

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 852

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senators Pizzo, Taddeo, Braynon, and others

SUBJECT: Incarcerated Pregnant Women

DATE: March 4, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cox</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Jameson</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>Jameson</u>	<u>Jameson</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 852 amends section 944.241, Florida Statutes, which currently addresses the use of restraints on pregnant prisoners in Florida's correctional institutions, to expand the prohibition on the use of restraints on pregnant prisoners. Additionally, the bill prescribes when a corrections officer may conduct an invasive body cavity search and when a pregnant prisoner may be placed in restrictive housing.

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner is being transported. This applies to a pregnant prisoner at any point in her known pregnancy. The bill prescribes certain circumstances in which restraints may not be used, which are substantively similar to the exceptions provided for in current law.

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband and such correctional officer submits a written report to the corrections official within 72 hours after the search including specified information supporting the need for the search.

The bill prohibits a pregnant prisoner from being involuntarily placed in restrictive housing unless specified correctional staff determine that an extraordinary circumstance exists such that restrictive housing is necessary and there are no less restrictive means available.

The bill requires the corrections official to write a report documenting the need for the use of restrictive housing prior to placing the prisoner in restrictive housing. The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstance still exists. A copy of the report and each review must be provided to the prisoner.

Additionally, the bill requires a pregnant prisoner who is placed in restrictive housing to be seen at least every 24 hours, housed in the least restrictive setting consistent with the health and safety of the individual, and given an intensive treatment plan for prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires a primary care nurse practitioner or obstetrician to provide an order for the prisoner to be admitted to the infirmary and requires that a prisoner who is passed her due date be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements.

The bill has a significant negative fiscal impact. See Section V.

The bill is effective July 1, 2020.

## II. Present Situation:

### Pregnancy in Prison

Reports predict that an estimated four to ten percent of women are pregnant upon being committed to prison or jail.<sup>1</sup> However, documentation of pregnancies and pregnancy care while incarcerated is sparse. The most recent data from the Bureau of Justice Statistics (BJS) was collected more than 15 years ago. In 2002, the BJS found that five percent of women in local jails were pregnant when admitted. In 2004, the BJS reported that four percent of women in state prisons and three percent of women in federal prisons were pregnant upon admission. The government has not released any further national data since.<sup>2</sup>

The American College of Obstetricians and Gynecologists (ACOG) report that pregnancies among incarcerated women are often higher risk due to a number of factors, including that such

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<sup>1</sup> Ferszt, G., Palmer, M., and McGrane, C., Nursing for Women's Health, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women?*, February 2018, available at [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (hereinafter cited as "Nursing for Women's Health Report"); Daniel, R., Prison Policy Initiative, *Prisons neglect pregnant women in their healthcare policies*, December 5, 2019, available at <https://www.prisonpolicy.org/blog/2019/12/05/pregnancy/> (hereinafter cited as "Prison Policy Initiative report") (all sites last visited January 3, 2020).

<sup>2</sup> Prison Policy Initiative Report. See also Sufrin, C., Beal, L., Clarke, J., Jones, R., and Mosher, W., The American Journal of Public Health, *Pregnancy Outcomes in US Prison, 2016-2017*, January 15, 2019, available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305006> (hereinafter cited as "Pregnancy Outcomes Report") (last visited on January 3, 2020).

pregnancies are often unplanned and are compromised by a lack of prenatal care, poor nutrition, domestic violence, mental illness, and drug and alcohol abuse.<sup>3</sup>

Further, the ACOG reports a number of risks that are directly related to a pregnant inmate being restrained, including:

- Added discomfort during the common pregnancy symptoms of nausea and vomiting.
- The inability of a pregnant inmate to break a fall and protect herself and the fetus in the case of a forward fall.
- The inability for healthcare providers to perform a number of tests to evaluate for conditions such as appendicitis, preterm labor, or kidney infection if a pregnant inmate has abdominal pain during pregnancy.
- A delay in diagnosing issues after vaginal bleeding during pregnancy.
- The inability to safely treat a pregnant inmate who is suffering from seizures related to hypertensive disease and preeclampsia,<sup>4</sup> which are common in pregnancy.
- Interference with normal labor and delivery, such as prohibiting the pregnant inmate from:
  - Ambulating during labor, which increases the likelihood for adequate pain management, successful cervical dilation, and a successful vaginal delivery.
  - Moving or being moved in preparation for emergencies of labor and delivery, including shoulder dystocia, hemorrhage, or abnormalities of the fetal heart rate requiring intervention, including urgent cesarean delivery.<sup>5</sup>

The Florida Department of Corrections (DOC) has five female correctional institutions statewide.<sup>6</sup> The DOC assigns female prisoners to institutions based on current classification procedures while facilitating the individual risk and needs of prisoners to the extent possible considering security, medical and mental health needs, programmatic needs, geographic realities, and prohibitive monetary factors. The Lowell Correctional Institution houses all pregnant prisoners for the duration of the pregnancy and prisoners within six weeks post-delivery. Lowell Correctional Institution is the only institution in the state designed and staffed to care for expectant and early postpartum prisoners.

Upon confirmation of pregnancy, the prisoner's medical grade is changed and the pregnant prisoner is referred to a licensed physician for obstetrical care to provide prenatal care and follow

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<sup>3</sup> The American College of Obstetricians and Gynecologists, Committee Opinion, *Health Care for Pregnancy and Postpartum Incarcerated Women and Adolescent Females*, November 2011, available at <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/Health-Care-for-Pregnant-and-Postpartum-Incarcerated-Women-and-Adolescent-Females?IsMobileSet=false> (last visited January 3, 2020); See also Nursing for Women's Health Report.

<sup>4</sup> Preeclampsia results in a pregnant woman exhibiting high blood pressure, protein in the urine, and swelling in the body. It also results in signs of damage to another organ system, most often the liver and kidneys. Preeclampsia usually begins after 20 weeks of pregnancy in women whose blood pressure had been normal. See Mayo Clinic, *Preeclampsia, Overview*, available at <https://www.mayoclinic.org/diseases-conditions/preeclampsia/symptoms-causes/syc-20355745>; WebMD, *What is Preeclampsia?*, available at <https://www.webmd.com/baby/preeclampsia-eclampsia#1> (all sites last visited January 6, 2020).

<sup>5</sup> *Supra*, n. 3.

