

CHAPTER 330
FORMERLY
SENATE BILL NO. 190
AS AMENDED BY
SENATE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE HEALTHY PREGNANCIES FOR INCARCERATED WOMEN ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 11 of the Delaware Code by making insertions as shown by underlining as follows:

Chapter 66. Restraint of Pregnant Prisoners.

§6601. Findings and purposes.

The General Assembly hereby finds that restraining a pregnant woman can pose undue health risks to the woman and her unborn fetus. Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery. Women often need to move around during labor and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures. Shackling is unnecessary and dangerous to a woman's well-being.

§6602. Definitions.

As used in this Chapter:

(a) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body and/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 (tether) chain, or a convex shield.

(b) "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.

(c) "Postpartum recovery" means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth.

(d) "Correctional institution" means any entity under the authority of any state, county, or municipal law enforcement division that has the power to detain and/or restrain a person under the laws of the State.

(e) "Corrections official" means the official responsible for oversight of a correctional institution, or his/her designee.

(f) "Prisoner or detainee" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of a criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. Included is any person detained under the immigration laws of the United States at any correctional facility.

(g) "Extraordinary circumstances" 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 or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public.

(a) A correctional institution shall not use restraints on a pregnant prisoner or detainee during labor, delivery, or postpartum recovery, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance, except that:

(1) If the doctor, nurse or other health professional treating the prisoner requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

(2) Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.

(b) If restraints are used on a prisoner or detainee pursuant to subsection (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 as to the extraordinary circumstances that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least 5 years.

§6604. Enforcement.

(a) Within 30 days of the effective date of this Act, all affected correctional institutions in Delaware shall adopt policies and procedures, pursuant to this Chapter as contemplated by 11 Del. C. § 4322 (d).

(b) Correctional institutions shall inform pregnant prisoners and detainees of the rules developed pursuant to subsection (a) upon determination of the pregnancy.

(c) Notwithstanding any other provisions to the contrary or 11 Del C. § 4322 (c) and (d), within 60 days of the effective date of this Act, correctional institutions shall inform all staff contractors, medical providers, prisoners and detainees in the custody of the affected correctional institutions about the policies and procedures developed pursuant to subsection (a).

§6605. Annual Report.

No later than 30 days before the end of each fiscal year, the Commissioner of the Department of Correction shall submit a written report to the Office of the Governor that certifies compliance with this Act and includes, when appropriate, an account of every instance of shackling. The written report shall not contain any individually identifying information of any prisoner or detainee. Such reports shall be made available for public inspection.

Approved July 12, 2012