

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1259 Restrictive Housing for Incarcerated Pregnant Women

**SPONSOR(S):** Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Jones and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Mawn	Hall
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Smith	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

An estimated 10 percent of women admitted to prisons or jails in the United States are pregnant at the time of their admission. Pregnant women in the criminal justice system are at a particularly high risk, as their health is often compromised by a lack of prenatal care, poor nutrition, and untreated or undertreated chronic medical and psychiatric conditions.

While the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and detention centers provide pregnant women in their respective facilities medical care and nutrition, nothing currently prevents the placement of a pregnant woman in restrictive housing or another form of isolation or confinement. Consequently, pregnant women are sometimes housed alone, whether in medical isolation cells or other types of restrictive housing, for days or weeks at a time. In isolation, pregnant women are at increased risk of psychological trauma, dangerous blood clots due to an inability to freely move around, and of having their medical needs overlooked.

CS/CS/HB 1259:

- Prohibits DOC, DJJ, and any detention facility from involuntarily placing a pregnant inmate in restrictive housing, absent a determination that such placement is necessary to protect the health and safety of the inmate or others or to preserve the prison's security and order and that there are no less restrictive housing options available, in the:
  - Third trimester of pregnancy; or
  - First or second trimester of pregnancy if the prisoner's medical provider determines that restrictive housing poses a danger of adverse clinical consequences for the prisoner.
- Requires a corrections official to write a report with specified information after placing a pregnant inmate in restrictive housing and provide a copy of the report to the inmate within 12 hours.
- Requires that a pregnant inmate placed in restrictive housing be:
  - Seen by a qualified health care professional at least once every 24 hours;
  - Housed in the least restrictive setting consistent with her health and safety; and
  - Given a medical treatment plan if she does not already have one in place.
- Provides that, if a pregnant inmate needs infirmary care, a specified medical provider must order her admission to the infirmary, and if the inmate passes her due date, she must be admitted to the infirmary until labor begins or until her obstetrician makes other housing arrangements.
- Requires that a pregnant inmate placed in the infirmary be provided the same access to specified classes and privileges as the general population unless her medical provider determines that such access poses a risk of adverse clinical consequences for the inmate or another, and documents such determination in the inmate's medical file.

The bill would have an insignificant fiscal impact on state expenditures. The bill would have an indeterminate fiscal impact on local governments, to the extent additional staff and training are necessary to implement the bill.

The bill provides an effective date of July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1259c.JUA

DATE: 2/11/2020

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Incarcerated Pregnant Women

An estimated 10 percent of women admitted to prisons or jails in the United States are pregnant at the time of their admission.<sup>1</sup> Pregnant women in the criminal justice system are at a particularly high risk, as their health is often compromised by a lack of prenatal care, poor nutrition, and untreated or undertreated chronic medical and psychiatric conditions.<sup>2</sup> Further, pregnant women are often housed alone for days or weeks at a time for medical observation or minor disciplinary infractions.<sup>3</sup> Such isolation puts pregnant women at risk of psychological trauma, dangerous blood clots due to an inability to freely move around, and for having their medical needs overlooked.<sup>4</sup>

##### *Department of Corrections*

The Department of Corrections (“DOC”) assigns female inmates to one of five female prisons in the state based on an inmate classification scheme designed to stabilize total inmate population and meet the needs of individual inmates.<sup>5</sup> All pregnant inmates are housed at Lowell Correctional Institution in Ocala, Florida, the only state prison designed and staffed to care for pregnant and post-partum inmates, for the duration of their pregnancies and for six weeks post-delivery.<sup>6</sup> However, a pregnant inmate is transferred to an outside hospital for delivery, where she remains until discharged by her attending obstetrician.<sup>7</sup>

In FY 2018-19, DOC housed 101 pregnant inmates.<sup>8</sup> When pregnancy is confirmed, DOC refers the pregnant inmate to a licensed physician for obstetrical care for the duration of her pregnancy.<sup>9</sup> A pregnant inmate also receives prenatal counseling, vitamins, exams, and a prenatal diet adjusted for the caloric and nutritional needs of pregnancy.<sup>10</sup>

