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LEGISLATIVE ACTION

Senate

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House

Senator Pizzo moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 944.241, Florida Statutes, is amended to
read:

944.241 ~~Shackling of~~ Incarcerated pregnant women.—

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

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

(a) "Correctional institution" means any facility under the



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12 authority of the department or the Department of Juvenile
13 Justice, a county or municipal detention facility, or a
14 detention facility operated by a private entity.

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

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

19 (d) "Extraordinary circumstance" means a substantial flight
20 risk or some other extraordinary medical or security
21 circumstance that dictates restraints or restrictive housing be
22 used to ensure the safety and security of the prisoner, the
23 staff of the correctional institution or medical facility, other
24 prisoners, or the public.

25 (e) "Invasive body cavity search" means a search that
26 involves a manual inspection using touch, insertion, or probing
27 of the openings, cavities, and orifices of the human body,
28 including, but not limited to, the genitals, buttocks, anus, or
29 breasts that is not conducted for a medical purpose.

30 (f) ~~(e)~~ "Labor" means the period of time before a birth
31 during which contractions are of sufficient frequency,
32 intensity, and duration to bring about effacement and
33 progressive dilation of the cervix.

34 (g) ~~(f)~~ "Postpartum recovery" means, as determined by her
35 physician, the period immediately following delivery, including
36 the recovery period when a woman is in the hospital or infirmary
37 following birth, up to 24 hours after delivery unless the
38 physician after consultation with the department or correctional
39 institution recommends a longer period of time.

40 (h) ~~(g)~~ "Prisoner" means any person incarcerated or detained



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41 in any correctional institution who is accused of, convicted of,
42 sentenced for, or adjudicated delinquent for a violation of
43 criminal law or the terms and conditions of parole, probation,
44 community control, pretrial release, or a diversionary program.
45 For purposes of this section, the term includes any woman
46 detained under the immigration laws of the United States at any
47 correctional institution.

48 (i) ~~(h)~~ "Restraints" means any physical restraint or
49 mechanical device used to control the movement of a prisoner's
50 body or limbs, including, but not limited to, flex cuffs, soft
51 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
52 irons, belly chains, a security or tether chain, or a convex
53 shield.

54 (j) "Restrictive housing" means the placement of pregnant
55 prisoners separately from the general population of a
56 correctional institution and imposing restrictions on their
57 movement, behavior, and privileges solely based on the condition
58 of being pregnant. The term includes placing the prisoner in
59 medical isolation, in a medical housing unit, or in the
60 infirmary.

61 (3) RESTRAINT OF PRISONERS.—

62 (a) Except as provided in paragraph (b), restraints may not
63 be used on a prisoner who is known to be pregnant:

64 1. If any doctor, nurse, or other health professional
65 treating the prisoner in labor, in delivery, or in postpartum
66 recovery requests that restraints not be used due to a
67 documentable medical purpose. If the doctor, nurse, or other
68 health professional makes such a request, the correctional
69 officer or other law enforcement officer accompanying the



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70 prisoner must immediately remove all restraints.

71 2. During transport, labor, delivery, or and postpartum
72 recovery, unless the corrections official makes an
73 individualized determination that the prisoner presents an
74 extraordinary circumstance., except that:

75 ~~1. The physician may request that restraints not be used~~
76 ~~for documentable medical purposes. The correctional officer,~~
77 ~~correctional institution employee, or other officer accompanying~~
78 ~~the pregnant prisoner may consult with the medical staff;~~
79 ~~however, If the corrections official officer determines there is~~
80 ~~an extraordinary public safety risk, the official may officer is~~
81 ~~authorized to apply restraints as limited by paragraph (b)~~
82 ~~subparagraph 2.~~

83 (b) A restraint may be used on a prisoner who is known to
84 be pregnant or in postpartum recovery only if all of the
85 following apply:

86 1. The corrections official makes an individualized
87 determination that the prisoner presents an extraordinary
88 circumstance.

89 2. The restraints used are the least restrictive necessary.

90 3. If wrist restraints are used, the restraints are applied
91 in the front of the prisoner so that she may protect herself in
92 the event of a forward fall.

93 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
94 ~~restraints are not be used on any pregnant prisoner who is in~~
95 ~~labor or delivery.~~

96 ~~(b) If restraints are used on a pregnant prisoner pursuant~~
97 ~~to paragraph (a):~~

98 ~~1. The type of restraint applied and the application of the~~



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99 ~~restraint must be done in the least restrictive manner~~
100 ~~necessary; and~~

101 (c)2- The corrections official shall make written findings
102 within 10 days after the use of restraints as to the
103 extraordinary circumstance that dictated the use of the
104 restraints. These findings shall be kept on file by the
105 department or correctional institution for at least 5 years.

106 (d) A pregnant prisoner who is transported by a
107 correctional institution must be transported using a restraint
108 that is the least restrictive necessary. A correctional
109 institution that uses restraints on a pregnant prisoner during
110 transport must comply with the written findings required in
111 paragraph (c).

112 ~~(c) During the third trimester of pregnancy or when~~
113 ~~requested by the physician treating a pregnant prisoner, unless~~
114 ~~there are significant documentable security reasons noted by the~~
115 ~~department or correctional institution to the contrary that~~
116 ~~would threaten the safety of the prisoner, the unborn child, or~~
117 ~~the public in general:~~

- 118 ~~1. Leg, ankle, and waist restraints may not be used; and~~
119 ~~2. If wrist restraints are used, they must be applied in~~
120 ~~the front so the pregnant prisoner is able to protect herself in~~
121 ~~the event of a forward fall.~~

122 ~~(d) In addition to the specific requirements of paragraphs~~
123 ~~(a) (c), any restraint of a prisoner who is known to be pregnant~~
124 ~~must be done in the least restrictive manner necessary in order~~
125 ~~to mitigate the possibility of adverse clinical consequences.~~

126 (4) INVASIVE BODY CAVITY SEARCHES.-

127 (a) Except as provided under paragraph (b), an invasive



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128 body cavity search of a pregnant prisoner may be conducted only
129 by a medical professional.

