

CHAPTER 2020-89

Committee Substitute for Committee Substitute for House Bill No. 1259

An act relating to incarcerated pregnant women; amending s. 944.241, F.S.; amending the short title; providing definitions; prohibiting the involuntary placement of pregnant prisoners in restrictive housing; providing exceptions; requiring corrections officials to write a specified report if circumstances necessitate placing a pregnant prisoner in restrictive housing; providing requirements for the report; requiring a copy of such reports to be provided to pregnant prisoners in restrictive housing; providing requirements for the treatment of pregnant prisoners placed in restrictive housing; requiring pregnant prisoners to be placed in a designated medical housing unit or admitted to the infirmary under certain circumstances; providing certain rights for pregnant prisoners placed in a designated medical housing unit or admitted to the infirmary; expanding enforcement provisions to provide for grievances for violations relating to restrictive housing of pregnant prisoners; requiring the Department of Corrections and the Department of Juvenile Justice to adopt rules; requiring detention facilities to develop specified written policies and procedures; providing an effective date.

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

Section 1. Section 944.241, Florida Statutes, is amended to read:

944.241 ~~Shaekling 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:

(a) “Correctional institution” means any facility under the authority of the department or the Department of Juvenile Justice, a county or municipal detention facility, or a detention facility operated by a private entity.

(b) “Corrections official” means the official who is responsible for oversight of a correctional institution, or his or her designee.

(c) “Department” means the Department of Corrections.

(d) “Extraordinary circumstance” means 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.

(e) “Invasive body search” means a search involving a manual inspection of the breasts or a manual inspection using touch, insertion, or probing of the

cavities of the human body, including the genitals, buttocks, or anus. An invasive body search may only be conducted according to a correctional institution's written rules, policies, or procedures as required by subsection (6).

(f)(e) "Labor" means 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.

(g)(f) "Postpartum recovery" means, 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 department or correctional institution recommends a longer period of time.

(h) "Pregnant prisoner" means any prisoner whose pregnancy is confirmed by or otherwise known to a qualified healthcare professional at the correctional institution.

(i)(g) "Prisoner" means 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. For purposes of this section, the term includes any woman detained under the immigration laws of the United States at any correctional institution.

(j)(h) "Restraints" means 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.

(k) "Restrictive housing" means housing a prisoner separately from the general population of a correctional institution and imposing restrictions on her movement, behavior, and privileges. The term includes placing a prisoner in medical isolation, in a medical housing unit, or in the infirmary.

(3) RESTRAINT OF PRISONERS.—

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

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

~~2. Under no circumstances shall Leg, ankle, or waist restraints may not~~ may not be used on any pregnant prisoner who is in labor or delivery.

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

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

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

(c) 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 department or correctional institution to the contrary that would threaten the safety of the prisoner, the unborn child, or the public in general:

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

2. 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.

(d) In addition to the specific requirements of paragraphs (a)-(c), any restraint of a pregnant 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.

(4) RESTRICTIVE HOUSING.—

(a) Except as provided in paragraph (b) or paragraph (d), a pregnant prisoner may not be involuntarily placed in restrictive housing.

(b) A pregnant prisoner may be involuntarily placed in restrictive housing if the corrections official of the correctional institution makes an individualized determination that restrictive housing is necessary to protect the health and safety of the pregnant prisoner or others or to preserve the security and order of the correctional institution and that there are no less restrictive means available. After placing a pregnant prisoner in restrictive housing under this paragraph, the corrections official must write a report stating:

1. The individualized reason restrictive housing is necessary.

2. The reason less restrictive means are not available.

3. Whether a qualified healthcare professional at the correctional institution objects to the placement.

The corrections official must provide a copy of such report to the pregnant prisoner within 12 hours after placing the prisoner in restrictive housing.

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

1. Seen by a qualified healthcare professional at least once every 24 hours.

2. Observed by a correctional officer at least once every hour.

3. Housed in the least restrictive setting consistent with the health and safety of the pregnant prisoner.

4. Given a medical treatment plan developed and approved by a qualified healthcare professional at the correctional institution if the pregnant prisoner does not already have such a treatment plan in place.

(d)1. If a pregnant prisoner needs medical care, a primary care nurse practitioner or obstetrician must provide an order for the pregnant prisoner to be placed in a designated medical housing unit or admitted to the infirmary.

2. If a pregnant prisoner has passed her due date, she must be placed in a designated medical housing unit or admitted to the infirmary until labor begins. A pregnant prisoner who has been placed in a designated medical housing unit or admitted to the infirmary must be provided the same access to outdoor recreation, visitation, mail, telephone calls, and other privileges and classes available to the general population unless:

a. The corrections official, after consulting with a qualified healthcare professional at the correctional institution, determines that such access poses a danger to the safety and security of the correctional institution; or

b. A qualified healthcare professional at the correctional institution determines that such access poses a danger of adverse clinical consequences for the pregnant prisoner or others and documents such determination in the pregnant prisoner's medical file.

(5)(4) ENFORCEMENT.—

(a) Notwithstanding any relief or claims afforded by federal or state law, any prisoner who is restrained or placed in restrictive housing in violation of this section 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.

(b) This section does not prevent a woman harmed through the use of restraints or by placement in restrictive housing under this section from filing a complaint under any other relevant provision of federal or state law.

(6)(5) NOTICE TO PRISONERS.—

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

(b) Each correctional institution shall inform female prisoners of the rules developed pursuant to paragraph (a) 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.

(c) Each county or municipal detention facility and each detention facility operated by a private entity shall adopt written policies and procedures relating to the use of restraints and the performance of invasive body searches on pregnant prisoners.

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

Approved by the Governor June 23, 2020.

Filed in Office Secretary of State June 23, 2020.