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LEGISLATIVE ACTION

Senate

.

House

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Floor: 1/RE/3R

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03/12/2020 11:03 AM

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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. The term includes placing the prisoner
57 in medical isolation, in a medical housing unit, or in the
58 infirmary.

59 (3) RESTRAINT OF PRISONERS.—

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

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

69 2. During transport, labor, delivery, or and postpartum



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70 recovery, unless the corrections official makes an
71 individualized determination that the prisoner presents an
72 extraordinary circumstance., ~~except that:~~

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

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

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

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

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

91 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
92 ~~restraints are not be used on any pregnant prisoner who is in~~
93 ~~labor or delivery.~~

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

96 ~~1. The type of restraint applied and the application of the~~
97 ~~restraint must be done in the least restrictive manner~~
98 ~~necessary; and~~



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

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

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

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

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

124 (4) INVASIVE BODY CAVITY SEARCHES.—

125 (a) Except as provided under paragraph (b), an invasive
126 body cavity search of a pregnant prisoner may be conducted only
127 by a medical professional.



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

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

136 (5) RESTRICTIVE HOUSING.—

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

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

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

- 154 a. The extraordinary circumstance that is present; and
155 b. The reason less restrictive means are not available.

156 2. The corrections official shall review the report at



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157 least every 24 hours to confirm that the extraordinary
158 circumstance cited in the report still exists. A copy of the
159 report and each review must be provided to the pregnant
160 prisoner.

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

163 1. Seen at least every 12 hours by the medical staff
164 overseeing prenatal care and medical treatment in the facility;

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

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

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

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

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

183 (6)-(4) ENFORCEMENT.—

184 (a) Notwithstanding any relief or claims afforded by
185 federal or state law, any prisoner who is restrained in



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186 violation of this section may file a grievance with the
187 correctional institution, and be granted a 45-day extension if
188 requested in writing pursuant to rules promulgated by the
189 correctional institution.

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

193 ~~(7)~~ (5) NOTICE TO PRISONERS.—

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

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

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

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

207 And the title is amended as follows:

208 Delete everything before the enacting clause
209 and insert:

210 A bill to be entitled
211 An act relating to incarcerated pregnant women;
212 amending s. 944.241, F.S.; amending the short title;
213 redefining the term "extraordinary circumstance";
214 defining the terms "invasive body cavity search" and



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