presents an extraordinary
53 circumstance, except that:

54 1. The physician may request that restraints not be used
55 for documentable medical purposes. The correctional officer,
56 correctional institution employee, or other officer accompanying
57 the pregnant prisoner may consult with the medical staff;
58 however, if the officer determines there is an extraordinary
59 public safety risk, the officer is authorized to apply
60 restraints as limited by subparagraph 2.

61 2. Under no circumstances shall leg, ankle, or waist
62 restraints be used on any pregnant prisoner who is in labor or
63 delivery.

64 (b) If restraints are used on a pregnant prisoner pursuant
65 to paragraph (a):

66 1. The type of restraint applied and the application of
67 the restraint must be done in the least restrictive manner
68 necessary; and

69 2. The corrections official shall make written findings
70 within 10 days after the use of restraints as to the
71 extraordinary circumstance that dictated the use of the
72 restraints. These findings shall be kept on file by the
73 department or correctional institution for at least 5 years.

74 (c) During the third trimester of pregnancy or when
75 requested by the physician treating a pregnant prisoner, unless

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76 there are significant documentable security reasons noted by the
77 department or correctional institution to the contrary that
78 would threaten the safety of the prisoner, the unborn child, or
79 the public in general:

80 1. Leg, ankle, and waist restraints may not be used; and

81 2. If wrist restraints are used, they must be applied in
82 the front so the pregnant prisoner is able to protect herself in
83 the event of a forward fall.

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

88 (4) ENFORCEMENT.-

89 (a) Notwithstanding any relief or claims afforded by
90 federal or state law, any prisoner who is restrained in
91 violation of this section may file a grievance with the
92 correctional institution, and be granted a 45 day extension if
93 requested in writing pursuant to rules promulgated by the
94 correctional institution.

95 (b) This section does not prevent a woman harmed through
96 the use of restraints under this section from filing a complaint
97 under any other relevant provision of federal or state law.

98 (5) NOTICE TO PRISONERS.-

99 (a) By September 1, 2012, the department and the
100 Department of Juvenile Justice shall adopt rules pursuant to ss.
101 120.536(1) and 120.54, Florida Statutes, to administer this
102 section.

103 (b) Each correctional institution shall inform female

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104 prisoners of the rules developed pursuant to paragraph (a) upon
105 admission to the correctional institution, including the
106 policies and practices in the prisoner handbook, and post the
107 policies and practices in locations in the correctional
108 institution where such notices are commonly posted and will be
109 seen by female prisoners, including common housing areas and
110 medical care facilities.

111 Section 2. This act shall take effect July 1, 2012.

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115 -----
116 **T I T L E A M E N D M E N T**

117 Remove the entire title and insert:

118 An act relating to the restraint of incarcerated pregnant women;
119 providing a short title; defining terms; prohibiting use of
120 restraints on a prisoner known to be pregnant during labor,
121 delivery, and postpartum recovery unless a corrections official
122 makes an individualized determination that the prisoner presents
123 an extraordinary circumstance requiring restraints; authorizing
124 an officer to apply restraints after consulting with medical
125 staff; requiring that any restraint applied must be done in the
126 least restrictive manner necessary; requiring the corrections
127 official to make written findings as to the extraordinary
128 circumstance requiring restraints; restricting the use of
129 certain restraints during the third trimester of pregnancy
130 unless there are significant security concerns documented by the
131 department or correctional institution; requiring that the

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132 findings be kept on file by the department or correctional
133 institution for at least 5 years; authorizing any woman who is
134 restrained in violation of the act to file a grievance within a
135 specified period; providing that these remedies do not prevent a
136 woman harmed through the use of restraints from filing a
137 complaint under federal or state law; directing the Department
138 of Corrections and the Department of Juvenile Justice to adopt
139 rules; requiring correctional institutions to inform female
140 prisoners of the rules upon admission, include the policies and
141 practices in the prisoner handbook, and post the policies and
142 practices in the correctional institution; providing an
143 effective date.

144
145 WHEREAS, restraining a pregnant prisoner can pose undue
146 health risks and increase the potential for physical harm to the
147 woman and her pregnancy, and

148 WHEREAS, the vast majority of female prisoners in this
149 state are nonviolent offenders, and

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

152 WHEREAS, freedom from physical restraints is especially
153 critical during labor, delivery, and postpartum recovery after
154 delivery as women often need to move around during labor and
155 recovery, including moving their legs as part of the birthing
156 process, and

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

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 367 (2012)

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160 WHEREAS, the Federal Bureau of Prisons, the United States
161 Marshals Service, the American Correctional Association, the
162 American College of Obstetricians and Gynecologists, and the
163 American Public Health Association all oppose restraining women
164 during labor, delivery, and postpartum recovery because it is
165 unnecessary and dangerous to a woman's health and well-being,
166 NOW, THEREFORE,