<sup>6</sup> These facilities are Gadsden Correctional Facility in Quincy, Lowell Correctional Institution in Ocala, Florida Women's Reception Center in Ocala, Hernando Correctional Institution in Brooksville, and Homestead Correctional Institution in Florida City. The DOC, *Agency Analysis for SB 852*, January 10, 2020, p. 2 (on file with Senate Criminal Justice Committee)(hereinafter cited as "The DOC SB 852 Analysis").

them throughout the pregnancy. High risk patients are identified by obstetricians and given the necessary medical care. Inmates receive prenatal counseling, vitamins, and exams. They also are prescribed a prenatal diet that includes three fortified breakfast beverages per day and is adjusted for the caloric value and nutritional recommendations for pregnancy.<sup>7</sup> Pregnant prisoners are transferred to a contract hospital for the actual delivery and then returned to the institution when discharged by the attending obstetrician. The DOC reports that postpartum care is provided at the institution according to the discharge orders of the attending obstetrician, but that the six-week checkup is provided by the obstetrician.<sup>8</sup>

The DOC reports that the pregnant prisoner population over the last three fiscal years is as follows:

- 101 prisoners in Fiscal Year 2018-2019.
- 98 in Fiscal Year 2017-2018.
- 109 in Fiscal Year 2016-2017.<sup>9</sup>

### **The Federal First Step Act's Prohibition on the Use of Restraints**

In December, 2018, the United States Congress passed, and President Trump signed into law, the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act” (First Step Act).<sup>10</sup> The law makes a number of changes to the federal criminal justice system and procedures applicable to inmates in the Federal Bureau of Prisons (BOP), including, in part, imposing a prohibition on the use of restraints on pregnant prisoners in the custody of the BOP and the U.S. Marshalls Office.

The prohibition on the use of restraints begins on the date that pregnancy is confirmed by a healthcare professional and ends when postpartum recovery is completed. However, the First Step Act authorizes restraints to be used in limited circumstances, including when the:

- Pregnant inmate is determined to be an immediate and credible flight risk;
- Pregnant inmate poses an immediate and serious threat of harm to herself or others that cannot be reasonably prevented by other means; or
- Healthcare professional determines that the use of restraints is appropriate for the medical safety of the inmate.<sup>11</sup>

If one of the above-mentioned exceptions apply, the BOP or U.S. Marshall Service still may not:

- Use restraints around the ankles, legs, or waist of an inmate;
- Restrain an inmate's hands behind her back;
- Use four-point restraints; or
- Attach an inmate to another inmate.<sup>12</sup>

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<sup>7</sup> The DOC SB 852 Analysis, p. 2.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The First Step Act of 2018, Pub. L. No. 115-391 (2018).

<sup>11</sup> Congressional Research Service, *The First Step Act of 2018: An Overview*, March 4, 2019, available at <https://crsreports.congress.gov/product/pdf/R/R45558> (last visited January 2, 2020). The Act provides that only the least restrictive restraints necessary to prevent escape or harm may be used if one of the exceptions applies.

<sup>12</sup> *Id.*

Additionally, upon the request of a healthcare professional, correctional officials or deputy marshals must refrain from using restraints on an inmate or must remove restraints used on an inmate. If restraints are used on a pregnant inmate, the correctional official or deputy marshal who used the restraints is required to submit a report within 30 days that describes the facts and circumstances surrounding the use of the restraints, including the reasons for using the restraints, the details of the use, including the type of restraint and length of time they were used, and any observable physical effects on the inmate.<sup>13</sup>

The First Step Act also requires the BOP and U.S. Marshall Service to develop training guidelines regarding the use of restraints on inmates during pregnancy, labor, and postpartum recovery. The guidelines are required to include:

- How to identify certain symptoms of pregnancy that require immediate referral to a healthcare professional;
- Circumstances under which exceptions to the prohibition on the use of restraints would apply;
- How to use restraints in a way that does not harm the inmate, the fetus, or the newborn in the case that an above-mentioned exception applies;
- Details on the information required to be reported when restraints are used; and
- The right of a healthcare professional to request that restraints not be used and the requirement to comply with such a request.<sup>14</sup>

The First Step Act does not include provisions related to various types of searches of or the use of restrictive housing for pregnant prisoners.

### **Florida's Prohibition on the Use of Restraints**

Section 944.241, F.S., prohibits restraints<sup>15</sup> from being used on a prisoner<sup>16</sup> who is known to be pregnant during labor,<sup>17</sup> delivery, and postpartum recovery,<sup>18</sup> unless the corrections official<sup>19</sup> makes an individualized determination that the prisoner presents an extraordinary

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<sup>13</sup> *Id.* The reports must be submitted to the BOP or U.S. Marshall Service and the healthcare provider responsible for the inmate's health and safety.

<sup>14</sup> *Id.*

<sup>15</sup> Section 944.241(2)(h), F.S., defines "restraints" to mean any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield.

<sup>16</sup> Section 944.241(2)(g), F.S., defines "prisoner" to mean any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. Additionally, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

<sup>17</sup> Section 944.241(2)(e), F.S., defines "labor" to mean the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

<sup>18</sup> Section 944.241(2)(f), F.S., defines "postpartum recovery" to mean, as determined by her physician, the period immediately following delivery, including the recovery period when a woman is in the hospital or infirmary following birth, up to 24 hours after delivery unless the physician after consultation with the DOC or correctional institution recommends a longer period of time.

<sup>19</sup> Section 944.241(2)(b), F.S., defines "corrections official" to mean the official who is responsible for oversight of a correctional institution, or his or her designee.

circumstance.<sup>20</sup> This section applies to any facility under the authority of the DOC, the DJJ, a county or municipal detention facility, or a detention facility operated by a private entity.<sup>21</sup>

A physician may request that restraints not be used for documentable medical purposes. In that case, the correctional officer, correctional institution employee, or other officer accompanying the pregnant prisoner may consult with the medical staff and if the officer determines there is an extraordinary public safety risk, the officer is authorized to apply restraints. However, leg, ankle, or waist restraints may not be used on any pregnant prisoner who is in labor or delivery.<sup>22</sup> If restraints are used on a pregnant prisoner, the:

- Type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and
- Corrections official is required to make written findings within ten days after the use of restraints to document the extraordinary circumstance that required the use of the restraints.<sup>23</sup>

Leg, ankle, and waist restraints may not be used during the third trimester of pregnancy or when requested by the physician treating a pregnant prisoner unless there are significant documentable security reasons noted by the correctional institution to the contrary that would threaten the safety of the prisoner, the unborn child, or the public in general. In addition, if wrist restraints are used, they must be applied in the front so the pregnant prisoner is able to protect herself in the event of a forward fall.<sup>24</sup> Any restraint of a prisoner who is known to be pregnant must be done in the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences.<sup>25</sup>

Section 944.241(4), F.S., provides that any prisoner who is restrained may file a grievance with the correctional institution and be granted a 45-day extension if requested in writing pursuant to rules promulgated by the correctional institution and that a woman harmed through the use of restraints in violation of s. 944.241, F.S., is not prohibited from filing a complaint under any other relevant provision of federal or state law.

