

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 524

INTRODUCER: Senator Joyner

SUBJECT: Restraint of Incarcerated Pregnant Women

DATE: December 2, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter	Cannon	CJ	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Healthy Pregnancies for Incarcerated Women Act.” It generally prohibits the use of restraints during labor, delivery, or postpartum recovery on women who are known to be pregnant and who are incarcerated in a state, local, or privately-operated adult or juvenile facility. However, exceptions are allowed on an individual basis if there is a substantial flight risk or an extraordinary medical or security circumstance that dictates the use of restraints. The bill also sets standards for restraint of pregnant prisoners during the third trimester of pregnancy. A woman who is restrained in violation of the bill’s provisions can file a grievance within one year in addition to pursuing any other remedies that are available under state or federal law for harm caused by the restraint.

The bill includes several administrative requirements: (1) any exception must be documented in writing and kept available for public inspection for a period of 5 years; (2) an annual report must be made to the governor’s office of every instance in which restraints were used pursuant to the exception or in violation of the provisions of the bill; (3) the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) must adopt rules to administer the new law, and (4) each correctional institution must inform female prisoners of the rules and post the policies in the institution where they will be seen by female prisoners.

This bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Background

The issue of whether or not pregnant female inmates should be exempted from normal policies regarding use of restraints has been widely debated during the last few years.

In October 2010, the National Women's Law Center and the Rebecca Project for Human Rights published a state-by-state report card on the conditions of confinement for pregnant and parenting women and the effect on their children.¹ The report found that, overall, the grades for prenatal care, shackling, and family-based treatment as an alternative to incarceration were poor with twenty-one states receiving either a D or F (failing grades) and twenty-two states receiving a grade of C.² Seven states received a B and only one state, Pennsylvania, received an A-. For prenatal care, thirty-eight states received failing grades (D or F grade) for failure to institute adequate policies requiring incarcerated pregnant women to receive adequate prenatal care, despite the fact that many women in prison have higher-risk pregnancies.³ Furthermore, thirty-six states received failing grades for their failure to comprehensively limit the use of restraints on pregnant women during transportation, labor and delivery, and postpartum recuperation.⁴

A number of states have considered legislation prohibiting or limiting the use of restraints for pregnant inmates, and in 2008 the Federal Bureau of Prisons revised its policy to limit the use of restraints. The Board of Directors of the National Commission on Correctional Health Care recently adopted a position paper on restraint of pregnant inmates. The introduction states:

Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.⁵

¹ National Women's Law Center, The Rebecca Project for Human Rights, *Mothers Behind Bars: A State-by-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect on Their Children* (October 21, 2010), last viewed on December 5, 2011 at: <http://dev2.nwlc.org/resource/mothers-behind-bars-state-state-report-card-and-analysis-federal-policies-conditions-confi>.

² Florida received a composite grade of C. However, as discussed in footnotes 3 and 4 below, DOC asserts that it received inaccurately low grades with regard to prenatal care and shackling policies.

³ Florida received a grade of C for prenatal care. DOC claims that the report inaccurately cited it for: (1) not having a medical examination as a component of prenatal care; (2) not offering HIV testing to pregnant patients; (3) not having preexisting arrangements for deliveries; and (4) not providing advice on activity levels and safety (November 30, 2011 e-mail from DOC staff to Senate Criminal Justice Committee staff).

⁴ Florida received a grade of F for its shackling policies. DOC maintains that although its procedures meet the goals stated in the report, it received no credit because the procedure is not stated in a statute or formal administrative rule (November 30, 2011 e-mail from DOC staff to Senate Criminal Justice Committee staff).

⁵ Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html, last viewed March 16, 2011.

Department of Corrections Policy

DOC is responsible for the health care of inmates in its custody and approximately 80 pregnant inmates give birth each year.⁶ Florida law under s. 944.24, F.S., requires DOC to provide each pregnant inmate with prenatal care and medical treatment through the duration of her pregnancy. Inmates receive prenatal counseling, vitamins, and exams. They also receive an extra nutritional meal each day.⁷ A pregnant inmate must be transferred to a hospital outside the prison grounds if a condition develops which is beyond the scope and capabilities of the prison's medical facilities. Any woman inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purpose of childbirth, and the charge for hospital and medical care must be charged against the funds allocated to the institution. The department must provide for the care of an inmate's newborn and must pay for the child's care until the child is suitably placed outside the prison system.⁸

DOC has an established procedure regarding the use of restraints. Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.
- An inmate in labor is not restrained, but after delivery she will be tethered to the bed by one ankle for the remainder of her hospital stay, which is standard procedure for hospitalized inmates. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or for other needs that require movement.⁹

DOC reports that its procedures for the use of restraints on pregnant inmates are consistent with American Correctional Association standards.¹⁰ It also reports that there were no formal medical grievances submitted regarding the application of restraints during the past ten years.¹¹

Department of Juvenile Justice Policy

The DJJ policy is that pregnant youth must be handcuffed in the front when they are transported outside the secure area. Leg restraints, waist chains, and restraint belts cannot be used on pregnant youth.¹² There is no formal rule addressing the use of restraints during labor and

⁶ DOC Analysis of Senate Bill 524, page 3.

