

HB 1259

2020

1 A bill to be entitled
2 An act relating to restrictive housing for
3 incarcerated pregnant women; amending s. 944.241,
4 F.S.; defining the term "restrictive housing";
5 prohibiting the involuntary placement of pregnant
6 prisoners in restrictive housing; providing
7 exceptions; requiring corrections officials to write a
8 specified report if an extraordinary circumstance
9 necessitates placing a pregnant prisoner in
10 restrictive housing; providing requirements for the
11 report; requiring corrections officials to review such
12 reports at specified intervals; requiring a copy of
13 such reports and reviews to be provided to pregnant
14 prisoners in restrictive housing; providing
15 requirements for the treatment of pregnant prisoners
16 placed in restrictive housing; requiring pregnant
17 prisoners to be admitted to the infirmary under
18 certain circumstances; providing certain rights for
19 pregnant prisoners admitted to the infirmary;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

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

26 | 944.241 ~~Shackling of Incarcerated pregnant women;~~
27 | restraints; involuntary medical isolation.-

28 | (1) SHORT TITLE.-This section may be cited as the "Healthy
29 | Pregnancies for Incarcerated Women Act."

30 | (2) DEFINITIONS.-As used in this section, the term:

31 | (a) "Correctional institution" means any facility under
32 | the authority of the department or the Department of Juvenile
33 | Justice, a county or municipal detention facility, or a
34 | detention facility operated by a private entity.

35 | (b) "Corrections official" means the official who is
36 | responsible for oversight of a correctional institution, or his
37 | or her designee.

38 | (c) "Department" means the Department of Corrections.

39 | (d) "Extraordinary circumstance" means a substantial
40 | flight risk or some other extraordinary medical or security
41 | circumstance that dictates restraints be used to ensure the
42 | safety and security of the prisoner, the staff of the
43 | correctional institution or medical facility, other prisoners,
44 | or the public.

45 | (e) "Labor" means the period of time before a birth during
46 | which contractions are of sufficient frequency, intensity, and
47 | duration to bring about effacement and progressive dilation of
48 | the cervix.

49 | (f) "Postpartum recovery" means, as determined by her
50 | physician, the period immediately following delivery, including

51 the recovery period when a woman is in the hospital or infirmary
52 following birth, up to 24 hours after delivery unless the
53 physician after consultation with the department or correctional
54 institution recommends a longer period of time.

55 (g) "Prisoner" means any person incarcerated or detained
56 in any correctional institution who is accused of, convicted of,
57 sentenced for, or adjudicated delinquent for a violation of
58 criminal law or the terms and conditions of parole, probation,
59 community control, pretrial release, or a diversionary program.
60 For purposes of this section, the term includes any woman
61 detained under the immigration laws of the United States at any
62 correctional institution.

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

69 (i) "Restrictive housing" means housing some prisoners
70 separately from the general population of a correctional
71 institution and imposing restrictions on their movement,
72 behavior, and privileges. The term includes placing the prisoner
73 in medical isolation or in the infirmary.

74 (3) RESTRAINT OF PRISONERS.—

75 (a) Restraints may not be used on a prisoner who is known

76 to be pregnant during labor, delivery, and postpartum recovery,
77 unless the corrections official makes an individualized
78 determination that the prisoner presents an extraordinary
79 circumstance, except that:

80 1. The physician may request that restraints not be used
81 for documentable medical purposes. The correctional officer,
82 correctional institution employee, or other officer accompanying
83 the pregnant prisoner may consult with the medical staff;
84 however, if the officer determines there is an extraordinary
85 public safety risk, the officer is authorized to apply
86 restraints as limited by subparagraph 2.

87 2. ~~Under no circumstances shall~~ Leg, ankle, or waist
88 restraints may not be used on any pregnant prisoner who is in
89 labor or delivery.

90 (b) If restraints are used on a pregnant prisoner pursuant
91 to paragraph (a):

92 1. The type of restraint applied and the application of
93 the restraint must be done in the least restrictive manner
94 necessary; and

95 2. The corrections official shall make written findings
96 within 10 days after the use of restraints as to the
97 extraordinary circumstance that dictated the use of the
98 restraints. These findings shall be kept on file by the
99 department or correctional institution for at least 5 years.

100 (c) During the third trimester of pregnancy or when

101 requested by the physician treating a pregnant prisoner, unless
102 there are significant documentable security reasons noted by the
103 department or correctional institution to the contrary that
104 would threaten the safety of the prisoner, the unborn child, or
105 the public in general:

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

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

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

114 (4) ENFORCEMENT.—

115 (a) Notwithstanding any relief or claims afforded by
116 federal or state law, any prisoner who is restrained in
117 violation of this section may file a grievance with the
118 correctional institution, and be granted a 45-day extension if
119 requested in writing pursuant to rules promulgated by the
120 correctional institution.

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

124 (5) RESTRICTIVE HOUSING.—

125 (a) Except as provided in paragraph (b), a pregnant

126 prisoner may not be involuntarily placed in restrictive housing.

127 (b) A pregnant prisoner may be involuntarily placed in
 128 restrictive housing only if the corrections official of the
 129 correctional institution, in consultation with the individual
 130 overseeing prenatal care and medical treatment at the
 131 correctional institution, determines that an extraordinary
 132 circumstance exists such that restrictive housing is necessary
 133 and that there are no less restrictive means available.

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

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

138 2. The corrections official shall review the report at
 139 least every 24 hours to confirm that the extraordinary
 140 circumstances cited in the report still exist. A copy of the
 141 report and each review must be provided to the prisoner.

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

- 144 1. Examined at least every 8 hours by the person
 145 overseeing prenatal care and medical treatment in the facility;
- 146 2. Housed in the least restrictive setting consistent with
 147 the health and safety of the individual; and
- 148 3. Given an intensive treatment plan developed and
 149 approved by the person overseeing prenatal care and medical
 150 treatment at the facility.

151 (d) If a pregnant prisoner needs infirmary care, a primary
152 care nurse practitioner or obstetrician must provide an order
153 for the prisoner to be admitted to the infirmary. If the
154 prisoner has passed her due date, she must be admitted to the
155 infirmary until labor begins or until the obstetrician makes
156 other housing arrangements. A pregnant prisoner who has been
157 placed in the infirmary shall be provided:

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

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

162 (6) ~~(5)~~ NOTICE TO PRISONERS.—

163 (a) By September 1, 2012, the department and the
164 Department of Juvenile Justice shall adopt rules pursuant to ss.
165 120.536(1) and 120.54 to administer this section.

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

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