

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.; providing definitions; prohibiting the
5 involuntary placement of pregnant prisoners in
6 restrictive housing under specified circumstances;
7 providing exceptions; requiring corrections officials
8 to write a specified report if circumstances
9 necessitate placing a pregnant prisoner in restrictive
10 housing; providing requirements for the report;
11 requiring a copy of such reports to be provided to
12 pregnant prisoners in restrictive housing; providing
13 requirements for the treatment of pregnant prisoners
14 placed in restrictive housing; requiring pregnant
15 prisoners to be admitted to the infirmary under
16 certain circumstances; providing certain rights for
17 pregnant prisoners admitted to the infirmary;
18 requiring the Department of Corrections and the
19 Department of Juvenile Justice to adopt rules by a
20 specified date; providing an effective date.

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

23
24 Section 1. Section 944.241, Florida Statutes, is amended
25 to read:

26 944.241 ~~Shackling of~~ Incarcerated pregnant women;
 27 restraints; restrictive housing.—

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) "Gestation" means the development of a human embryo or
 46 fetus between fertilization and birth.

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

51 (g)~~(f)~~ "Postpartum recovery" means, as determined by her
52 physician, the period immediately following delivery, including
53 the recovery period when a woman is in the hospital or infirmary
54 following birth, up to 24 hours after delivery unless the
55 physician after consultation with the department or correctional
56 institution recommends a longer period of time.

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

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

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

76 (k) "Trimester" means one of the following three distinct
77 periods of time in the duration of a pregnancy:

78 1. "First trimester," which is the period of time from
79 fertilization through the end of the 11th week of gestation.

80 2. "Second trimester," which is the period of time from
81 the beginning of the 12th week of gestation through the end of
82 the 23rd week of gestation.

83 3. "Third trimester," which is the period of time from the
84 beginning of the 24th week of gestation through birth.

85 (3) RESTRAINT OF PRISONERS.—

86 (a) Restraints may not be used on a prisoner who is known
87 to be pregnant during labor, delivery, and postpartum recovery,
88 unless the corrections official makes an individualized
89 determination that the prisoner presents an extraordinary
90 circumstance, except that:

91 1. The physician may request that restraints not be used
92 for documentable medical purposes. The correctional officer,
93 correctional institution employee, or other officer accompanying
94 the pregnant prisoner may consult with the medical staff;
95 however, if the officer determines there is an extraordinary
96 public safety risk, the officer is authorized to apply
97 restraints as limited by subparagraph 2.

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

101 (b) If restraints are used on a pregnant prisoner pursuant
102 to paragraph (a):

103 1. The type of restraint applied and the application of
104 the restraint must be done in the least restrictive manner
105 necessary; and

106 2. The corrections official shall make written findings
107 within 10 days after the use of restraints as to the
108 extraordinary circumstance that dictated the use of the
109 restraints. These findings shall be kept on file by the
110 department or correctional institution for at least 5 years.

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

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

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

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

125 (4) ENFORCEMENT.—

126 (a) Notwithstanding any relief or claims afforded by
 127 federal or state law, any prisoner who is restrained in
 128 violation of this section may file a grievance with the
 129 correctional institution, and be granted a 45-day extension if
 130 requested in writing pursuant to rules promulgated by the
 131 correctional institution.

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

135 (5) RESTRICTIVE HOUSING.—

136 (a) Except as provided in paragraph (b) or paragraph (d),
 137 a pregnant prisoner may not be involuntarily placed in
 138 restrictive housing during the:

139 1. Third trimester of pregnancy.

140 2. First or second trimester of pregnancy, if the
 141 individual overseeing prenatal care and medical treatment at the
 142 correctional institution determines that restrictive housing
 143 poses a danger of adverse clinical consequences for the prisoner
 144 and documents such determination in the prisoner's medical file.

145 (b) A pregnant prisoner as described in subparagraph (a)1.
 146 or subparagraph (a)2. may be involuntarily placed in restrictive
 147 housing only if the corrections official of the correctional
 148 institution makes an individualized determination that
 149 restrictive housing is necessary to protect the health and
 150 safety of the prisoner or others or to preserve the security and

151 order of the correctional institution and that there are no less
152 restrictive means available. After placing a pregnant prisoner
153 in restrictive housing under this paragraph, the corrections
154 official must write a report stating:

155 1. The individualized reason restrictive housing is
156 necessary.

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

158 3. Whether the individual overseeing prenatal care and
159 medical treatment at the correctional institution objects to the
160 placement.

161
162 The corrections official must provide a copy of such report to
163 the prisoner within 12 hours after placing the prisoner in
164 restrictive housing.

165 (c) A pregnant prisoner who is placed in restrictive
166 housing under this section must be:

167 1. Seen by a qualified health care professional at least
168 once every 24 hours.

169 2. Housed in the least restrictive setting consistent with
170 the health and safety of the prisoner.

171 3. Given a medical treatment plan developed and approved
172 by the individual overseeing prenatal care and medical treatment
173 at the correctional institution if the inmate does not already
174 have such a treatment plan in place.

175 (d) If a pregnant prisoner needs infirmary care, a primary

176 care nurse practitioner or obstetrician must provide an order
177 for the prisoner to be admitted to the infirmary. If the
178 prisoner has passed her due date, she must be admitted to the
179 infirmary until labor begins or until the treating obstetrician
180 makes other housing arrangements. A pregnant prisoner who has
181 been placed in the infirmary must be provided the same access to
182 outdoor recreation, visitation, mail, telephone calls, and other
183 privileges and classes available to the general population
184 unless the individual overseeing prenatal care and medical
185 treatment at the correctional institution determines that such
186 access poses a danger of adverse clinical consequences for the
187 prisoner or others and documents such determination in the
188 prisoner's medical file.

189 (6)~~(5)~~ NOTICE TO PRISONERS.—

190 (a) By September 1, 2020 ~~2012~~, the department and the
191 Department of Juvenile Justice must ~~shall~~ adopt rules pursuant
192 to ss. 120.536(1) and 120.54 to administer this section.

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

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