##### *Department of Juvenile Justice*

The Department of Juvenile Justice (“DJJ”) screens every female youth admitted to a juvenile justice facility and any female youth who reports her menstrual cycle is two or more weeks late for pregnancy.<sup>11</sup> The Designated Health Authority must be notified within 12 hours of a positive pregnancy screening, and a pregnant youth must receive medical care from either an obstetrician or a perinatologist for the duration of her pregnancy.<sup>12</sup> Such medical care must include a routine medical oversight evaluation at least every 30 days, daily monitoring of and observation for pregnancy-related

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<sup>1</sup> Ginnette G. Ferszt, Michelle Palmer, and Christine McGrane, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women*, 22 *Nursing for Women’s Health* 1 (Feb. 2018), [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (last visited Feb. 4, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Sarah McCammon, *Pregnant, Locked Up, and Alone*, <https://www.npr.org/2019/06/16/732109546/pregnant-locked-up-and-alone> (last visited Feb. 4, 2020).

<sup>4</sup> *Id.*

<sup>5</sup> These prisons are Gadsden Correctional Facility (Quincy), Lowell Correctional Institution (Ocala), Florida Women’s Reception Center (Ocala), Hernando Correctional Institution (Brooksville), and Homestead Correctional Institution (Florida City). See Florida Department of Corrections (“DOC”), Agency Analysis of HB 1259, p. 2 (Jan. 14, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See DOC, *supra* note 5 at p. 3.

<sup>9</sup> See DOC, *supra* note 5 at p. 2.

<sup>10</sup> *Id.*

<sup>11</sup> DJJ, *Detention Services: Facility Medical Policies (Procedure No. 8030)*, <http://www.djj.state.fl.us/docs/services/8030-pregnancy7A6980CD83A9.pdf?sfvrsn=2> (last visited Feb. 4, 2020).

<sup>12</sup> *Id.*

medical complications, and modified meals meeting the nutritional needs of pregnancy.<sup>13</sup> In 2019, DJJ housed and treated 65 pregnant youths.<sup>14</sup>

### *Detention Facilities*

The Florida Model Jail Standards<sup>15</sup> (“FMJS”) require that a pregnant inmate in a detention facility receive timely and appropriate prenatal care from a qualified medical practitioner.<sup>16</sup> Such care must include medical examinations, advice on appropriate levels of activity and safety precautions, nutritional guidance, and counseling.<sup>17</sup> In spite of these standards, in April of 2019, a woman incarcerated in the Broward County Jail gave birth alone in an isolation cell without medical assistance during the delivery.<sup>18</sup> The woman was reportedly placed in an isolation cell due to her pregnancy.<sup>19</sup>

### Restrictive Housing - DOC

All inmates in the custody of DOC, including pregnant inmates, are placed in a specified housing status, which may include restrictive housing such as:<sup>20</sup>

- “Administrative confinement,” meaning the temporary removal of an inmate from the general population for security and safety reasons until a more permanent inmate management process concludes.<sup>21</sup>
- “Disciplinary Confinement,” meaning a form of punishment in which an inmate found guilty of violating DOC rules is confined for periods of time to an individual cell based upon authorized penalties for prohibited conduct.<sup>22</sup>
- “Close management,” meaning the confinement of an inmate who demonstrates, through his or her behavior, an inability to live in the general population without abusing the rights and privileges of others or who threatens the institution’s security or the safety of others.<sup>23</sup>
- “Protective management,” meaning the removal of an inmate from the general population for the inmate’s safety and security.<sup>24</sup>
- “Medical isolation,” meaning the confinement of an inmate to a medical isolation cell in the infirmary due to the inmate’s illness or injury.<sup>25</sup>

When an inmate is placed in restrictive housing, the placement must be justified after attempting all other less-restrictive housing options, and the placement must be reviewed by multiple DOC staff members.<sup>26</sup> All DOC staff members are trained to observe inmate behavior for signs of medical or mental health distress, and an inmate may request aid at any time.<sup>27</sup> Further, an inmate in restrictive

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<sup>13</sup> *Id.*

<sup>14</sup> See Florida Department of Juvenile Justice, Agency Analysis of HB 1259, p. 2 (Jan. 31, 2020).

