

By the Committee on Criminal Justice; and Senator Pizzo

591-02249-20

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1 A bill to be entitled
2 An act relating to incarcerated pregnant women;
3 amending s. 944.241, F.S.; amending the short title;
4 redefining the term "extraordinary circumstance";
5 defining the terms "invasive body cavity search" and
6 "restrictive housing"; revising the circumstances
7 under which a prisoner who is known to be pregnant may
8 not be restrained; specifying conditions under which
9 restraints may be used; requiring that invasive body
10 cavity searches on a pregnant prisoner be conducted by
11 a medical professional; providing an exception;
12 prohibiting the involuntary placement of pregnant
13 prisoners in restrictive housing; providing
14 exceptions; requiring corrections officials to write a
15 specified report if an extraordinary circumstance
16 necessitates placing a pregnant prisoner in
17 restrictive housing; providing requirements for the
18 report; requiring corrections officials to review such
19 reports at specified intervals; requiring a copy of
20 such reports and reviews to be provided to pregnant
21 prisoners in restrictive housing; providing
22 requirements for the treatment of pregnant prisoners
23 placed in restrictive housing; requiring pregnant
24 prisoners to be admitted to the infirmary under
25 certain circumstances; providing certain rights for
26 pregnant prisoners admitted to the infirmary;
27 providing an effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

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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 or restrictive housing 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 cavity search" means a search that involves a manual inspection using touch, insertion, or probing of the openings, cavities, and orifices of the human body, including, but not limited to the genitals, buttocks, anus, or breasts that is not conducted for a medical purpose.

(f) ~~(e)~~ "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and

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

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

80 (j) "Restrictive housing" means the placement of pregnant
81 prisoners separately from the general population of a
82 correctional institution and imposing restrictions on their
83 movement, behavior, and privileges solely based on the condition
84 of being pregnant. The term includes placing the prisoner in
85 medical isolation or in the infirmary.

86 (3) RESTRAINT OF PRISONERS.—

87 (a) Except as provided in paragraph (b), restraints may not

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88 be used on a prisoner who is known to be pregnant:

89 1. If any doctor, nurse, or other health professional
90 treating the prisoner in labor, in delivery, or in postpartum
91 recovery requests that restraints not be used due to a
92 documentable medical purpose. If the doctor, nurse, or other
93 health professional makes such a request, the correctional
94 officer or other law enforcement officer accompanying the
95 prisoner must immediately remove all restraints.

96 2. During transport, labor, delivery, or and postpartum
97 recovery, unless the corrections official makes an
98 individualized determination that the prisoner presents an
99 extraordinary circumstance., except that:

100 ~~1. The physician may request that restraints not be used~~
101 ~~for documentable medical purposes. The correctional officer,~~
102 ~~correctional institution employee, or other officer accompanying~~
103 ~~the pregnant prisoner may consult with the medical staff;~~
104 ~~however,~~ If the corrections official officer determines there is
105 an extraordinary public safety risk, the official may officer is
106 authorized to apply restraints as limited by paragraph (b)
107 subparagraph 2.

108 (b) A restraint may be used on a prisoner who is known to
109 be pregnant or in postpartum recovery only if all of the
110 following apply:

111 1. The corrections official makes an individualized
112 determination that the prisoner presents an extraordinary
113 circumstance.

114 2. The restraints used are the least restrictive necessary.

115 3. If wrist restraints are used, the restraints are applied
116 in the front of the prisoner so that she may protect herself in

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117 the event of a forward fall.

118 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
119 ~~restraints are not be used on any pregnant prisoner who is in~~
120 ~~labor or delivery.~~

121 ~~(b) If restraints are used on a pregnant prisoner pursuant~~
122 ~~to paragraph (a):~~

123 ~~1. The type of restraint applied and the application of the~~
124 ~~restraint must be done in the least restrictive manner~~
125 ~~necessary; and~~

126 ~~(c)2. The corrections official shall make written findings~~
127 ~~within 10 days after the use of restraints as to the~~
128 ~~extraordinary circumstance that dictated the use of the~~
129 ~~restraints. These findings shall be kept on file by the~~
130 ~~department or correctional institution for at least 5 years.~~