The DOC and the DJJ are required to adopt rules to administer the provisions and must inform female prisoners of such rules upon admission to the correctional institution, including the policies and practices in the prisoner handbook, and post the policies and practices in locations in the correctional institution where such notices are commonly posted and will be seen by female prisoners, including common housing areas and medical care facilities.<sup>26</sup>

The Florida Model Jail Standards (FMJS) are minimum standards that jails across Florida must meet to ensure the constitutional rights of those incarcerated are upheld. The FMJS Committee is

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<sup>20</sup> Section 944.241(2)(d), F.S., defines “extraordinary circumstance” to mean a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public.

<sup>21</sup> See s. 944.241(2)(a), F.S.

<sup>22</sup> Section 944.241(3)(a), F.S.

<sup>23</sup> Section 944.241(3)(b), F.S. The written findings must be kept on file by the DOC or correctional institution for at least five years.

<sup>24</sup> Section 244.241(3)(c), F.S.

<sup>25</sup> Section 944.241(3)(d), F.S.

<sup>26</sup> Section 944.241(5), F.S.

required to develop and continually enforce model standards adopted by the group.<sup>27</sup> The FMJS Rule 11.15 adopts the language of s. 944.241, F.S., related to the use of restraints on pregnant inmates.

## **Searches of Detained Persons in Florida's Prisons and Other Facilities**

### *Department of Corrections*

There are a number of searches of inmates that are utilized to control the introduction and movement of contraband and to prevent escapes of inmates, including searches while clothed, strip searches, and body cavity searches.<sup>28</sup>

Rule 33-602.204, of the Florida Administrative Code (Rule 33-602.204), in part, requires that body cavity searches must be conducted only by appropriate Health Services staff, but allows authorized staff to be of the opposite sex from the inmates.<sup>29</sup> Body orifice and cavity searches must be conducted only when authorized by the warden, assistant warden, or the correctional officer chief upon a finding that there exists reasonable cause to believe that an inmate has contraband secreted in a body cavity.<sup>30</sup>

Specified procedures and conditions must apply to body orifice and cavity searches, including, in part, that:

- The degree and intensity of the search must be the least required to bring the search to a conclusion.
- Oral cavity searches may be conducted visually as a routine element of any search of an inmate.<sup>31</sup>
- Physical intrusion into the inmate's body<sup>32</sup> or physical isolation and observation may be utilized in specified circumstances.<sup>33</sup>

<sup>27</sup> The Florida Sheriff's Association (FSA), *Florida Model Jail Standards as of 1/1/2019, What is FMJS?*, available at <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited January 10, 2020) (hereinafter cited as "FMJS Rule").

<sup>28</sup> Fla. Admin. Code R. 33-602.204.

<sup>29</sup> Fla. Admin. Code R. 33-602.204(3)(a).

<sup>30</sup> Fla. Admin. Code R. 33-602(3)(b). Reasonable cause may be established from specified evidence, including confidential information received from a reliable source, irregularities found in the area of the body during a strip search, or observed actions or behavior resulting in reasonable cause to believe that the individual has secreted contraband within a body cavity.

<sup>31</sup> Additionally, if there are indications that an inmate is concealing contraband in his or her mouth, the Rule states that the inmate will be restrained or be placed under constant visual observation and no restraints or holds may be applied in any manner which inhibit breathing or swallowing. However, the inmate may be physically controlled and isolated from other inmates if necessary in order to avoid his or her disposal of the contraband. When there is reasonable cause to believe contraband has been swallowed, any attempt to retrieve the contraband will be accomplished by Health Service staff. No physical intrusion into the inmate's oral cavity will be attempted by any other person other than Health Service staff.

<sup>32</sup> Fla. Admin. Code R. 33-602(3)(c)d.3. The specified circumstances allowing physical intrusion into the body include when: a member of the Health Services staff has determined that failure to remove the contraband presents an imminent danger to the health of the inmate; the contraband is clearly identified and is determined to be a clear and present danger to the security of the institution or the safety of the inmate or other persons; or the intrusion is necessary to retrieve the contraband for purposes of identification or to secure it as evidence and less intrusive means to retrieve such contraband are not feasible.

<sup>33</sup> Fla. Admin. Code R. 33-602(3)(c)d.4. Physical isolation and observation are authorized when the inmate cannot or will not voluntarily remove and surrender the contraband or in the event that a Medical Doctor has determined that the physical removal of contraband may be hazardous to the health and safety of the inmate. The isolation must occur in a medically approved isolated setting under constant visual supervision until the contraband can be retrieved through natural means. The

- Prior to the initiation of the first phase of the search, and before each successive escalation of the search, the individual must be given opportunities to voluntarily remove and surrender the contraband.<sup>34</sup>
- A specified correctional officer of the same sex must be physically present when the search is conducted.<sup>35</sup>
- The search must be made only by a physician or a designated member of the Health Services staff working under sanitary conditions and in a medically approved way using only the force necessary to ensure the person submits to the examination.<sup>36</sup>
- Complete and detailed documentation of all body cavity searches other than visual or metal detector searches must be submitted to the warden and include specified information.<sup>37</sup>

### *Department of Juvenile Justice*

The DJJ has implemented procedures for conducting searches of juveniles who are in detention as well as those that have been committed to a residential facility. Rule 63G-2.019(11), F.A.C., which addresses detention services within the DJJ, and Rule 63E-7.107, F.A.C., which addresses residential placement, provide very similar procedures for when searches of juveniles may occur.

