

By Senator Pizzo

38-00970-20

2020854__

1 A bill to be entitled
2 An act relating to incarcerated pregnant women;
3 amending s. 944.241, F.S.; defining the term
4 "restrictive housing"; revising the circumstances
5 under which a prisoner who is known to be pregnant may
6 not be restrained; specifying conditions under which
7 restraints may be used; requiring the Department of
8 Corrections, correctional facilities, and certain
9 agencies to develop policies that meet certain
10 requirements for the use of restraints on prisoners
11 known to be pregnant; requiring such prisoners who are
12 in labor to be taken to an appropriate medical
13 facility without delay; providing requirements for the
14 care of the prisoner after she has given birth and of
15 the prisoner's infant; prohibiting the child's birth
16 certificate from stating the child was born in a
17 correctional facility; requiring that invasive body
18 cavity searches on a pregnant prisoner be conducted by
19 a medical professional; providing an exception;
20 prohibiting the involuntary placement of pregnant
21 prisoners in restrictive housing; providing
22 exceptions; requiring corrections officials to write a
23 specified report if an extraordinary circumstance
24 necessitates placing a pregnant prisoner in
25 restrictive housing; providing requirements for the
26 report; requiring corrections officials to review such
27 reports at specified intervals; requiring copies of
28 the reports and reviews to be provided to pregnant
29 prisoners in restrictive housing; providing

38-00970-20

2020854__

30 requirements for the treatment of pregnant prisoners
31 placed in restrictive housing; requiring pregnant
32 prisoners to be admitted to the infirmary under
33 certain circumstances; providing certain privileges
34 for pregnant prisoners admitted to the infirmary;
35 providing an effective date.
36

37 Be It Enacted by the Legislature of the State of Florida:
38

39 Section 1. Section 944.241, Florida Statutes, is amended to
40 read:

41 944.241 ~~Shackling of~~ Incarcerated pregnant women.—

42 (1) SHORT TITLE.—This section may be cited as the “Healthy
43 Pregnancies for Incarcerated Women Act.”

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

45 (a) “Correctional institution” means any facility under the
46 authority of the department or the Department of Juvenile
47 Justice, a county or municipal detention facility, or a
48 detention facility operated by a private entity.

49 (b) “Corrections official” means the official who is
50 responsible for oversight of a correctional institution, or his
51 or her designee.

52 (c) “Department” means the Department of Corrections.

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

38-00970-20

2020854__

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

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

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

77 (h) "Restraints" means any physical restraint or mechanical
78 device used to control the movement of a prisoner's body or
79 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 (i) "Restrictive housing" means the placement of some
84 prisoners separately from the general population of a
85 correctional institution and imposing restrictions on their
86 movement, behavior, and privileges. The term includes placing
87 the prisoner in medical isolation or in the infirmary.

38-00970-20

2020854__

88 (3) RESTRAINT OF PRISONERS.—

89 (a) Except as provided in paragraph (b), restraints may not
90 be used on a prisoner who is known to be pregnant:

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

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

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

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

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

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

38-00970-20

2020854__

117 3. If wrist restraints are used, the restraints are applied
118 in the front of the prisoner so that she may protect herself in
119 the event of a forward fall.

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

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

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

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

133 (d) The department and the corrections official of each
134 local correctional facility or the managing official of the
135 agency designated to transport prisoners shall develop a policy
136 for use at each correctional facility which:

137 1. Requires a restraint used on a pregnant prisoner during
138 transport to be the least restrictive necessary; and

139 2. Establishes a method for reporting the use of restraints
140 on pregnant prisoners.

141 (4) CARE FOR PREGNANT PRISONERS DURING LABOR AND AFTER
142 BIRTH.—

143 (a) A prisoner who is in labor shall be taken to an
144 appropriate medical facility without delay.

145 (b) For 72 hours after the birth of an infant by a

38-00970-20

2020854__

146 prisoner:

147 1. The infant must be allowed to remain with the prisoner,
148 unless a medical professional determines that doing so would
149 pose a health or safety risk to the prisoner or infant; and

150 2. The prisoner must have access to any nutritional or
151 hygiene-related products necessary to care for the infant,
152 including diapers.

