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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/14/2020	.	
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The Committee on Criminal Justice (Pizzo) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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:



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

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

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

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

25 (e) "Invasive body cavity search" means a search that
26 involves a manual inspection using touch, insertion, or probing
27 of the openings, cavities, and orifices of the human body,
28 including, but not limited to the genitals, buttocks, anus, or
29 breasts that is not conducted for a medical purpose.

30 (f)-(e) "Labor" means the period of time before a birth
31 during which contractions are of sufficient frequency,
32 intensity, and duration to bring about effacement and
33 progressive dilation of the cervix.

34 (g)-(f) "Postpartum recovery" means, as determined by her
35 physician, the period immediately following delivery, including
36 the recovery period when a woman is in the hospital or infirmary
37 following birth, up to 24 hours after delivery unless the
38 physician after consultation with the department or correctional
39 institution recommends a longer period of time.



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40 (h)~~(g)~~ "Prisoner" means any person incarcerated or detained
41 in any correctional institution who is accused of, convicted of,
42 sentenced for, or adjudicated delinquent for a violation of
43 criminal law or the terms and conditions of parole, probation,
44 community control, pretrial release, or a diversionary program.
45 For purposes of this section, the term includes any woman
46 detained under the immigration laws of the United States at any
47 correctional institution.

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

54 (j) "Restrictive housing" means the placement of pregnant
55 prisoners separately from the general population of a
56 correctional institution and imposing restrictions on their
57 movement, behavior, and privileges solely based on the condition
58 of being pregnant. The term includes placing the prisoner in
59 medical isolation or in the infirmary.

60 (3) RESTRAINT OF PRISONERS.—

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

63 1. If any doctor, nurse, or other health professional
64 treating the prisoner in labor, in delivery, or in postpartum
65 recovery requests that restraints not be used due to a
66 documentable medical purpose. If the doctor, nurse, or other
67 health professional makes such a request, the correctional
68 officer or other law enforcement officer accompanying the



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69 prisoner must immediately remove all restraints.

70 2. During transport, labor, delivery, or and postpartum
71 recovery, unless the corrections official makes an
72 individualized determination that the prisoner presents an
73 extraordinary circumstance., except that:

74 ~~1. The physician may request that restraints not be used~~
75 ~~for documentable medical purposes. The correctional officer,~~
76 ~~correctional institution employee, or other officer accompanying~~
77 ~~the pregnant prisoner may consult with the medical staff;~~
78 ~~however, If the corrections official officer determines there is~~
79 ~~an extraordinary public safety risk, the official may officer is~~
80 ~~authorized to apply restraints as limited by paragraph (b)~~
81 ~~subparagraph 2.~~

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

85 1. The corrections official makes an individualized
86 determination that the prisoner presents an extraordinary
87 circumstance.

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

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

92 ~~4.2. Under no circumstances shall Leg, ankle, or waist~~
93 ~~restraints are not be used on any pregnant prisoner who is in~~
94 ~~labor or delivery.~~

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

97 ~~1. The type of restraint applied and the application of the~~



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98 ~~restraint must be done in the least restrictive manner~~
99 ~~necessary; and~~

100 (c)2. The corrections official shall make written findings
101 within 10 days after the use of restraints as to the
102 extraordinary circumstance that dictated the use of the
103 restraints. These findings shall be kept on file by the
104 department or correctional institution for at least 5 years.

105 (d) A pregnant prisoner who is transported by a
106 correctional institution must be transported using a restraint
107 that is the least restrictive necessary. A correctional
108 institution that uses restraints on a pregnant prisoner during
109 transport must comply with the written findings required in
110 paragraph (c).

111 ~~(c) During the third trimester of pregnancy or when~~
112 ~~requested by the physician treating a pregnant prisoner, unless~~
113 ~~there are significant documentable security reasons noted by the~~
114 ~~department or correctional institution to the contrary that~~
115 ~~would threaten the safety of the prisoner, the unborn child, or~~
116 ~~the public in general:~~

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

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

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

125 (4) INVASIVE BODY CAVITY SEARCHES.—

126 (a) Except as provided under paragraph (b), an invasive



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127 body cavity search of a pregnant prisoner may be conducted only
128 by a medical professional.