These rules provide, in part, that:

- The Superintendent must ensure that the primary function of any search is to locate contraband and to identify any item or situation that may be hazardous or otherwise compromise safety or security.<sup>38</sup>
- All searches and the result of each search must be documented in specified documents.<sup>39</sup>
- Any item or situation that may compromise safety or security must be immediately reported to the detention officer supervisor and law enforcement must be contacted if any item found would be considered illegal under Florida law or if there is evidence of any type of unlawful activity.<sup>40</sup>

Further, the rules provide, in part, that:

- A frisk search must be conducted by an officer of the same sex as the youth being searched and such searches must be conducted:
  - During admission.
  - Following activities outside the secure area of the facility or visitation with a person from outside of the facility.
  - Prior to and after transportation.
  - When there is a reasonable suspicion that a youth is harboring contraband.<sup>41</sup>

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natural process of waste elimination must be used as an alternative to forcible intrusion into the body cavities or surgery when a Medical Doctor determines that the natural method is feasible and does not pose a hazard to the inmate's health and safety.

<sup>34</sup> Fla. Admin. Code R. 33-602(3)(c)d.6.

<sup>35</sup> Fla. Admin. Code R. 33-602(3)(c)d.7.

<sup>36</sup> Fla. Admin. Code R. 33-602(3)(c)d.9.-10.

<sup>37</sup> Fla. Admin. Code R. 33-602(3)(c)d.12.

<sup>38</sup> Fla. Admin. Code R. 63G-2.019(11)(a); Fla. Admin. Code R. 63E-7.107(2)(b).

<sup>39</sup> Fla. Admin. Code R. 63G-2.019(11)(b); Fla. Admin. Code R. 63E-7.107(2)(a).

<sup>40</sup> Fla. Admin. Code R. 63G-2.019(11)(d). These provisions do not appear in Rule 63E-7.107.

<sup>41</sup> Fla. Admin. Code R. 63G-2.019(11)(e); *See* Fla. Admin. Code R. 63E-7.107(2)(a) and (b).



- Strip searches must be conducted during admission or if there is a reasonable suspicion a youth is harboring contraband and the strip search must be conducted in a private area with two staff members present, both of the same sex as the youth being searched.<sup>42</sup>
- Staff must explain the purpose and procedure of the search, assure the youth of his or her safety, avoid using unnecessary force, and treat the youth with dignity and respect to minimize the youth's stress and embarrassment.<sup>43</sup>
- Staff may not search or physically examine a transgender or intersex youth for the sole purpose of determining the youth's genital status.<sup>44</sup>
- Cavity searches must be approved by the superintendent, conducted by trained medical personnel in a hospital setting, and only conducted when it is strongly suspected that a youth has concealed contraband in a body cavity.<sup>45</sup>

### ***County Detention Facilities***

The FMJS also had model standards for conducting searches on inmates in the custody of a county detention facility. FMJS Rules 4.2 and 4.3, provide that inmates must be searched by certified staff when being admitted to a detention facility and that the provisions of s. 901.211, F.S., must apply to such searches. Additionally, a body cavity search is only authorized to be conducted by licensed medical personnel.<sup>46</sup>

Section 901.211, F.S., in part, provides that a person arrested for a traffic, regulatory, or misdemeanor offense, except in a case that is violent in nature, which involves a weapon, or which involves a controlled substance, may not be strip searched<sup>47</sup> unless certain circumstances apply.<sup>48</sup> Each strip search is required to be performed by a person of the same gender as the arrested person and on premises where the search cannot be observed by persons not physically conducting or observing the search. Additionally, an observer must be of the same gender as the arrested person.<sup>49</sup> Any body cavity search must be performed under sanitary conditions.<sup>50</sup>

<sup>42</sup> See Fla. Admin. Code R. 63G-2.019(11)(e)4. and 5.; Fla. Admin. Code R. 63E-7.107(2)(a). A strip search is a visual check of a youth without clothing. Both of these Rules also provide that if two staff of the same sex as the youth are not available that one staff of the same sex as the youth may conduct the strip search while a staff of the opposite sex is positioned to observe the staff person conducting the search outside the view of the youth.

<sup>43</sup> Fla. Admin. Code R. 63G-2.019(11)(e)6.; Fla. Admin. Code R. 63E-7.107(2).

<sup>44</sup> Fla. Admin. Code R. 63G-2.019(11)(e)7. Further, if the youth's genital status is unknown, it may be determined during conversation with the youth, by reviewing medical records, or, if necessary, by learning that information as part of a broader medical examination conducted in private by a medical practitioner. Rule 63E-7.107 is silent on this provision.

<sup>45</sup> Fla. Admin. Code R. 63G-2.019(11)(e)8.; Fla. Admin. Code R. 63E-7.107(2)(c).

<sup>46</sup> FMJS Rule 4.2 and 4.3. A written report documenting such action must be submitted to the officer-in-charge or designee.

<sup>47</sup> Section 901.211(1), F.S., defines the term "strip search" to mean having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.

<sup>48</sup> See s. 901.211(2), F.S.

<sup>49</sup> Section 901.211(3), F.S.

<sup>50</sup> Section 901.211(4), F.S.

## **Confinement in Florida's Correctional Facilities**

### *Department of Corrections*

#### Confinement - General

Inmates in the custody of the DOC may be placed in confinement status based on specified conditions, which are detailed in the DOC's rules. Confinement status types used by the DOC include administrative or disciplinary confinement and protective management. "Administrative confinement" means the temporary removal of an inmate from the general inmate population in order to provide for security and safety until such time as more permanent inmate management processes can be concluded.<sup>51</sup> "Disciplinary confinement" means a form of punishment in which inmates found guilty of committing violations of the DOC rules are confined for specified periods of time to individual cells based upon authorized penalties for prohibited conduct.<sup>52</sup> "Protective management" means a special management status for the protection of inmates from other inmates in an environment as representative of that of the general population as is safely possible.<sup>53</sup>

All inmates are subject to the same consideration for placement in administrative or disciplinary confinement. These types of confinement may limit conditions and privileges to assist with promoting the security, order, and effective management of the institution, but otherwise the treatment of inmates in confinement is as near to that of the general population as assignment to confinement permits.<sup>54</sup> For protective management, the rule provides that other privileges may be restricted on a daily case-by-case basis when such restrictions are necessary for the security, order, or effective management of the institution.<sup>55</sup>

Certain procedures appear to apply consistently across all types of confinement, such as:

- Prior to placing the inmate in confinement, the inmate is given a pre-confinement health assessment or medical evaluation.<sup>56</sup>
- The ability to house inmates in confinement with other inmates, subject to the inmates being interviewed by the housing supervisor to ensure that none of the inmates constitute a threat to each other prior to placing inmates in the same cell.<sup>57</sup>

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<sup>51</sup> Fla. Admin. Code R. 33-602.220(1)(a).

