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Sen. S. McBride & Sen. Townsend
Reps. Baumbach, Bentz, Bolden, K. Johnson, Kowalko,
S. Moore, Morrison, Wilson-Anton; Sens. Gay, Hansen,
Sokola

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 342

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO TREATMENT OF PREGNANT AND POST-PARTUM PRISONERS.

1 WHEREAS, Delaware law currently limits the circumstances in which a pregnant person may be restrained and
2 completely prohibits the use of restraints during labor or delivery; and

3 WHEREAS, the Women's Prison Association reports there is no record of escape from a woman who was not
4 restrained during labor; and

5 WHEREAS, it is cruel and inhumane to add to the discomfort of women already suffering from pregnancy
6 symptoms by shackling or restraining their limbs; and

7 WHEREAS, the American College of Obstetricians and Gynecologists affirms that shackling a pregnant inmate
8 increases the risk of falling, impairs evaluations for serious pregnancy-associated conditions, causes pain and skin damage;
9 and further endangers the inmate when they are at increased risk of preeclampsia; and

10 WHEREAS, using restraints on a person who has recently given birth may negatively impact bonding between
11 mother and child, as well as exacerbate pregnancy-related mental health conditions such as depression and post-traumatic
12 stress disorder; and

13 WHEREAS, the State must do more to protect and enhance the dignity, health, safety, and wellbeing of all
14 pregnant and postpartum persons in its correctional system.

15 NOW, THEREFORE:

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

17 Section 1. Amend Chapter 66, Title 11 of the Delaware Code by making deletions as shown by strike through and
18 insertions as shown by underline as follows:

19 CHAPTER 66. Restraint of ~~Pregnant Prisoners~~ Pregnant Persons in Custody

20 § 6601. Findings and purposes.

21 The General Assembly hereby finds that the physical restraint of persons in custody during pregnancy, labor, and
22 recovery presents serious risks to the health and well-being of mother and baby. In most circumstances, the use of restraints
23 is unnecessary and dangerous. ~~restraining a pregnant woman can pose undue health risks to the woman and her unborn~~
24 ~~fetus. Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery.~~
25 ~~Women often need to move around during labor and recovery, including moving their legs as part of the birthing process.~~
26 ~~Restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to~~
27 ~~conduct sudden emergency procedures. Shackling is unnecessary and dangerous to a woman's well-being.~~

28 § 6602. Definitions.

29 As used in this chapter:

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

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

34 (3) "Extraordinary circumstances" means a substantial flight risk or some other extraordinary medical or
35 security circumstance that dictates restraints be used to ensure the safety and security of the ~~prisoner or detainee,~~
36 prisoner, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public.

37 (4) "Immediate postpartum period" means the 13 week period following childbirth.

38 (4) (5) "Labor" means the period of time before a birth during which contractions are of sufficient frequency,
39 intensity, and duration to bring about effacement and progressive dilation of the cervix.

40 (5) ~~"Postpartum recovery" means, as determined by a woman's physician, the period immediately following~~
41 ~~delivery, including the entire period she is in the hospital or infirmary after birth.~~

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

46 (7) "Restraints" means any physical restraint or mechanical device used to control the movement of a ~~prisoner~~
47 ~~or detainee's~~ prisoner's body and/or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal
48 handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain, or a convex shield.

49 § 6603. Use of restraints on pregnant ~~prisoners;~~ prisoners; other prohibitions.

50 (a) (1) ~~A~~ Except as provided in paragraph (a)(2) and (3) of this section, a correctional institution shall may not use
51 restraints on a pregnant prisoner or detainee during labor, delivery, or postpartum recovery, who is in the second or third
52 trimester of pregnancy, in labor, in delivery, or in the immediate postpartum period. Under no circumstances shall leg or
53 waist restraints be used on any prisoner or detainee who is in labor or delivery. Where allowed, wrist restraints must be
54 fastened in front of the body.

55 (2) ~~unless the~~ If a corrections official makes an individualized determination that the prisoner or detainee
56 presents an extraordinary circumstance, except that: circumstance exists, restraints may be used for the limited period
57 that such circumstance exists, subject to the limitations in paragraphs (a)(2)a., b., and c. of this section.

