

By Senator Pizzo

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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:

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

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

31 (a) "Correctional institution" means any facility under the  
32 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 flight  
40 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 in  
56 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,

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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 mechanical  
64 device used to control the movement of a prisoner's body or  
65 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

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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 the  
93 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

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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 overseeing  
145 prenatal care and medical treatment in the facility;

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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 approved  
149 by the person overseeing prenatal care and medical treatment at  
150 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, mail,  
159 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 Department  
164 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)  
165 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.