<sup>52</sup> Fla. Admin. Code R. 33-602.222(1)(f).

<sup>53</sup> Fla. Admin. Code R. 33-602.221(1)(j). Protective management is not disciplinary in nature and, to the extent possible, all less restrictive avenues to address protection needs must be employed.

<sup>54</sup> Fla. Admin. Code R. 33-602.220(5); Fla. Admin. Code R. 33-602.221(2)(a) and (4); and Fla. Admin. Code R. 33-602.222(4).

<sup>55</sup> Fla. Admin. Code R. 33-602.221(4)(t). All such restrictions must be documented on a specified form and reported to the Inmate Classification Team (ICT). The ICT is authorized to restrict privileges on a continuing basis after a determination that such restrictions are necessary for the security, order or effective management of the institution. The ICT's decision for continuing restriction must also be documented on a specified form.

<sup>56</sup> See Fla. Admin. Code R. 33-602.220(2)(b) and (c) and Fla. Admin. Code R. 33-602.222(2)(a). An inmate does not have to be given the pre-confinement evaluation if he or she is currently in another confinement status that required a pre-confinement medical assessment. Rule 33-602.221, related to protective management is silent on whether a pre-confinement evaluation is necessary.

<sup>57</sup> Fla. Admin. Code R. 33-602.220(4)(a); Fla. Admin. Code R. 33-602.221(3)(a); and Fla. Admin. Code R. 33-602.222(3).

- The number of inmates housed in an administrative confinement cell must not exceed the number of bunks in the cell.<sup>58</sup>

Inmates in confinement retain certain modified privileges, as mentioned above. For example, such inmates are provided:

- Exercise, which occurs either in the inmate's cell, if confined on a 24-hour basis, or, if confinement extends beyond a 30-day period, three hours per week of exercise at a minimum outdoors.
- Showers at least three times per week and on days that the inmate works.
- Normal institution meals.<sup>59</sup>
- The same clothing and clothing exchange as is provided to the general inmate population.<sup>60</sup>
- Out of cell time is permitted for regularly scheduled mental health services, unless, within the past four hours, the inmate has displayed hostile, threatening, or other behavior that could present a danger to others.
- Correspondence opportunities that are the same as the general inmate population.
- Telephone privileges for emergency situations, when necessary to ensure the inmate's access to courts, or in any other circumstance when a call is authorized by the warden or duty warden.
- Visits, when authorized by the warden or his or her designated representative.
- Legal visits, unless there is evidence that the visit is a threat to security and order.<sup>61</sup>
- Legal materials in the same manner as in the general population as long as security concerns permit.<sup>62, 63</sup>

### Administrative Confinement

Florida Administrative Rule 33-602.220 provides that an inmate may be placed into administrative confinement for the following reasons:

- Disciplinary charges are pending and the inmate needs to be temporarily removed from the general inmate population in order to provide for security or safety until such time as the disciplinary hearing is held.
- Outside charges are pending against the inmate and the presence of the inmate in the general population would present a danger to the security or order of the institution.
- Pending review of an inmate's request for protection from other inmates.
- An inmate has presented a signed written statement alleging that they are in fear of staff and has provided specific information to support this claim.

<sup>58</sup> Fla. Admin. Code R. 33-602.220(4)(a) and (d); Fla. Admin. Code R. 33-602.221(3); and Fla. Admin. Code R. 33-602.222(3)(a).

<sup>59</sup> The exception to this is when an item on the normal menu creates a security problem in the confinement unit, in which case, another item of comparable quality is substituted. Utilization of the special management meal is authorized for any inmate in administrative confinement who uses food or food service equipment in a manner that is hazardous to him or herself, staff, or other inmates.

<sup>60</sup> The exception to this is when there is an individual factual basis that exceptions are necessary for the welfare of the inmate or the security of the institution.

<sup>61</sup> The warden or his or her designee must approve all legal visits in advance.

<sup>62</sup> An inmate in confinement may be required to conduct legal business by correspondence rather than a personal visit to the law library if security requirements prevent a personal visit. However, all steps are taken to ensure the inmate is not denied needed access while in administrative confinement.

<sup>63</sup> Fla. Admin. Code R. 33-602.220(5); 33-602.221(4); and 33-602.222(4).

- An investigation, evaluation for change of status, or transfer is pending and the presence of the inmate in the general population might interfere with that investigation or present a danger to the inmate, other inmates, or to the security and order of the institution.
- An inmate is received from another institution when classification staff is not available to review the inmate file and classify the inmate into general population.<sup>64</sup>

Staff are required to conduct regular visits to administrative confinement. These visits are to be conducted a minimum of:

- At least every 30 minutes by a correctional officer, but on an irregular schedule.
- Daily by the housing supervisor.
- Daily by the shift supervisor on duty for all shifts except in the case of riot or other institutional emergency.
- Weekly by the chief of security, when on duty at the facility, except in the case of riot or other institutional emergency.
- Daily by a clinical health care person.
- Weekly by the chaplain, warden, assistant wardens, a classification officer, and a member of the ICT.<sup>65</sup>

An inmate is assessed weekly to determine the appropriateness of placement with the goal of returning the inmate to general population as soon as the facts of the case indicate that such return can be done safely.<sup>66</sup> Other assessment requirements that are applicable to inmates who have been confined for more than 30 days include:

- A psychological screening assessment by a mental health professional to determine his or her mental condition.<sup>67</sup>
- An interview by the ICT, who must prepare a formal assessment and evaluation report after each 30 day period in administrative confinement.<sup>68</sup>

### Disciplinary Confinement

Staff are required to conduct regular visits to disciplinary confinement in the same frequency as mentioned above related to administrative confinement with the addition of specific visits as follows:

- As frequently as necessary, but not less than once every 30 days, by a member of the ICT to ensure that the inmate's welfare is properly provided for and to determine the time and method of release.

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<sup>64</sup> Fla. Admin. Code R. 33-602.220(3).

<sup>65</sup> Fla. Admin. Code R. 33-602.220(4).

<sup>66</sup> Fla. Admin. Code R. 63-602.220(8)(a).

<sup>67</sup> Fla. Admin. Code R. 33.602.220(8)(b). The assessment includes a personal interview if determined necessary by mental health staff. All such assessments are documented in the inmate's mental health record. The psychologist or psychological specialist prepares a report and presents it to the ICT regarding the results of the assessment with recommendations. The ICT then makes the decision to continue administrative confinement. If the decision is to continue confinement, a psychological screening assessment is completed at least every 90-day period.