130 (b) A correctional officer may conduct an invasive body
131 cavity search of a pregnant prisoner only if the officer has a
132 reasonable belief that the prisoner is concealing contraband. An
133 officer who conducts an invasive body cavity search must submit
134 a written report to the corrections official within 72 hours
135 after the search. The report must:

- 136 1. Explain the reasons for the search; and
137 2. Identify any contraband recovered in the search.

138 (5) RESTRICTIVE HOUSING.—

139 (a) Except as provided in paragraph (b), a pregnant
140 prisoner may not be involuntarily placed in restrictive housing.
141 This subsection does not prohibit a corrections official from
142 placing a pregnant prisoner in restrictive housing for
143 disciplinary violations or to address security risks to the
144 pregnant prisoner, other prisoners, or staff directly related to
145 the pregnant prisoner provided the corrections official complies
146 with the reporting requirements of subparagraph (b)1.

147 (b) A pregnant prisoner may be involuntarily placed in
148 restrictive housing only if the corrections official of the
149 correctional institution, in consultation with the medical staff
150 overseeing prenatal care and medical treatment at the
151 correctional institution, determines that an extraordinary
152 circumstance exists such that restrictive housing is necessary
153 and that there are no less restrictive means available.

154 1. The corrections official shall, before placing a
155 prisoner in restrictive housing, write a report that states:

- 156 a. The extraordinary circumstance that is present; and



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157 b. The reason less restrictive means are not available.

158 2. The corrections official shall review the report at
159 least every 24 hours to confirm that the extraordinary
160 circumstance cited in the report still exists. A copy of the
161 report and each review must be provided to the pregnant
162 prisoner.

163 (c) A pregnant prisoner who is placed in restrictive
164 housing under this section shall be:

165 1. Seen at least every 24 hours by the medical staff
166 overseeing prenatal care and medical treatment in the facility;

167 2. Housed in the least restrictive setting consistent with
168 the health and safety of the pregnant prisoner; and

169 3. Given an intensive treatment plan developed and approved
170 by the medical staff overseeing prenatal care and medical
171 treatment at the facility.

172 (d) If a pregnant prisoner needs medical care, an
173 authorized medical staff must provide an order for the pregnant
174 prisoner to be placed in a designated medical housing unit or
175 admitted to the infirmary. If the pregnant prisoner has passed
176 her due date, she must be placed in a designated medical housing
177 unit or admitted to the infirmary until labor begins or until
178 other housing arrangements are made. A pregnant prisoner who has
179 been placed in a designated medical housing unit or admitted to
180 the infirmary shall be provided:

181 1. The same access to outdoor recreation, visitation, mail,
182 and telephone calls as other prisoners; and

183 2. The ability to continue to participate in other
184 privileges and classes granted to the general population.

185 (6)-(4) ENFORCEMENT.-



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186 (a) Notwithstanding any relief or claims afforded by
187 federal or state law, any prisoner who is restrained in
188 violation of this section may file a grievance with the
189 correctional institution, and be granted a 45-day extension if
190 requested in writing pursuant to rules promulgated by the
191 correctional institution.

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

195 (7)~~(5)~~ NOTICE TO PRISONERS.-

196 (a) ~~By September 1, 2012,~~ The department and the Department
197 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
198 and 120.54 to administer this section.

199 (b) Each correctional institution shall inform female
200 prisoners of the rules developed pursuant to paragraph (a) upon
201 admission to the correctional institution, including the
202 policies and practices in the prisoner handbook, and post the
203 policies and practices in locations in the correctional
204 institution where such notices are commonly posted and will be
205 seen by female prisoners, including common housing areas and
206 medical care facilities.

207 Section 2. This act shall take effect July 1, 2020.

208 ===== T I T L E A M E N D M E N T =====

209 And the title is amended as follows:

210 Delete everything before the enacting clause
211 and insert:

212 A bill to be entitled
213 An act relating to incarcerated pregnant women;
214 amending s. 944.241, F.S.; amending the short title;



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215 redefining the term "extraordinary circumstance";
216 defining the terms "invasive body cavity search" and
217 "restrictive housing"; revising the circumstances
218 under which a prisoner who is known to be pregnant may
219 not be restrained; specifying conditions under which
220 restraints may be used; requiring that invasive body
221 cavity searches on a pregnant prisoner be conducted by
222 a medical professional; providing an exception;
223 prohibiting the involuntary placement of pregnant
224 prisoners in restrictive housing; providing
225 exceptions; requiring corrections officials to write a
226 specified report if an extraordinary circumstance
227 necessitates placing a pregnant prisoner in
228 restrictive housing; providing requirements for the
229 report; requiring corrections officials to review such
230 reports at specified intervals; requiring a copy of
231 such reports and reviews to be provided to pregnant
232 prisoners in restrictive housing; providing
233 requirements for the treatment of pregnant prisoners
234 placed in restrictive housing; requiring pregnant
235 prisoners to be placed in a designated medical housing
236 unit or admitted to the infirmary under certain
237 circumstances; providing certain rights for pregnant
238 prisoners placed in a designated medical housing unit
239 or admitted to the infirmary; providing an effective
240 date.