129 (b) A correctional officer may conduct an invasive body
130 cavity search of a pregnant prisoner only if the officer has a
131 reasonable belief that the prisoner is concealing contraband. An
132 officer who conducts an invasive body cavity search must submit
133 a written report to the corrections official within 72 hours
134 after the search. The report must:

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

137 (5) RESTRICTIVE HOUSING.—

138 (a) Except as provided in paragraph (b), a pregnant
139 prisoner may not be involuntarily placed in restrictive housing.
140 This subsection does not prohibit a corrections official from
141 placing a pregnant prisoner in restrictive housing for
142 disciplinary violations or to address security risks to the
143 pregnant prisoner, other prisoners, or staff directly related to
144 the pregnant prisoner provided the corrections official complies
145 with the reporting requirements of sub-subparagraph (b)1.

146 (b) A pregnant prisoner may be involuntarily placed in
147 restrictive housing only if the corrections official of the
148 correctional institution, in consultation with the medical staff
149 overseeing prenatal care and medical treatment at the
150 correctional institution, determines that an extraordinary
151 circumstance exists such that restrictive housing is necessary
152 and that there are no less restrictive means available.

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

155 a. The extraordinary circumstance that is present; and



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

157 2. The corrections official shall review the report at
158 least every 24 hours to confirm that the extraordinary
159 circumstance cited in the report still exist. A copy of the
160 report and each review must be provided to the pregnant
161 prisoner.

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

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

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

168 3. Given an intensive treatment plan developed and approved
169 by the medical staff overseeing prenatal care and medical
170 treatment at the facility.

171 (d) If a pregnant prisoner needs infirmary care, an
172 authorized medical staff must provide an order for the pregnant
173 prisoner to be admitted to the infirmary. If the pregnant
174 prisoner has passed her due date, she must be admitted to the
175 infirmary until labor begins or until other housing arrangements
176 are made. A pregnant prisoner who has been placed in the
177 infirmary shall be provided:

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

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

182 (6)-(4) ENFORCEMENT.—

183 (a) Notwithstanding any relief or claims afforded by
184 federal or state law, any prisoner who is restrained in



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185 violation of this section may file a grievance with the
186 correctional institution, and be granted a 45-day extension if
187 requested in writing pursuant to rules promulgated by the
188 correctional institution.

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

192 ~~(7)~~ ~~(5)~~ NOTICE TO PRISONERS.—

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

196 (b) Each correctional institution shall inform female
197 prisoners of the rules developed pursuant to paragraph (a) upon
198 admission to the correctional institution, including the
199 policies and practices in the prisoner handbook, and post the
200 policies and practices in locations in the correctional
201 institution where such notices are commonly posted and will be
202 seen by female prisoners, including common housing areas and
203 medical care facilities.

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

205 ===== T I T L E A M E N D M E N T =====

206 And the title is amended as follows:

207 Delete everything before the enacting clause
208 and insert:

209 A bill to be entitled
210 An act relating to incarcerated pregnant women;
211 amending s. 944.241, F.S.; amending the short title;
212 redefining the term "extraordinary circumstance";
213 defining the terms "invasive body cavity search" and



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214 "restrictive housing"; revising the circumstances
215 under which a prisoner who is known to be pregnant may
216 not be restrained; specifying conditions under which
217 restraints may be used; requiring that invasive body
218 cavity searches on a pregnant prisoner be conducted by
219 a medical professional; providing an exception;
220 prohibiting the involuntary placement of pregnant
221 prisoners in restrictive housing; providing
222 exceptions; requiring corrections officials to write a
223 specified report if an extraordinary circumstance
224 necessitates placing a pregnant prisoner in
225 restrictive housing; providing requirements for the
226 report; requiring corrections officials to review such
227 reports at specified intervals; requiring a copy of
228 such reports and reviews to be provided to pregnant
229 prisoners in restrictive housing; providing
230 requirements for the treatment of pregnant prisoners
231 placed in restrictive housing; requiring pregnant
232 prisoners to be admitted to the infirmary under
233 certain circumstances; providing certain rights for
234 pregnant prisoners admitted to the infirmary;
235 providing an effective date.