

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Reed offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Shackling of incarcerated pregnant women.-

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

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

9 (a) "Correctional institution" means any facility under
10 the authority of the department or the Department of Juvenile
11 Justice, a county or municipal detention facility, or a
12 detention facility operated by a private entity.

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

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

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

23 (e) "Labor" means the period of time before a birth during
24 which contractions are of sufficient frequency, intensity, and
25 duration to bring about effacement and progressive dilation of
26 the cervix.

27 (f) "Postpartum recovery" means, as determined by her
28 physician, the period immediately following delivery, including
29 the recovery period when a woman is in the hospital or infirmary
30 following birth, up to 24 hours after delivery unless the
31 physician after consultation with the department or correctional
32 institution recommends a longer period of time.

33 (g) "Prisoner" means any person incarcerated or detained
34 in any correctional institution who is accused of, convicted of,
35 sentenced for, or adjudicated delinquent for a violation of
36 criminal law or the terms and conditions of parole, probation,
37 community control, pretrial release, or a diversionary program.
38 For purposes of this section, the term includes any woman
39 detained under the immigration laws of the United States at any
40 correctional institution.

41 (h) "Restraints" means any physical restraint or
42 mechanical device used to control the movement of a prisoner's
43 body or limbs, including, but not limited to, flex cuffs, soft
44 restraints, hard metal handcuffs, a black box, chubb cuffs, leg

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45 irons, belly chains, a security or tether chain, or a convex
46 shield.

47 (3) RESTRAINT OF PRISONERS.—

48 (a) Restraints may not be used on a prisoner who is known
49 to be pregnant during labor, delivery, and postpartum recovery,
50 unless the corrections official makes an individualized
51 determination that the prisoner presents an extraordinary
52 circumstance, except that:

53 1. The physician may request that restraints not be used
54 for documentable medical purposes. The correctional officer,
55 correctional institution employee, or other officer accompanying
56 the pregnant prisoner may consult with the medical staff;
57 however, if the officer determines there is an extraordinary
58 public safety risk, the officer is authorized to apply
59 restraints as limited by subparagraph 2.

60 2. Under no circumstances shall leg, ankle, or waist
61 restraints be used on any pregnant prisoner who is in labor or
62 delivery.

63 (b) If restraints are used on a pregnant prisoner pursuant
64 to paragraph (a):

65 1. The type of restraint applied and the application of
66 the restraint must be done in the least restrictive manner
67 necessary; and

68 2. The corrections official shall make written findings
69 within 10 days after the use of restraints as to the
70 extraordinary circumstance that dictated the use of the
71 restraints. These findings shall be kept on file by the
72 department or correctional institution for at least 5 years.

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73 (c) During the third trimester of pregnancy or when
74 requested by the physician treating a pregnant prisoner, unless
75 there are significant documentable security reasons noted by the
76 department or correctional institution to the contrary that
77 would threaten the safety of the prisoner, the unborn child, or
78 the public in general:

79 1. Leg, ankle, and waist restraints may not be used; and
80 2. If wrist restraints are used, they must be applied in
81 the front so the pregnant prisoner is able to protect herself in
82 the event of a forward fall.

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

87 (4) ENFORCEMENT.—

88 (a) Notwithstanding any relief or claims afforded by
89 federal or state law, any prisoner who is restrained in
90 violation of this section may file a grievance with the
91 correctional institution, and be granted a 45-day extension if
92 requested in writing pursuant to rules promulgated by the
93 correctional institution.

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

97 (5) NOTICE TO PRISONERS.—

98 (a) By September 1, 2012, the department and the
99 Department of Juvenile Justice shall adopt rules pursuant to ss.
100 120.536(1) and 120.54, Florida Statutes, to administer this

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101 section.

102 (b) Each correctional institution shall inform female
103 prisoners of the rules developed pursuant to paragraph (a) upon
104 admission to the correctional institution, including the
105 policies and practices in the prisoner handbook, and post the
106 policies and practices in locations in the correctional
107 institution where such notices are commonly posted and will be
108 seen by female prisoners, including common housing areas and
109 medical care facilities.

110 Section 2. This act shall take effect July 1, 2012.

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112
113 **T I T L E A M E N D M E N T**

114 Remove the entire title and insert:

115 A bill to be entitled
116 An act relating to the restraint of incarcerated
117 pregnant women; providing a short title; defining
118 terms; prohibiting use of restraints on a prisoner
119 known to be pregnant during labor, delivery, and
120 postpartum recovery unless a corrections official
121 makes an individualized determination that the
122 prisoner presents an extraordinary circumstance
123 requiring restraints; authorizing an officer to apply
124 restraints after consulting with medical staff;
125 requiring that any restraint applied must be done in
126 the least restrictive manner necessary; requiring the
127 corrections official to make written findings as to
128 the extraordinary circumstance requiring restraints;

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129 restricting the use of certain restraints during the
130 third trimester of pregnancy unless there are
131 significant security concerns documented by the
132 department or correctional institution; requiring that
133 the findings be kept on file by the department or
134 correctional institution for at least 5 years;
135 authorizing any woman who is restrained in violation
136 of the act to file a grievance within a specified
137 period; providing that these remedies do not prevent a
138 woman harmed through the use of restraints from filing
139 a complaint under federal or state law; directing the
140 Department of Corrections and the Department of
141 Juvenile Justice to adopt rules; requiring
142 correctional institutions to inform female prisoners
143 of the rules upon admission, include the policies and
144 practices in the prisoner handbook, and post the
145 policies and practices in the correctional
146 institution; providing an effective date.

147
148 WHEREAS, restraining a pregnant prisoner can pose undue
149 health risks and increase the potential for physical harm to the
150 woman and her pregnancy, and

151 WHEREAS, the vast majority of female prisoners in this
152 state are nonviolent offenders, and

153 WHEREAS, the impact of such harm to a pregnant woman can
154 negatively affect her pregnancy, and

155 WHEREAS, freedom from physical restraints is especially
156 critical during labor, delivery, and postpartum recovery after
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157 delivery as women often need to move around during labor and
158 recovery, including moving their legs as part of the birthing
159 process, and

160 WHEREAS, restraints on a pregnant woman can interfere with
161 the medical staff's ability to appropriately assist in
162 childbirth or to conduct sudden emergency procedures, and

163 WHEREAS, the Federal Bureau of Prisons, the United States
164 Marshals Service, the American Correctional Association, the
165 American College of Obstetricians and Gynecologists, and the
166 American Public Health Association all oppose restraining women
167 during labor, delivery, and postpartum recovery because it is
168 unnecessary and dangerous to a woman's health and well-being,
169 NOW, THEREFORE