

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 placed in designated medical housing
16 unit or admitted to the infirmary under certain
17 circumstances; providing certain rights for pregnant
18 prisoners placed in designated medical housing unit or
19 admitted to the infirmary; requiring the Department of
20 Corrections and the Department of Juvenile Justice to
21 adopt rules by a specified date; providing an
22 effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

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

28 944.241 ~~Shackling of~~ Incarcerated pregnant women;
 29 restraints; restrictive housing.-

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

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

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

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

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

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

47 (e) "Gestation" means the development of a human embryo or
 48 fetus between fertilization and birth.

49 (f) ~~(e)~~ "Labor" means the period of time before a birth
 50 during which contractions are of sufficient frequency,

51 intensity, and duration to bring about effacement and
52 progressive dilation of the cervix.

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

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

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

73 (j) "Restrictive housing" means housing some prisoners
74 separately from the general population of a correctional
75 institution and imposing restrictions on their movement,

76 behavior, and privileges. The term includes placing the prisoner
77 in medical isolation, in a medical housing unit, or in the
78 infirmary.

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

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

83 2. "Second trimester," which is the period of time from
84 the beginning of the 12th week of gestation through the end of
85 the 23rd week of gestation.

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

88 (3) RESTRAINT OF PRISONERS.—

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

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

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

104 (b) If restraints are used on a pregnant prisoner pursuant
105 to paragraph (a):

106 1. The type of restraint applied and the application of
107 the restraint must be done in the least restrictive manner
108 necessary; and

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

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

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

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

124 (d) In addition to the specific requirements of paragraphs
125 (a)-(c), any restraint of a prisoner who is known to be pregnant

126 | must be done in the least restrictive manner necessary in order
 127 | to mitigate the possibility of adverse clinical consequences.

128 | (4) ENFORCEMENT.—

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

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

138 | (5) RESTRICTIVE HOUSING.—

139 | (a) Except as provided in paragraph (b) or paragraph (d),
 140 | a pregnant prisoner may not be involuntarily placed in
 141 | restrictive housing during the:

142 | 1. Third trimester of pregnancy.

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

148 | (b) A pregnant prisoner as described in subparagraph (a)1.
 149 | or subparagraph (a)2. may be involuntarily placed in restrictive
 150 | housing only if the corrections official of the correctional

151 institution makes an individualized determination that
152 restrictive housing is necessary to protect the health and
153 safety of the prisoner or others or to preserve the security and
154 order of the correctional institution and that there are no less
155 restrictive means available. After placing a pregnant prisoner
156 in restrictive housing under this paragraph, the corrections
157 official must write a report stating:

158 1. The individualized reason restrictive housing is
159 necessary.

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

161 3. Whether the individual overseeing prenatal care and
162 medical treatment at the correctional institution objects to the
163 placement.

164
165 The corrections official must provide a copy of such report to
166 the prisoner within 12 hours after placing the prisoner in
167 restrictive housing.

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

170 1. Seen by a qualified health care professional at least
171 once every 24 hours.

172 2. Housed in the least restrictive setting consistent with
173 the health and safety of the prisoner.

174 3. Given a medical treatment plan developed and approved
175 by the individual overseeing prenatal care and medical treatment

176 at the correctional institution if the inmate does not already
177 have such a treatment plan in place.

178 (d) If a pregnant prisoner needs medical care, a primary
179 care nurse practitioner or obstetrician must provide an order
180 for the prisoner to be placed in designated medical housing unit
181 or admitted to the infirmary. If the prisoner has passed her due
182 date, she must be placed in designated medical housing unit or
183 admitted to the infirmary until labor begins. A pregnant
184 prisoner who has been placed in designated medical housing unit
185 or admitted to the infirmary must be provided the same access to
186 outdoor recreation, visitation, mail, telephone calls, and other
187 privileges and classes available to the general population
188 unless the corrections official, after consulting with the
189 individual overseeing prenatal care and medical treatment at the
190 correctional institution, determines that such access poses a
191 danger to the safety and security of the correctional
192 institution or the individual overseeing prenatal care and
193 medical treatment at the correctional institution determines
194 that such access poses a danger of adverse clinical consequences
195 for the prisoner or others and documents such determination in
196 the prisoner's medical file.

197 (6) ~~(5)~~ NOTICE TO PRISONERS.—

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

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

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