<sup>15</sup> The FMJS are minimum standards which jails across Florida must meet to protect the constitutional rights of those incarcerated. Florida Sheriffs Association, *Florida Model Jail Standards*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited Feb. 4, 2020).

<sup>16</sup> The FMJS R. 7.22 (2019).

<sup>17</sup> *Id.*

<sup>18</sup> Sandra E. Garcia, Ordeal of Woman Who Gave Birth in Florida Jail Cell Prompts Internal Investigation, *The New York Times* (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/woman-gives-birth-jail-cell.html> (last visited Feb. 4, 2020).

<sup>19</sup> *Id.*

<sup>20</sup> See DOC, *supra* note 5 at p. 3.

<sup>21</sup> An inmate may be placed in such confinement if disciplinary charges are pending against the inmate and he or she needs to be temporarily removed from the general population pending a disciplinary hearing, the inmate is received from another prison when classification staff is not available to classify the inmate into the general population, or for other reasons set out in rule. R. 33-602.220(1)-(3), F.A.C.

<sup>22</sup> R. 33-602.222(1)(f), F.A.C.

<sup>23</sup> There are three close management levels, with close management I (“CMI”) being the most restrictive and close management III (“CMIII”) being the least restrictive. An inmate may be placed in CMI for offenses including causing death or injury, taking a hostage, or escaping using violence or a weapon. An inmate may be placed in close management II for offenses including a pattern of predatory actions making the inmate a threat to others or participating in a riot or disturbance. An inmate may be placed in CMIII for offenses including assisting or aiding in an escape attempt or possessing unauthorized drugs. R. 33-601.800(2), F.A.C.

<sup>24</sup> R. 33-602.221(1)(j), F.A.C.

<sup>25</sup> See DOC, *supra* note 5 at p. 3.

<sup>26</sup> See generally Rules 33-602.220, 33-602.221, and 33-602.222, F.A.C.

<sup>27</sup> *Id.*; see also DOC, *supra* note 5 at p. 5.

housing receives regular staff visits and necessary medical care, including a medical evaluation prior to placement, and some inmates retain privileges similar to those of the general population.<sup>28</sup>

### Restrictive Housing - Department of Juvenile Justice

DJJ has implemented the Juvenile Detention Alternatives Initiative (“JDAI”) standards, a widely-recognized set of national best practices for juvenile justice facility conditions.<sup>29</sup> The JDAI standards prohibit placing a youth in solitary confinement for punishment or discipline and limits solitary confinement, when permissible, to no more than four hours.<sup>30</sup> The DJJ uses solitary confinement, known as secured detention, only to house youth pending adjudication, disposition of his or her case, placement in a juvenile detention facility, or when ordered to do so by the court.<sup>31</sup> Solitary confinement is not used for a youth housed in a residential commitment facility or a detention facility, but DJJ does utilize restrictive housing in these settings, including:<sup>32</sup>

- “Medical confinement,” meaning the placement of a youth in a secured room to allow the youth to rest and recover from illness or to prevent the spread of a communicable illness.<sup>33</sup>
- “Behavioral confinement,” meaning the placement of a youth in a secure room during a volatile situation in which a youth’s sudden or unforeseen behavior imminently and substantially threatens the safety of the youth or others.<sup>34</sup>
- “Room restriction,” meaning the temporary confinement of a youth in his or her sleeping quarters when the youth is out of control or a suicide risk.<sup>35</sup>
- “Controlled observation,” meaning the temporary placement of a youth in a separate, safe, and secure observation room when de-escalation strategies are not successful and:
  - There is imminent risk of the youth physically harming him or herself, staff, or others; or
  - The youth is engaged in major property destruction likely to compromise the program’s security or jeopardize the youth’s safety or the safety of others.<sup>36</sup>
- “Precautionary observation,” meaning the constant supervision of a suicide risk youth in a secure designated observation area.<sup>37</sup>

When a youth is placed in restrictive housing, DJJ staff must regularly visit and observe the youth, and in some instances, staff observation must be continuous.<sup>38</sup> A youth in restrictive housing typically loses access to some or all of the privileges granted to other youths, but placement in restrictive housing is limited in duration by administrative rule.<sup>39</sup> Further, if a youth in restrictive housing complains of illness or injury, the youth must receive a timely medical assessment and any necessary treatment.<sup>40</sup>

