

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  
30 certain circumstances; authorizing any woman who is  
31 restrained in violation of the act to file a grievance  
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  
 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  
 80 the authority of the department or the Department of Juvenile  
 81 Justice, a county or municipal detention facility, or a  
 82 detention facility operated by a private entity.

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

HB 367

2012

85 or her designee.

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

87 (d) "Extraordinary circumstance" means a substantial  
88 flight 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  
102 in 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  
110 mechanical device used to control the movement of a prisoner's  
111 body or limbs, including, but not limited to, flex cuffs, soft  
112 restraints, hard metal handcuffs, a black box, chubb cuffs, leg

HB 367

2012

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  
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  
132 the 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 after the use of restraints as to the  
136 extraordinary circumstance that dictated the use of the  
137 restraints. These findings shall be kept on file by the  
138 correctional institution for at least 5 years and be made  
139 available for public inspection.

140 (c) During the third trimester of pregnancy, or when

HB 367

2012

141 requested by the doctor, nurse, or other health care  
142 professional treating the pregnant prisoner:

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

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

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

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

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

157 (4) ENFORCEMENT.—

158 (a) Notwithstanding any relief or claims afforded by  
159 federal or state law, any prisoner who is restrained in  
160 violation of this section may file a grievance with the  
161 department pursuant to s. 944.331, Florida Statutes, within 1  
162 year after the incident.

163 (b) This section does not prevent a woman harmed under  
164 this 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, 2012, the department and the  
168 Department of Juvenile Justice shall adopt rules pursuant to ss.

HB 367

2012

169 120.536(1) and 120.54, Florida Statutes, to administer this  
170 section.

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

179 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary  
180 of Corrections, the Secretary of Juvenile Justice, and the  
181 corrections official of each municipal and county detention  
182 facility where a pregnant prisoner has been restrained pursuant  
183 to paragraph (3) (a), or in violation of subsection (3), during  
184 the previous year shall submit a written report to the Executive  
185 Office of the Governor which includes an account of every such  
186 instance. Such reports shall be made available for public  
187 inspection.

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