<sup>68</sup> Fla. Admin. Code R. 33-602.220(8)(c) and (d). Additionally, the state classification office (SCO) reviews the reports provided by mental health and the ICT, and may interview the inmate, to determine the final disposition of the inmate's administrative confinement status.

- As frequently as necessary by the SCO to ensure that the inmate's welfare is provided for and to determine if the inmate should be released if said inmate is housed in disciplinary confinement for longer than 60 consecutive days.<sup>69</sup>

### *Department of Juvenile Justice*

The DJJ does not use solitary confinement with youth that are in the custody of its secure detention centers<sup>70</sup> or residential commitment programs.<sup>71</sup> Section 985.03(7), F.S., defines a “child” or “juvenile” or “youth” to mean any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years.

The DJJ, in conjunction with the Annie E. Casey Foundation, has implemented the Juvenile Detention Alternatives Initiative (JDAI). JDAI is the most widely recognized set of national best practices on the practices and conditions inside juvenile justice facilities. The JDAI Standards provide that solitary confinement can never be used for purposes of punishment or discipline and must be limited to periods of less than four hours.<sup>72</sup>

The DJJ does use short-term supervised confinement, precautionary observation, and secure and controlled observation for youth presenting an immediate danger to themselves or others in its detention and residential facilities. Additionally, medical confinement is used for youth who present with a communicable disease that may infect others.<sup>73</sup>

### Detention Facilities

The applicable DJJ Rules provide definitions related to types of confinement, including behavioral confinement and medical confinement. “Behavioral confinement” is defined to mean placement of a youth in a secure room during volatile situations in which a youth’s sudden or unforeseen onset of behavior imminently and substantially threatens the physical safety of others or himself or herself.<sup>74</sup> “Medical confinement” is defined to mean the placement of a youth in a

<sup>69</sup> Fla. Admin. Code R. 33-602.222(7). Fla. Admin. Code R. 33-602.222(1)(l) provides that the SCO refers to the office or office staff at the central office level that is responsible for the review of inmate classification decisions. Duties include approving, disapproving, or modifying ICT recommendations.

<sup>70</sup> Section 985.03(19), F.S., defines “detention center or facility” to mean a facility used pending court adjudication or disposition or execution of court order for the temporary care of a child alleged or found to have committed a violation of law. A detention center or facility may provide secure custody. A facility used for the commitment of adjudicated delinquents is not considered a detention center or facility.

<sup>71</sup> Section 985.43, F.S., provides that upon adjudication of a delinquency case a court may commit a youth to the DJJ for placement in a residential commitment program. Section 985.03(44), F.S., which defines “restrictiveness level,” addresses the different levels of commitment programs, including, in part, “minimum-risk nonresidential,” “nonsecure residential,” and “high-risk residential.”

<sup>72</sup> See JDAI, A Project of the Annie E. Casey Foundation, *Revised JDAI Standards, Standards Instrument, 2014 Update*, p. 6, December 2014, available at <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited January 10, 2020).

<sup>73</sup> The DJJ, *SB 624 Agency Analysis*, p. 2, January 31, 2019 (on file with the Senate Committee on Criminal Justice)(hereinafter cited as “The DJJ SB 624 Analysis”)[SB 624 (2019) addressed confinement for youth in the custody of the DOC, the DJJ, and county detention facilities]; See also Fla. Admin. Code Chs. 63E-7, 63G-2, and 63N-1.

<sup>74</sup> Fla. Admin. Code R. 63G-2.014(7).

secure room to allow the youth to rest and recover from illness and/or prevents the spread of a communicable illness (i.e. flu, H1N1 virus, etc.).<sup>75</sup>

Additionally, confinement may not be used to harass, embarrass, demean, or otherwise abuse a youth. The use of confinement must be monitored by the superintendent or designee and the time limit for placement of a youth in confinement is no more than eight hours unless the superintendent or his or her designee grants an extension because release of the youth would imminently threaten his or her safety or the safety of others. The Regional Director or designee must review and grant any confinement extended beyond 24 hours, and, if granted, must notify the Assistant Secretary or designee.<sup>76</sup>

A confinement report must be submitted by the detention officer as soon as possible, but no later than one hour after the youth's confinement. The confinement report must be reviewed by the detention officer's supervisor as soon as possible, but no later than two hours after the youth's confinement. The detention officer supervisor must evaluate and document the youth's status, at a minimum, every three hours to determine if the continued confinement of the youth is required. A youth is prohibited from being held in confinement beyond 72 hours without a confinement hearing.<sup>77</sup>

#### Residential Commitment Facilities

The DJJ Rules applicable to residential facilities prohibits a residential commitment program's behavior management system from including disciplinary confinement, wherein a youth is isolated in a locked room, as discipline for misbehavior.<sup>78</sup> A residential commitment program may use room restriction, which is described to mean temporarily restricting the youth's participation in routine activities by requiring the youth to remain in his or her sleeping quarters, when:

- A youth is out of control or a suicide risk.
- A supervisor has given prior approval for each use of room restriction.
- It does not exceed four hours and the door to the room remains open to facilitate staff supervision.
- Staff engages, or attempts to engage, the youth in productive interactions at least every 30 minutes.
- The program does not deny a youth basic services, such as regular meals and physical or mental health services.
- The program staff uses strategies, such as conflict resolution and constructive dialogue, to facilitate the youth's reintegration into the general population.<sup>79</sup>

The program documents certain details for each case of room restriction, including:

- A description of the behavior that resulted in room restriction;
- The date and time room restriction was implemented;

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<sup>75</sup> Fla. Admin. Code R. 63G-2.014(50). The use of medical confinement is not intended as punishment or discipline and is ordered by the Designated Health Authority.

<sup>76</sup> Fla. Admin. Code R. 63G-2.022(4).

<sup>77</sup> Fla. Admin. Code R. 63G-2.022(4).

<sup>78</sup> Fla. Admin. Code R. 63E-7.009(3)(e).

<sup>79</sup> Fla. Admin. Code R. 63E-7.009(4).