### Restrictive Housing – Detention Facilities

The FMJS allows segregation of an inmate in a detention facility from the general population for disciplinary reasons in “disciplinary confinement” and for medical reasons in “medical confinement.”<sup>41</sup> The FMJS also allows placement of an inmate in a detention facility in “administrative confinement” to ensure immediate control and supervision when the inmate is a threat to him or herself, to others, or to the detention facility’s safety and security.<sup>42</sup> Incident reports must be created for each confinement

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<sup>28</sup> *Id.*

<sup>29</sup> See DJJ, *Juvenile Detention Alternatives Initiative (JDAI)*, [http://www.djj.state.fl.us/research/latest-initiatives/juvenile-detention-alternatives-initiative-\(jdai\)](http://www.djj.state.fl.us/research/latest-initiatives/juvenile-detention-alternatives-initiative-(jdai)) (last visited Feb. 4, 2020).

<sup>30</sup> See JDAI, *Juvenile Detention Facility Assessment 2014 Update* (Dec. 2014), <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited Feb. 4, 2020).

<sup>31</sup> R. 63G-2.013(58), F.A.C.

<sup>32</sup> See Department of Juvenile Justice, Agency Analysis of SB 624, p. 2 (Feb. 28, 2019).

<sup>33</sup> R. 63G-2.014(50), F.A.C.

<sup>34</sup> R. 63G-2.014(7), F.A.C.

<sup>35</sup> R. 63E-7.107(15), F.A.C.

<sup>36</sup> R. 63E-7.107(14)(a), F.A.C.

<sup>37</sup> R. 63G-2.014(52), F.A.C.

<sup>38</sup> See *generally* Rules 63E-7.107 and 63G-2.022, F.A.C.

<sup>39</sup> For example, a youth may be placed in controlled observation for no more than two hours, unless the program director extends the placement in two-hour increments for up to 24 hours. See *generally* Rules 63E-7.107 and 63G-2.022, F.A.C.

<sup>40</sup> See *generally* Rules 63E-7.107 and 63G-2.022, F.A.C.

<sup>41</sup> The FMJS R. 1.17 (2019).

<sup>42</sup> The FMJS R. 13.13 (2019).

placement, and any person charged with a disciplinary violation is entitled to a disciplinary hearing within seven working days of the incident.<sup>43</sup>

An inmate in administrative confinement receives housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except where an inmate's classification status or special needs<sup>44</sup> justify restrictions.<sup>45</sup> Inmates with special needs in confinement must be checked by medical staff at least every 72 hours, and a physician must examine an inmate in medical isolation within 48 hours after his or her confinement.<sup>46</sup> Further, facility staff must visit the inmate at least twice a day and document the inmate's general condition with each visit.<sup>47</sup>

## Effect of Proposed Changes

CS/CS/HB 1259 prohibits DOC, DJJ, and any county, municipal, or private detention facility from involuntarily placing a pregnant inmate in restrictive housing,<sup>48</sup> absent a determination by the corrections official<sup>49</sup> of the correctional institution that such placement is necessary to protect the health and safety of the inmate or others or the institution's security and order and that there are no less restrictive means available, in the:

- Third trimester of pregnancy; or
- First or second trimester of pregnancy if inmate's medical provider at the correctional institution determines that restrictive housing poses a danger of adverse clinical consequences for the prisoner and documents such determination in the inmate's medical file.

The bill provides that, after placing a prisoner in restrictive housing, the corrections official must write a report stating the reason restrictive housing is necessary, the reason less restrictive means are unavailable, and whether the inmate's medical provider at the correctional institution objects to the placement. The corrections official must also provide a copy of the report to the inmate within 12 hours of her placement.

Further, the bill requires that a pregnant inmate placed in restrictive housing be:

- Seen by a qualified health care professional at least once every 24 hours;
- Housed in the least restrictive setting consistent with the inmate's health and safety; and
- Given a medical treatment plan developed and approved by the inmate's medical provider at the correctional institution if she does not already have one in place.

