

By Senator Joyner

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1 A bill to be entitled
2 An act relating to the restraint of incarcerated
3 pregnant women; providing a short title; defining
4 terms; prohibiting use of restraints on a prisoner
5 known to be pregnant during labor, delivery, and
6 postpartum recovery unless a corrections official
7 determines that the prisoner presents an extraordinary
8 circumstance; requiring that a corrections officer or
9 other official accompanying a prisoner remove all
10 restraints if the doctor, nurse, or other health care
11 professional treating the prisoner requests that
12 restraints not be used; prohibiting leg, ankle, or
13 waist restraints from being used on a prisoner under
14 specified circumstances; requiring that restraints be
15 applied in the least restrictive manner necessary;
16 requiring that the corrections official make written
17 findings within 10 days as to the extraordinary
18 circumstance that dictated the use of restraints;
19 requiring that the findings be kept on file for a
20 certain period and be made available for public
21 inspection; restricting the use of waist, wrist, or
22 leg and ankle restraints during the third trimester of
23 pregnancy or when requested by a doctor, nurse, or
24 other health care professional treating the prisoner;
25 requiring that the use of restraints on a pregnant
26 prisoner be by the least restrictive manner necessary;
27 authorizing any woman who is restrained in violation
28 of the act to file a grievance within a specified
29 period; providing that these remedies do not prevent a

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30 woman harmed from filing a complaint under any other
31 relevant federal or state law; directing the
32 Department of Corrections and the Department of
33 Juvenile Justice to adopt rules; requiring that
34 correctional institutions and detention facilities
35 inform female prisoners of the rules upon admission,
36 include the policies and practices in the prisoner
37 handbook, and post the policies and practices in the
38 correctional institution or detention facility;
39 requiring that the Secretary of Corrections, the
40 Secretary of Juvenile Justice, and county and
41 municipal corrections officials annually file written
42 reports with the Executive Office of the Governor
43 detailing each incident of restraint in violation of
44 law or as an authorized exception; requiring that the
45 reports be made available for public inspection;
46 providing an effective date.

47
48 WHEREAS, restraining a pregnant prisoner can pose undue
49 health risks and increase the potential for physical harm to the
50 woman and her pregnancy, and

51 WHEREAS, the vast majority of female prisoners in this
52 state are nonviolent offenders, and

53 WHEREAS, freedom from physical restraints is especially
54 critical during labor, delivery, and postpartum recovery after
55 delivery as women often need to move around during labor and
56 recovery, including moving their legs as part of the birthing
57 process, and

58 WHEREAS, restraints on a pregnant woman can interfere with

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59 the medical staff's ability to appropriately assist in
60 childbirth or to conduct sudden emergency procedures, and

61 WHEREAS, the Federal Bureau of Prisons, the United States
62 Marshals Service, the American Correctional Association, the
63 American College of Obstetricians and Gynecologists, and the
64 American Public Health Association all oppose restraining women
65 during labor, delivery, and postpartum recovery because it is
66 unnecessary and dangerous to a woman's health and well-being,
67 NOW, THEREFORE,

68
69 Be It Enacted by the Legislature of the State of Florida:

70
71 Section 1. Shackling of incarcerated pregnant prisoners.-

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

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

75 (a) "Correctional institution" means a facility under the
76 authority of the department or the Department of Juvenile
77 Justice, a county or municipal detention facility, or a
78 detention facility operated by a private entity.

79 (b) "Corrections official" means the official who is
80 responsible for oversight of a correctional institution, or his
81 or her designee.

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

83 (d) "Extraordinary circumstance" means a substantial flight
84 risk or some other extraordinary medical or security
85 circumstance that dictates that restraints be used to ensure the
86 safety and security of the prisoner, the staff of the
87 correctional institution or medical facility, other prisoners,

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88 or the public.

89 (e) "Labor" means the period before a birth during which
90 contractions are of sufficient frequency, intensity, and
91 duration to bring about effacement and progressive dilation of
92 the cervix.

93 (f) "Postpartum recovery" means, the period immediately
94 following delivery, including the recovery period when a woman
95 is in the hospital or infirmary following birth.

96 (g) "Prisoner" means any person incarcerated or detained in
97 a correctional institution who is accused of, convicted of,
98 sentenced for, or adjudicated delinquent for a violation of
99 criminal law or the terms and conditions of parole, probation,
100 community control, pretrial release, or a diversionary program.
101 For purposes of this section, the term includes any woman
102 detained under the immigration laws of the United States at any
103 correctional institution.

104 (h) "Restraints" means any physical restraint or mechanical
105 device used to control the movement of a prisoner's body or
106 limbs, including, but not limited to, shackles, flex cuffs, soft
107 restraints, hard metal handcuffs, a black box, Chubb cuffs, leg
108 irons, belly chains, a security or tether chain, or a convex
109 shield.

110 (3) RESTRAINT OF PRISONERS.—

111 (a) Restraints may not be used on a prisoner who is known
112 to be pregnant during labor, delivery, and postpartum recovery,
113 unless the corrections official determines that the prisoner
114 presents an extraordinary circumstance, except that:

115 1. If the doctor, nurse, or other health care professional
116 treating the prisoner requests that restraints not be used, the

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117 corrections officer, correctional institution employee, or other
118 officer accompanying the pregnant prisoner shall remove all
119 restraints; and

120 2. Leg, ankle, or waist restraints may not be used under
121 any circumstance on a pregnant prisoner who is in labor or
122 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 necessary
127 in order to mitigate the possibility of adverse medical
128 consequences; and

129 2. The corrections official shall make written findings
130 within 10 days after the use of restraints as to the
131 extraordinary circumstance that dictated the use of the
132 restraints. These findings shall be kept on file by the
133 correctional institution for at least 5 years and be made
134 available for public inspection.

135 (c) During the third trimester of pregnancy, or when
136 requested by the doctor, nurse, or other health care
137 professional treating the pregnant prisoner:

138 1. Waist restraints that directly constrict the area of
139 pregnancy may not be used;

140 2. If wrist restraints are used, they must be applied in
141 such a way that the pregnant prisoner is able to protect herself
142 in the event of a forward fall; and

143 3. Leg and ankle restraints that restrain the legs close
144 together may not be used when the prisoner is required to walk
145 or stand.

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146 4. Use of leg, ankle, or waist restraints is subject to
147 subparagraph (a)2.

148 (4) ENFORCEMENT.-

149 (a) Notwithstanding any relief or claims afforded by
150 federal or state law, any prisoner who is restrained in
151 violation of this section may file a grievance with the
152 department pursuant to s. 944.331, Florida Statutes, within 1
153 year after the incident.

154 (b) This section does not prevent a woman harmed under this
155 section from filing a complaint under any other relevant federal
156 or state law.

157 (5) NOTICE TO PRISONERS.-

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

161 (b) Each correctional institution shall inform female
162 prisoners of the rules developed pursuant to paragraph (a) upon
163 admission to the correctional institution, including the
164 policies and practices in the prisoner handbook, and must post
165 the policies and practices in locations in the correctional
166 institution where such notices are commonly posted and seen by
167 female prisoners, including common housing areas and medical
168 care facilities.

169 (6) ANNUAL REPORT.-By June 30 of each year, the Secretary
170 of Corrections, the Secretary of Juvenile Justice, and the
171 corrections official of each municipal and county detention
172 facility where a pregnant prisoner has been restrained pursuant
173 to paragraph (3)(a), or in violation of subsection (3), during
174 the previous year shall submit a written report to the Executive

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175 Office of the Governor which includes an account of every such
176 instance. The reports shall be made available for public
177 inspection.

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