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CS/CS/HB 1259, Engrossed 2

2020 Legislature

1
2 An act relating to incarcerated pregnant women;
3 amending s. 944.241, F.S.; amending the short title;
4 providing definitions; prohibiting the involuntary
5 placement of pregnant prisoners in restrictive
6 housing; providing exceptions; requiring corrections
7 officials to write a specified report if circumstances
8 necessitate placing a pregnant prisoner in restrictive
9 housing; providing requirements for the report;
10 requiring a copy of such reports to be provided to
11 pregnant prisoners in restrictive housing; providing
12 requirements for the treatment of pregnant prisoners
13 placed in restrictive housing; requiring pregnant
14 prisoners to be placed in a designated medical housing
15 unit or admitted to the infirmary under certain
16 circumstances; providing certain rights for pregnant
17 prisoners placed in a designated medical housing unit
18 or admitted to the infirmary; expanding enforcement
19 provisions to provide for grievances for violations
20 relating to restrictive housing of pregnant prisoners;
21 requiring the Department of Corrections and the
22 Department of Juvenile Justice to adopt rules;
23 requiring detention facilities to develop specified
24 written policies and procedures; providing an
25 effective date.

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

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 authority of the department or the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.

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

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

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

(e) "Invasive body search" means a search involving a manual inspection of the breasts or a manual inspection using

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51 touch, insertion, or probing of the cavities of the human body,
52 including the genitals, buttocks, or anus. An invasive body
53 search may only be conducted according to a correctional
54 institution's written rules, policies, or procedures as required
55 by subsection (6).

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

60 (g)~~(f)~~ "Postpartum recovery" means, as determined by her
61 physician, the period immediately following delivery, including
62 the recovery period when a woman is in the hospital or infirmary
63 following birth, up to 24 hours after delivery unless the
64 physician after consultation with the department or correctional
65 institution recommends a longer period of time.

66 (h) "Pregnant prisoner" means any prisoner whose pregnancy
67 is confirmed by or otherwise known to a qualified healthcare
68 professional at the correctional institution.

69 (i)~~(g)~~ "Prisoner" means any person incarcerated or
70 detained in any correctional institution who is accused of,
71 convicted of, sentenced for, or adjudicated delinquent for a
72 violation of criminal law or the terms and conditions of parole,
73 probation, community control, pretrial release, or a
74 diversionary program. For purposes of this section, the term
75 includes any woman detained under the immigration laws of the

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76 United States at any correctional institution.

77 (j)~~(h)~~ "Restraints" means any physical restraint or
 78 mechanical device used to control the movement of a prisoner's
 79 body or limbs, including, but not limited to, flex cuffs, soft
 80 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
 81 irons, belly chains, a security or tether chain, or a convex
 82 shield.

83 (k) "Restrictive housing" means housing a prisoner
 84 separately from the general population of a correctional
 85 institution and imposing restrictions on her movement, behavior,
 86 and privileges. The term includes placing a prisoner in medical
 87 isolation, in a medical housing unit, or in the infirmary.

88 (3) RESTRAINT OF PRISONERS.—

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

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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 pregnant prisoner ~~who is known to be~~

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

129 (4) RESTRICTIVE HOUSING.—

130 (a) Except as provided in paragraph (b) or paragraph (d),
 131 a pregnant prisoner may not be involuntarily placed in
 132 restrictive housing.

133 (b) A pregnant prisoner may be involuntarily placed in
 134 restrictive housing if the corrections official of the
 135 correctional institution makes an individualized determination
 136 that restrictive housing is necessary to protect the health and
 137 safety of the pregnant prisoner or others or to preserve the
 138 security and order of the correctional institution and that
 139 there are no less restrictive means available. After placing a
 140 pregnant prisoner in restrictive housing under this paragraph,
 141 the corrections official must write a report stating:

142 1. The individualized reason restrictive housing is
 143 necessary.

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

145 3. Whether a qualified healthcare professional at the
 146 correctional institution objects to the placement.

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 148 The corrections official must provide a copy of such report to
 149 the pregnant prisoner within 12 hours after placing the prisoner
 150 in restrictive housing.

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- 151 (c) A pregnant prisoner who is placed in restrictive
152 housing under this section must be:
- 153 1. Seen by a qualified healthcare professional at least
154 once every 24 hours.
- 155 2. Observed by a correctional officer at least once every
156 hour.
- 157 3. Housed in the least restrictive setting consistent with
158 the health and safety of the pregnant prisoner.
- 159 4. Given a medical treatment plan developed and approved
160 by a qualified healthcare professional at the correctional
161 institution if the pregnant prisoner does not already have such
162 a treatment plan in place.
- 163 (d)1. If a pregnant prisoner needs medical care, a primary
164 care nurse practitioner or obstetrician must provide an order
165 for the pregnant prisoner to be placed in a designated medical
166 housing unit or admitted to the infirmary.
- 167 2. If a pregnant prisoner has passed her due date, she
168 must be placed in a designated medical housing unit or admitted
169 to the infirmary until labor begins. A pregnant prisoner who has
170 been placed in a designated medical housing unit or admitted to
171 the infirmary must be provided the same access to outdoor
172 recreation, visitation, mail, telephone calls, and other
173 privileges and classes available to the general population
174 unless:
- 175 a. The corrections official, after consulting with a

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176 qualified healthcare professional at the correctional
 177 institution, determines that such access poses a danger to the
 178 safety and security of the correctional institution; or

179 b. A qualified healthcare professional at the correctional
 180 institution determines that such access poses a danger of
 181 adverse clinical consequences for the pregnant prisoner or
 182 others and documents such determination in the pregnant
 183 prisoner's medical file.

184 (5)~~(4)~~ ENFORCEMENT.—

185 (a) Notwithstanding any relief or claims afforded by
 186 federal or state law, any prisoner who is restrained or placed
 187 in restrictive housing in violation of this section may file a
 188 grievance with the correctional institution, and be granted a
 189 45-day extension if requested in writing pursuant to rules
 190 promulgated by the correctional institution.

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

195 (6)~~(5)~~ NOTICE TO PRISONERS.—

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

199 (b) Each correctional institution shall inform female
 200 prisoners of the rules developed pursuant to paragraph (a) upon

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201 admission to the correctional institution, including the
202 policies and practices in the prisoner handbook, and post the
203 policies and practices in locations in the correctional
204 institution where such notices are commonly posted and will be
205 seen by female prisoners, including common housing areas and
206 medical care facilities.

207 (c) Each county or municipal detention facility and each
208 detention facility operated by a private entity shall adopt
209 written policies and procedures relating to the use of
210 restraints and the performance of invasive body searches on
211 pregnant prisoners.

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