131 ~~(d) A pregnant prisoner who is transported by a~~
132 ~~correctional institution must be transported using a restraint~~
133 ~~that is the least restrictive necessary. A correctional~~
134 ~~institution that uses restraints on a pregnant prisoner during~~
135 ~~transport must comply with the written findings required in~~
136 ~~paragraph (c).~~

137 ~~(e) During the third trimester of pregnancy or when~~
138 ~~requested by the physician treating a pregnant prisoner, unless~~
139 ~~there are significant documentable security reasons noted by the~~
140 ~~department or correctional institution to the contrary that~~
141 ~~would threaten the safety of the prisoner, the unborn child, or~~
142 ~~the public in general:~~

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

144 ~~2. If wrist restraints are used, they must be applied in~~
145 ~~the front so the pregnant prisoner is able to protect herself in~~

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146 ~~the event of a forward fall.~~

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

151 (4) INVASIVE BODY CAVITY SEARCHES.—

152 (a) Except as provided under paragraph (b), an invasive
153 body cavity search of a pregnant prisoner may be conducted only
154 by a medical professional.

155 (b) A correctional officer may conduct an invasive body
156 cavity search of a pregnant prisoner only if the officer has a
157 reasonable belief that the prisoner is concealing contraband. An
158 officer who conducts an invasive body cavity search must submit
159 a written report to the corrections official within 72 hours
160 after the search. The report must:

- 161 1. Explain the reasons for the search; and
- 162 2. Identify any contraband recovered in the search.

163 (5) RESTRICTIVE HOUSING.—

164 (a) Except as provided in paragraph (b), a pregnant
165 prisoner may not be involuntarily placed in restrictive housing.
166 This subsection does not prohibit a corrections official from
167 placing a pregnant prisoner in restrictive housing for
168 disciplinary violations or to address security risks to the
169 pregnant prisoner, other prisoners, or staff directly related to
170 the pregnant prisoner provided the corrections official complies
171 with the reporting requirements of subparagraph (b)1.

172 (b) A pregnant prisoner may be involuntarily placed in
173 restrictive housing only if the corrections official of the
174 correctional institution, in consultation with the medical staff

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175 overseeing prenatal care and medical treatment at the
176 correctional institution, determines that an extraordinary
177 circumstance exists such that restrictive housing is necessary
178 and that there are no less restrictive means available.

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

181 a. The extraordinary circumstance that is present; and

182 b. The reason less restrictive means are not available.

183 2. The corrections official shall review the report at
184 least every 24 hours to confirm that the extraordinary
185 circumstance cited in the report still exist. A copy of the
186 report and each review must be provided to the pregnant
187 prisoner.

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

190 1. Examined at least every 8 hours by the medical staff
191 overseeing prenatal care and medical treatment in the facility;

192 2. Housed in the least restrictive setting consistent with
193 the health and safety of the pregnant prisoner; and

194 3. Given an intensive treatment plan developed and approved
195 by the medical staff overseeing prenatal care and medical
196 treatment at the facility.

197 (d) If a pregnant prisoner needs infirmary care, an
198 authorized medical staff must provide an order for the pregnant
199 prisoner to be admitted to the infirmary. If the pregnant
200 prisoner has passed her due date, she must be admitted to the
201 infirmary until labor begins or until other housing arrangements
202 are made. A pregnant prisoner who has been placed in the
203 infirmary shall be provided:

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

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

208 ~~(6)~~ ~~(4)~~ ENFORCEMENT.—

209 (a) Notwithstanding any relief or claims afforded by
210 federal or state law, any prisoner who is restrained in
211 violation of this section may file a grievance with the
212 correctional institution, and be granted a 45-day extension if
213 requested in writing pursuant to rules promulgated by the
214 correctional institution.

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

218 ~~(7)~~ ~~(5)~~ NOTICE TO PRISONERS.—

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

222 (b) Each correctional institution shall inform female
223 prisoners of the rules developed pursuant to paragraph (a) upon
224 admission to the correctional institution, including the
225 policies and practices in the prisoner handbook, and post the
226 policies and practices in locations in the correctional
227 institution where such notices are commonly posted and will be
228 seen by female prisoners, including common housing areas and
229 medical care facilities.

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