

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; authorizing an officer to apply
10 restraints after consulting with medical staff;
11 requiring that any restraint applied must be done in
12 the least restrictive manner necessary; requiring the
13 corrections official to make written findings as to
14 the extraordinary circumstance requiring restraints;
15 restricting the use of certain restraints during the
16 third trimester of pregnancy unless there are
17 significant security concerns documented by the
18 department or correctional institution; requiring that
19 the findings be kept on file by the department or
20 correctional institution for at least 5 years;
21 authorizing any woman who is restrained in violation
22 of the act to file a grievance within a specified
23 period; providing that these remedies do not prevent a
24 woman harmed through the use of restraints from filing
25 a complaint under federal or state law; directing the
26 Department of Corrections and the Department of
27 Juvenile Justice to adopt rules; requiring
28 correctional institutions to inform female prisoners

CS/CS/HB 367

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29 | of the rules upon admission, include the policies and
30 | practices in the prisoner handbook, and post the
31 | policies and practices in the correctional
32 | institution; providing an effective date.

33 |
34 | WHEREAS, restraining a pregnant prisoner can pose undue
35 | health risks and increase the potential for physical harm to the
36 | woman and her pregnancy, and

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

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

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

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

49 | WHEREAS, the Federal Bureau of Prisons, the United States
50 | Marshals Service, the American Correctional Association, the
51 | American College of Obstetricians and Gynecologists, and the
52 | American Public Health Association all oppose restraining women
53 | during labor, delivery, and postpartum recovery because it is
54 | unnecessary and dangerous to a woman's health and well-being,
55 | NOW, THEREFORE,

56 |

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

58
59 Section 1. Shackling of incarcerated pregnant women.—

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

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

63 (a) "Correctional institution" means any facility under
64 the authority of the department or the Department of Juvenile
65 Justice, a county or municipal detention facility, or a
66 detention facility operated by a private entity.

67 (b) "Corrections official" means the official who is
68 responsible for oversight of a correctional institution, or his
69 or her designee.

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

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

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

81 (f) "Postpartum recovery" means, as determined by her
82 physician, the period immediately following delivery, including
83 the recovery period when a woman is in the hospital or infirmary
84 following birth, up to 24 hours after delivery unless the

85 physician after consultation with the department or correctional
86 institution recommends a longer period of time.

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

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

101 (3) RESTRAINT OF PRISONERS.—

102 (a) Restraints may not be used on a prisoner who is known
103 to be pregnant during labor, delivery, and postpartum recovery,
104 unless the corrections official makes an individualized
105 determination that the prisoner presents an extraordinary
106 circumstance, except that:

107 1. The physician may request that restraints not be used
108 for documentable medical purposes. The correctional officer,
109 correctional institution employee, or other officer accompanying
110 the pregnant prisoner may consult with the medical staff;
111 however, if the officer determines there is an extraordinary
112 public safety risk, the officer is authorized to apply

113 restraints as limited by subparagraph 2.

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

117 (b) If restraints are used on a pregnant prisoner pursuant
118 to paragraph (a):

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

122 2. The corrections official shall make written findings
123 within 10 days after the use of restraints as to the
124 extraordinary circumstance that dictated the use of the
125 restraints. These findings shall be kept on file by the
126 department or correctional institution for at least 5 years.

127 (c) During the third trimester of pregnancy or when
128 requested by the physician treating a pregnant prisoner, unless
129 there are significant documentable security reasons noted by the
130 department or correctional institution to the contrary that
131 would threaten the safety of the prisoner, the unborn child, or
132 the public in general:

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

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

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

141 (4) ENFORCEMENT.—

142 (a) Notwithstanding any relief or claims afforded by
143 federal or state law, any prisoner who is restrained in
144 violation of this section may file a grievance with the
145 correctional institution, and be granted a 45-day extension if
146 requested in writing pursuant to rules promulgated by the
147 correctional institution.

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

151 (5) NOTICE TO PRISONERS.—

152 (a) By September 1, 2012, the department and the
153 Department of Juvenile Justice shall adopt rules pursuant to ss.
154 120.536(1) and 120.54, Florida Statutes, to administer this
155 section.

156 (b) Each correctional institution shall inform female
157 prisoners of the rules developed pursuant to paragraph (a) upon
158 admission to the correctional institution, including the
159 policies and practices in the prisoner handbook, and post the
160 policies and practices in locations in the correctional
161 institution where such notices are commonly posted and will be
162 seen by female prisoners, including common housing areas and
163 medical care facilities.

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