- The name of the staff person who recommended the use of room restriction and the name of the approving supervisor;
- The name of the staff person removing the youth from room restriction;
- The date and time of removal and a description of the youth's behavior and attitude upon removal; and
- Follow-up actions taken or attempted to help re-integrate the youth back into the general population when released from room restriction.<sup>80</sup>

A residential commitment program must ensure that staff observe a youth at least every ten minutes while in their sleeping quarters, including when on room restriction. Staff must conduct the observations in a manner to ensure the safety and security of each youth and document real time observations manually or electronically.<sup>81</sup>

Further, a residential commitment program may use controlled observation only when necessary and as a last resort.<sup>82</sup> Controlled observation is defined to mean an immediate, short-term crisis management strategy, not authorized for use as punishment or discipline, wherein a youth in a residential commitment program is placed in a separate, identified, safe, and secure room.<sup>83</sup> Such specified programs are authorized to temporarily place a youth in a controlled observation room only in the following situations when non-physical interventions would not be effective:

- Emergency safety situations where there is imminent risk of the youth physically harming himself or herself, staff, or others; or
- When the youth is engaged in major property destruction that is likely to compromise the security of the program or jeopardize the youth's safety or the safety of others.<sup>84</sup>

Controlled observation has a maximum time limit of two hours, that can be extended by the program director in two-hour increments for no longer than 24 hours. Youth who are in controlled observation receive the standard 10-minute sight and sound check along with documentation of their behavior in 15-minute intervals.<sup>85</sup>

A supervisor with delegated authority must give prior authorization for each use of controlled observation unless the delay caused by seeking prior approval would further jeopardize the safety of others and the program's security. Staff is prohibited from leaving a youth alone in a controlled observation room until an inspection of the room is conducted and it is deemed safe, secure, and in compliance with specified guidelines.<sup>86</sup> The Rule further provides specific

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<sup>80</sup> *Id.* Further, Rule 63E-7.011, F.A.C., provides that a youth is prohibited from large muscle exercise when he or she is temporarily separated from the general population, including when placed on controlled observation or room restriction status pursuant to Rule 63E-7.013, F.A.C. However, if a youth is restricted to a room, the program must give the youth an opportunity for large muscle exercise as soon as is reasonably possible after the youth is reintegrated into the general population.

<sup>81</sup> Fla. Admin. Code R. 63E-7.013(3)(b).

<sup>82</sup> Fla. Admin. Code R. 63E-7.013(16).

<sup>83</sup> Fla. Admin. Code R. 63E-7.002(20).

<sup>84</sup> Fla. Admin. Code R. 63E-7.013(16).

<sup>85</sup> The DJJ SB 624 Agency Analysis, p. 2.

<sup>86</sup> *Id.*

procedures for how to address a youth whose health or safety deteriorates once placed into controlled observation.<sup>87</sup>

The Rule prohibits the use of controlled observation as punishment or discipline.<sup>88</sup>

### *County Detention Facilities*

The FMJS defines terms such as administrative confinement and disciplinary confinement. “Administrative confinement” is defined to mean the segregation of an inmate for investigation, protection, or some cause other than disciplinary action.<sup>89</sup> “Disciplinary confinement” is defined to mean the segregation of an inmate for disciplinary reasons.<sup>90</sup>

The FMJS provides that inmates may be placed in administrative confinement for the purpose of ensuring immediate control and supervision when it is determined they constitute a threat to themselves, to others, or to the safety and security of the detention facility. The Rule requires an incident report or disciplinary report to follow the action that prompted placement in administrative confinement. Additionally, the time of release for inmates in disciplinary or administrative confinement must be recorded and filed in the inmate’s file.<sup>91</sup>

Each inmate in administrative confinement must receive housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except as justified by his or her classification status or special needs inmate status.<sup>92, 93</sup> Further, special needs inmates should be checked by medical staff at intervals not exceeding 72 hours and inmates in administrative or disciplinary confinement must bathe twice weekly.<sup>94</sup> The FMJS provides that the Officer-in-Charge or designee must see and talk to each inmate in disciplinary or administrative confinement at least once each morning and once each afternoon and document the inmate’s general condition and attitude at each visit.<sup>95</sup>

Additionally, the FMJS requires that an inmate confined in an isolation cell used for medical purposes be examined by a physician or designee within 48 hours following his or her confinement in such area or cell. A physician or designee must determine when the inmate will be returned to the general population. The inmate must remain in isolation if the physician or designee:

- Finds that the inmate presents a serious risk to himself or others; or

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<sup>87</sup> See Fla. Admin. Code R. 63E-7.013(16)(e)-(i). For example, a youth must be immediately removed from the controlled observation room and provided follow-up mental health services if he or she begins demonstrating acute psychological distress or suicide risk behaviors subsequent to placement in controlled observation.

<sup>88</sup> Fla. Admin. Code R. 63E-7.001(20).

<sup>89</sup> The FMJS Rule 1.2.

<sup>90</sup> The FMJS Rule 1.17.

<sup>91</sup> The FMJS Rule 13.13.

<sup>92</sup> *Id.*

<sup>93</sup> The FMJS Rule 5.4 defines “special needs inmates” as “inmates who have been determined by the health authority to be mentally ill, suicidal, alcoholic or drug addicted going through withdrawal and in need of close monitoring.”

<sup>94</sup> The FMJS Rule 13.13.

<sup>95</sup> The FMJS Rule 13.14.



- Continues to provide the inmate with follow-up medical care and treatment during the entire time that the inmate remains confined in such area or cell as deemed necessary.<sup>96</sup>

Florida law and the rules of the DOC, the DJJ, and the FMJS do not appear to address restrictive housing of pregnant prisoners in separate provisions.

### III. Effect of Proposed Changes:

The bill amends s. 944.241, F.S., modifying current provisions for using restraints on a pregnant prisoner and prescribing procedures for when a pregnant prisoner may be subject to an invasive body cavity search or placed in restrictive housing.

Additionally, the bill renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act.”

#### Definitions

The bill amends the definitions section to:

- Expand the term “extraordinary circumstance” to apply to the exceptions of circumstances that dictate the use of restrictive housing in addition to the use of restraints.
- Add the definitions:
  - “Invasive body cavity search,” which means a search that involves a manual inspection using touch, insertion, or probing of the openings, cavities, and orifices of the human body, including, but not limited to the genitals, buttocks, anus, or breasts that is not conducted for a medical purpose; and
  - “Restrictive housing,” which means the placement of pregnant prisoners separately from the general population of a correctional institution and imposing restrictions on their movement, behavior, and privileges solely based on the condition of being pregnant. The term includes placing the prisoner in medical isolation or in the infirmary.