⁷ Guidelines for the care and treatment of pregnant inmates are defined in DOC Procedure 506.201 (*Pregnant Inmates and the Placement of Newborn Infants*) and Health Services Bulletin 15.03.39 (*Health Care for Pregnant Inmates*).

⁸ Section 944.24, F.S.

⁹ DOC Procedure 506.201, section 12, and DOC Analysis, page 2.

¹⁰ November 30, 2011 e-mail from DOC staff to Senate Criminal Justice Committee staff.

¹¹ DOC Analysis, page 3.

¹² DJJ Basic Curricula (PAR) 63H-1.001-.016(10).

delivery. However, the practice is for restraints to be removed during labor and delivery and whenever requested by the treating health care professional.¹³

County and Municipal Detention Facilities

Subsections (4) and (5) of s. 951.175, F.S., set forth general requirements for medical treatment and care of female inmates of county and municipal corrections facilities during pregnancy and childbirth. However, the use of restraints is not addressed in the statute and procedures regarding restraint of pregnant inmates are established by the sheriff of each county.

III. Effect of Proposed Changes:

The bill generally prohibits corrections officials from using restraints on a prisoner who is known to be pregnant during labor, delivery, or postpartum recovery. It also regulates the use of restraints during the third trimester. The following are summarized definitions of terms used in the bill:

- “Corrections official” refers to the person who is responsible for oversight of a correctional facility, or his or her designee.
- “Restraints” include any physical restraint or mechanical device used to control the movement of the body or limbs. Examples include shackles, flex cuffs, soft restraints, hard metal handcuffs, black boxes, Chubb cuffs, leg irons, belly chains, security or tether chairs, and convex shields.
- “Prisoner” includes any person who is incarcerated or detained in a correctional institution at any time in relation to a criminal offense, including both pre-trial and post-trial actions. It also includes any woman who is detained in a correctional institution under federal immigration laws.
- “Correctional institutions” include any facilities under the authority of the DOC or the DJJ as well as county and municipal detention facilities. It also includes detention facilities operated by private entities.
- “Labor” is the time before birth when contractions bring about effacement and progressive cervical dilation.
- “Postpartum recovery” is the time immediately following delivery, including recovery time in the hospital or infirmary.

Restraints can only be used during labor, delivery or post-partum recovery if the corrections official makes an individualized determination that extraordinary circumstances exist requiring their use. This is permissible in two situations: (1) when the prisoner presents a substantial flight risk; or (2) when there is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, corrections or medical staff, other prisoners, or the public. However, there are situations that override the exceptions: (1) the corrections official accompanying the prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and (2) use of leg, ankle, or waist restraints are completely prohibited during labor and delivery.

¹³ DJJ Analysis, pages 1-2.

In addition to the specific requirements, the bill provides that any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary. The purpose of this general requirement is to mitigate the possibility of adverse medical consequences.

The corrections official who authorizes the use of restraints due to an extraordinary circumstance must document the reasons for the exception within 10 days of their use. The correctional institution must maintain this documentation on file and available for public inspection for at least 5 years.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to walk or stand.

The secretaries of DOC and DJJ and the official responsible for any local correctional facility where a pregnant prisoner was restrained pursuant to an exception, or in violation of the provisions of the bill, during the previous year must submit a written report to the Executive Office of the Governor with an account of every instance in which such restraint was used.

The bill requires DOC and DJJ to adopt rules to administer the new law, and each correctional institution must inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prison handbook, and post the policies in appropriate places within the institution that are visible to female prisoners.

The bill also specifies that a woman who is harmed may file a grievance pursuant to s. 944.331, F.S., within one year in addition to any other remedies that might be available under state or federal law. Chapter 33-103, F.A.C., governs inmate grievances. The grievance procedure is designed to provide an inmate with a channel for the internal, administrative settlement of a grievance.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

In preparing the reports required by the bill, reporting persons or entities must be careful not to release a prisoner's protected health information in violation of the federal Health Insurance Portability and Accountability Act (HIPAA) restrictions. This will require

reporting agencies to train officers and officials who may not be familiar with the complexities of HIPAA. Disclosure of protected health information in the reports may result in the information becoming a public record and subjecting the agency to legal action.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It does not appear that the bill would have a significant fiscal impact on the government sector. In its analysis of the bill, DOC notes that staff will have to maintain files and prepare the annual report to the Governor but does not quantify any costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/CS/SB 1086, an almost identical bill, passed the Senate during the 2011 Legislative Session.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.