The bill also requires that, if a pregnant inmate needs infirmary care, a primary care nurse practitioner or obstetrician must order the inmate's admission to the infirmary. If the inmate passes her due date, she must be admitted to the infirmary until labor begins or until her obstetrician makes other housing arrangements. A pregnant inmate placed in the infirmary must be provided the same access to outdoor recreation, visitation, mail, and telephone calls, and other privileges and classes available to the general population unless her medical provider determines that such access poses a danger of adverse clinical consequences for the inmate or another and documents such determination in the inmate's medical file.

The bill defines "Restrictive Housing" as housing some prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior and privileges, to include medical isolation or infirmary placement.

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<sup>43</sup> The FMJS R. 13.8 (2019).

<sup>44</sup> The FMJS defines "special needs inmates" as "inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic, or drug addicted going through withdrawal and in need of close monitoring." Rule 5.4 (2019).

<sup>45</sup> The FMJS R. 13.13(b) (2019).

<sup>46</sup> The FMJS R. 13.13(c) (2019).

<sup>47</sup> The FMJS R. 13.14 (2019).

<sup>48</sup> The bill defines "restrictive housing" as housing some prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges. The term also includes placing inmates in medical isolation or in the infirmary.

<sup>49</sup> "Corrections official" means the official responsible for oversight of a correctional institution or his or her designee. S. 944.241(1)(b), F.S.

The bill provides definitions for Gestation, Trimester, First Trimester, Second Trimester and Third Trimester. These definitions are identical to existing definitions provided in s. 390.011, Florida Statutes.

The bill provides an effective date of July 1, 2020.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 944.241, F.S., relating to shackling of incarcerated pregnant women.

**Section 2:** Provides an effective date of July 1, 2020.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill would have an insignificant impact on the Department of Corrections, which could be absorbed within existing resources.

The Department of Juvenile Justice reviewed the bill and determined it would not have a significant fiscal impact on the Department.<sup>50</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may increase costs to local governments by an indeterminate amount, to the extent additional jail staff and training are necessary to implement the bill.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of article VII, section 18 of the Florida Constitution may apply because the bill would require local jails and detention facilities to follow specific procedures when placing a pregnant inmate into restrictive housing, which includes medical isolation and infirmary placement. The additional requirements may increase workload of the local jails and

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<sup>50</sup> Department of Juvenile Justice, *2020 Agency Legislative Budget Analysis: CS/HB 1259*, February 6, 2020, On File with the House Justice Appropriations Subcommittee.

detention facilities by an indeterminate amount. An exemption may apply if the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOC and DJJ to adopt rules to implement restrictive housing provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Limited the prohibition against involuntarily placing a pregnant prisoner in restrictive housing to the:
  - Third trimester of pregnancy; or
  - First or second trimester if the prisoner's medical provider determines that restrictive housing poses a danger of adverse clinical consequences for the prisoner and documents such determination in the prisoner's medical file.
- Modified a restrictive housing prohibition exception from a determination of extraordinary circumstances to a determination that restrictive housing is necessary to protect a pregnant prisoner's health and safety or to preserve the prison's security and order when there are no less restrictive housing options available.
- Required the corrections official's pre-placement report to:
  - State whether the prisoner's medical provider objects to the placement.
  - Be given to the prisoner within 12 hours of her placement in restrictive housing.
- Reduced the frequency with which a pregnant prisoner in restrictive housing must be examined by a medical provider from every eight hours to every 24 hours.
- Clarified that the treatment plan a pregnant prisoner in restrictive housing must be given is a medical treatment plan and requires such a plan only if she does not already have one in place.
- Specified that a pregnant prisoner in the infirmary must have the same access to specified privileges as a prisoner in the general population unless her medical provider determines that such access poses a danger of adverse clinical consequences and documents such determination in the prisoner's medical file.
- Required DOC and DJJ to adopt rules implementing the restrictive housing prohibitions by September 1, 2020.
- Defined "gestation" and "trimester."

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On February 11, 2020, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changes the requirement that a report be written relating to placing a pregnant prisoner in restrictive housing from before the placement occurs to after the placement occurs.
- Changes the requirement that a pregnant prisoner in restrictive housing be "examined at least every 24 hours by the individual overseeing prenatal care and medical treatment at the correctional institution", to "seen by a qualified health care professional at least once every 24 hours".

This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.