58 (4) a. A licensed medical professional must be notified as soon as practicable upon the application of leg or
59 waist restraints and shall examine the restrained prisoner within 10 minutes of the notification.

60 b. ~~If the doctor, nurse~~ a doctor, nurse, or other health professional treating the prisoner requests that
61 restraints not be used, the corrections officer accompanying the prisoner ~~or detainee~~ shall immediately remove all
62 ~~restraints; and restraints.~~

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

65 (3) Wrist restraints fastened in the front of the body may be used when a prisoner who is pregnant or in the
66 immediate post-partum period is being transported outside of the facility for medical or other appointments. Absent
67 extraordinary circumstances, no restraints may be used, including in transport, on a woman who is in labor, delivery, or
68 being transported with a newborn.

69 (b) If restraints are used on a prisoner ~~or detainee~~ pursuant to ~~subsection (a)~~ paragraph (a)(2) of this section:

70 (1) The type of restraint applied and the application of the restraint must be done in the least restrictive
71 manner necessary. ~~necessary; and~~

72 (2) The corrections official shall make written findings within 10 days as to the extraordinary circumstances
73 that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least 5
74 years.

75 (c) A pregnant prisoner who is required to squat and cough must be provided with accommodations or supports to
76 prevent the risk of falls.

77 (d) A pregnant prisoner may not be required to undergo a vaginal examination unless prescribed and performed by
78 a licensed health care professional.

79 § 6604. Enforcement.

80 (a) By August 11, 2012, all affected correctional institutions in Delaware shall adopt policies and procedures,
81 pursuant to this chapter as contemplated by § 4322(d) of this title.

82 (b) Correctional institutions shall inform pregnant and post-partum prisoners ~~and detainees~~ of the rules developed
83 pursuant to subsection (a) of this section upon determination of the pregnancy.

84 (c) Notwithstanding any other provisions to the contrary or § 4322(c) and (d) of this ~~title, by September 10, 2012,~~
85 title, correctional institutions shall inform all staff contractors, medical providers, prisoners and detainees in the custody of
86 the affected correctional institutions about the policies and procedures developed pursuant to subsection (a) of this section.

87 § 6605. Annual report.

88 No later than 30 days before the end of each fiscal year, the Commissioner of the Department of Correction shall
89 submit a written report to the Office of the ~~Governor~~ Governor, the Chairs of the House Corrections Committee and the
90 Senate Corrections and Public Safety Committee, the Director and the Librarian of the Division of Research of Legislative
91 Council, and the Public Archives that certifies compliance with this chapter and ~~includes, when appropriate, includes~~ an
92 account of every instance ~~of shackling~~ where restraints were used on a prisoner who is in the second or third trimester of
93 pregnancy, in labor, in delivery, or in the immediate postpartum period, other than the use of wrist restraints fastened in
94 front of the body. The written report shall not contain any individually identifying information of any ~~prisoner, prisoner or~~
95 ~~detainee~~. Such reports shall be made available for public inspection.

SYNOPSIS

Delaware law already prohibits the use of restraints on women who are giving birth or in labor except in limited circumstances. This Act expands that protection to include women in the second or third trimester of pregnancy and those in the 13-week immediate post-partum period. Wrist restraints fastened in front of the body may be used during transport except during labor or delivery or while being transported with a newborn. Wrist, leg, and waist restraints may also be used in extraordinary circumstances, but a licensed medical professional must be notified as soon as practicable when waist or leg restraints are applied and examine the prisoner within 10 minutes of the notification. Leg and waist restraints are prohibited for prisoners in labor and delivery.

The Act also requires that a pregnant or post-partum woman who is required to squat or cough during a strip search be provided accommodations to avoid falls and prohibits vaginal exams except those performed by a medical professional.

The American College of Obstetricians and Gynecologists states that shackling a pregnant inmate increases the risk of falling, impairs evaluations for serious pregnancy-associated conditions, causes pain and skin damage, and further endangers inmates at increased risk of preeclampsia. The use of restraints in the post-partum period creates additional risks to physical and mental health.