153 (c) A corrections official must allow a prisoner who gives
154 birth while in a correctional facility or who already has an
155 infant when she is admitted to a correctional facility to keep
156 the infant with her for a reasonable time, preferably on
157 extended furlough or in an appropriate community facility or, if
158 that is not practicable or reasonable, in a nursery at a
159 correctional facility which is staffed by qualified persons.

160 (d) If long-term imprisonment is anticipated, the
161 correctional facility shall help the prisoner develop necessary
162 plans, in coordination with social service agencies, for
163 alternative care for the infant following the 72 hours after the
164 infant's birth. For any arrangements contemplated, a prisoner
165 shall be informed of the consequences for the prisoner's
166 parental rights. When a prisoner and infant are separated, the
167 prisoner must be provided with counseling and other mental
168 health support.

169 (e) A child's birth certificate may not state that he or
170 she was born in a correctional facility.

171 (5) INVASIVE BODY CAVITY SEARCHES.—

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

38-00970-20

2020854__

175 (b) A correctional officer may conduct an invasive body
176 cavity search of a pregnant prisoner only if the officer has a
177 reasonable belief that the prisoner is concealing contraband. An
178 officer who conducts an invasive body cavity search must submit
179 a written report to the warden within 72 hours after the search.

180 The report must:

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

183 (6) RESTRICTIVE HOUSING.—

184 (a) Except as provided in paragraph (b), a pregnant
185 prisoner may not be involuntarily placed in restrictive housing.

186 (b) A pregnant prisoner may be involuntarily placed in
187 restrictive housing only if the corrections official of the
188 correctional institution, in consultation with a medical
189 professional at the correctional institution, determines that an
190 extraordinary circumstance exists such that restrictive housing
191 is necessary and that there are no less restrictive means
192 available.

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

- 195 a. The extraordinary circumstance that is present; and
- 196 b. The reason less restrictive means are not available.

197 2. The corrections official shall review the report at
198 least every 24 hours to confirm that the extraordinary
199 circumstance cited in the report still exists. A copy of the
200 report and each review must be provided to the prisoner.

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

- 203 1. Examined at least every 8 hours by a medical

38-00970-20

2020854__

204 professional at the facility;

205 2. Housed in the least restrictive setting consistent with
206 the health and safety of the individual; and

207 3. Given a treatment plan developed and approved by a
208 medical professional at the facility.

209 (d) If a pregnant prisoner needs infirmary care, a primary
210 care nurse practitioner or obstetrician must provide an order
211 for the prisoner to be admitted to the infirmary. If the
212 prisoner has passed her due date, she must be admitted to the
213 infirmary until labor begins or until the primary care nurse
214 practitioner or obstetrician makes other housing arrangements. A
215 pregnant prisoner who has been placed in the infirmary shall be
216 provided:

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

219 2. The ability to continue to participate in other
220 privileges and classes granted to the general population of the
221 correctional institution.

222 ~~(c) During the third trimester of pregnancy or when~~
223 ~~requested by the physician treating a pregnant prisoner, unless~~
224 ~~there are significant documentable security reasons noted by the~~
225 ~~department or correctional institution to the contrary that~~
226 ~~would threaten the safety of the prisoner, the unborn child, or~~
227 ~~the public in general:~~

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

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

232 ~~(d) In addition to the specific requirements of paragraphs~~

38-00970-20

2020854__

233 ~~(a) (c), any restraint of a prisoner who is known to be pregnant~~
234 ~~must be done in the least restrictive manner necessary in order~~
235 ~~to mitigate the possibility of adverse clinical consequences.~~

236 (7)~~(4)~~ ENFORCEMENT.—

237 (a) Notwithstanding any relief or claims afforded by
238 federal or state law, any prisoner who is restrained in
239 violation of this section may file a grievance with the
240 correctional institution, and be granted a 45-day extension if
241 requested in writing pursuant to rules promulgated by the
242 correctional institution.

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

246 (8)~~(5)~~ NOTICE TO PRISONERS.—

247 (a) By September 1, 2012, the department and the Department
248 of Juvenile Justice shall adopt rules pursuant to ss. 120.536(1)
249 and 120.54 to administer this section.

250 (b) Each correctional institution shall inform female
251 prisoners of the rules developed pursuant to paragraph (a) upon
252 admission to the correctional institution, including the
253 policies and practices in the prisoner handbook, and post the
254 policies and practices in locations in the correctional
255 institution where such notices are commonly posted and will be
256 seen by female prisoners, including common housing areas and
257 medical care facilities.

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