#### Use of Restraints

The bill expands the prohibition of using restraints on a pregnant prisoner under current law to cover when a pregnant prisoner, at any point in her known pregnancy, is being transported. The bill prescribes that restraints may not be used:

- If any doctor, nurse, or other health professional treating the prisoner in labor, in delivery, or in postpartum recovery requests that restraints not be used due to a documentable medical purpose. If the doctor, nurse, or other health professional makes such a request, the correctional officer or other law enforcement officer accompanying the prisoner must immediately remove all restraints.
- During transport, labor, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.

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<sup>96</sup> The FMJS Rule 7.23.

The bill provides an exception to the prohibition on the use of restraints, which specifically provides that:

- A restraint may be used on a pregnant prisoner or a prisoner who is in postpartum recovery only if all of the following apply:
  - The corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.
  - The restraints used are the least restrictive necessary.
  - If wrist restraints are used, the restraints are applied in the front of the prisoner so that she may protect herself in the event of a forward fall.
- A pregnant prisoner who is transported by a correctional institution must be transported using a restraint that is the least restrictive necessary.

Current law remains the same as it relates to the requirement that the corrections official must provide written findings when restraints are used on a pregnant prisoner due to an extraordinary circumstance that dictated the use of the restraints.

### **Invasive Body Cavity Searches**

The bill provides that an invasive body cavity search of a pregnant prisoner may only be conducted by a medical professional, unless a correctional officer has a reasonable belief that the prisoner is concealing contraband. The bill requires that an officer who conducts an invasive body cavity search submit a written report to the corrections official within 72 hours after the search, which must:

- Explain the reasons for the search; and
- Identify any contraband recovered in the search.

### **Restrictive Housing**

The bill prohibits, with limited exceptions, a pregnant prisoner from being involuntarily placed in restrictive housing. However, the bill provides that a corrections official is not prohibited from placing a pregnant prisoner in restrictive housing for disciplinary violations or to address security risks to the pregnant prisoner, other prisoners, or staff directly related to the pregnant prisoner, provided the corrections official complies with the requirements discussed below.

The only exception provided for in the bill authorizes a pregnant prisoner to be involuntarily placed in restrictive housing if the corrections official of the correctional institution, in consultation with the individual overseeing prenatal care and medical treatment at the correctional institution, determines that an extraordinary circumstance exists such that restrictive housing is necessary and that there are no less restrictive means available.

The bill requires the corrections official to, *before* placing a prisoner in restrictive housing, write a report that states:

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

The corrections official is required to review the report at least every 24 hours to confirm that the extraordinary circumstances cited in the report still exist and a copy of the report and each review must be provided to the prisoner.

A pregnant prisoner who is placed in restrictive housing under s. 944.241, F.S., must be:

- Seen at least every 24 hours by the person overseeing prenatal care and medical treatment in the facility;
- Housed in the least restrictive setting consistent with the health and safety of the individual; and
- Given an intensive treatment plan developed and approved by the person overseeing prenatal care and medical treatment at the facility.

In the case that a pregnant prisoner needs infirmary care, the bill requires an authorized medical staff to provide an order for the prisoner to be admitted to the infirmary. Further, if the prisoner has passed her due date, she must be admitted to the infirmary until labor begins or until the obstetrician makes other housing arrangements. The bill provides that a pregnant prisoner who has been placed in the infirmary must be provided:

- The same access to outdoor recreation, visitation, mail, and telephone calls as other prisoners; and
- The ability to continue to participate in other privileges and classes granted to the general population.

The bill amends s. 944.215(7), F.S., deleting a date related to the rulemaking authority, therefore providing the entities covered under the section with the necessary rulemaking authority to implement the changes made by the act.

The bill is effective July 1, 2020.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill requires that the DOC, DJJ, and county and municipal detention facilities comply with new standards for using restraints with, conducting invasive body cavity searches on, and placing in restrictive housing pregnant prisoners. These new standards require that specific staff document the extraordinary circumstance leading to the utilization of the enumerated exceptions to the use of restraints or restrictive housing with pregnant prisoners and to conduct reviews of the extraordinary circumstance that is the basis for the exception. The prisoner must be reviewed every 24 hours and must also be placed in the infirmary in certain circumstances.

According to the Department of Corrections and the Department of Juvenile Justice, changing the requirement for the frequency of interaction with medical staff from every eight hours to every 24 hours eliminates the fiscal impact.<sup>97</sup>

Similarly, the Sheriffs' Association previously advised that the medical examinations every 8 hours is a concern. They report that many medium and small jails do not have 24/7 medical staff onsite and would not be able to conduct the medical examinations without hiring or contracting for additional staff.<sup>98</sup> It is anticipated that the impact to sheriffs will be reduced with this change.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>97</sup> Telephone call with Mark Talent at the Department of Corrections, and with Rachel Moscosco at the Department of Juvenile Justice. (February 18, 2020).

<sup>98</sup> Email from the Sheriffs' Association (February 7, 2020) (on file with the Senate Committee on Criminal and Civil Justice Appropriations).

**VIII. Statutes Affected:**

This bill substantially amends section 944.241 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Appropriations on March 3, 2020:**

The committee substitute revises the previous requirement that pregnant prisoners who are placed in restrictive housing be “examined” at least every eight hours, to require that they be “seen” at least every 24 hours.

**CS by Criminal Justice on January 14, 2020:**

The committee substitute:

- Renames the Act the “Tammy Jackson Healthy Pregnancies for Incarcerated Women Act”;
- Modifies the term “extraordinary circumstance” to apply to restraints and restrictive housing;
- Defines the terms “invasive body cavity search” and “restrictive housing”;
- Expands the prohibition on using restraints on pregnant prisoners to cover a pregnant prisoner at any point in her pregnancy if she is being transported;
- Provides an exception to when restraints can be used on a pregnant prisoner and requires the corrections official to document the reasons why restraints were necessary;
- Prohibits invasive body cavity searches on a pregnant prisoner and provides an exception for when a correctional officer can conduct such a search;
- Prohibits a corrections institution from placing a pregnant prisoner in restrictive housing just as a result of the condition of being pregnant;
- Provides exceptions to when restrictive housing can be used on a pregnant prisoner and requires the corrections official to document the reasons why restrictive housing was necessary;
- Requires a corrections official to examine a pregnant prisoner placed into restrictive housing every eight hours to ensure the restrictive housing is still necessary;
- Requires pregnant prisoners placed in the infirmary for restrictive housing to be provided the same rights as in the general population; and
- Provides rulemaking authority.

**B. Amendments:**

None.