SPONSOR: Rep. Minor-Brown & Rep. Dorsey Walker &
Rep. Heffernan & Sen. Pinkney & Sen. Lockman &
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
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 2

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

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

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

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

WHEREAS, the American College of Obstetricians and Gynecologists affirms 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 the inmate when they are at increased risk of preeclampsia; and

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

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

NOW, THEREFORE:

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

HD : KL : MAW : 2141510501
LC : HVW : : 5081510250
Draft: 06/13/2022 03:17 PM

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

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

§ 6601. Findings and purposes.

The General Assembly hereby finds that the physical restraint of persons in custody during pregnancy, labor, and recovery presents serious risks to the health and well-being of mother and baby. In most circumstances, the use of restraints is unnecessary and dangerous. ~~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:

(1) "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~~ or restrain a person under the laws of the State.

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

(3) "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.~~ an immediate and serious threat of harm to themselves, staff, or others, or a substantial flight risk that cannot reasonably be contained by any other means.

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

~~(4)~~ (5) "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.

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

(6) ~~"Prisoner or detainee"~~ "Prisoner" 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.

(7) "Restraints" means any physical restraint or mechanical device used to control the movement of a ~~prisoner or detainee's~~ prisoner'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.

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

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

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

~~(1)~~ a. A licensed medical professional must be notified as soon as practicable upon the application of leg or waist restraints and shall examine the restrained prisoner within 10 minutes of the notification.

b. If ~~the doctor, nurse~~ a 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~~ restraints.

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

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

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

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

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

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

§ 6604. Enforcement.

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

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

(c) Notwithstanding any other provisions to the contrary or § 4322(c) and (d) of this ~~title, by September 10, 2012,~~ title, 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) of this section.

(d) The Department of Correction shall develop training guidelines regarding the use of restraints on prisoners during pregnancy, labor, and postpartum recovery and shall incorporate guidelines into appropriate training programs. Training guidelines must include all of the following:

(1) How to identify certain symptoms of pregnancy that require immediate referral to a healthcare professional.

(2) Circumstances under which the exceptions under subsection (a) of this section would apply and in the case that an exception under subsection (a) applies, all of the following:

a. How to apply restraints in a way that does not harm the prisoner or fetus.

b. The information required to be reported under subsection (b) of this section.

c. The right of a healthcare professional to request that restraints not be used and the requirement under (a)(2)a. of this section to comply with the request.

§ 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~~ Governor, the Chairs of the House Corrections Committee and the Senate Corrections and Public Safety Committee, the Director and the Librarian of the Division of Research of Legislative Council, and the Public Archives that certifies compliance with this chapter and ~~includes, when appropriate,~~ includes an

account of every instance ~~of shackling.~~ where restraints were used on a prisoner who is pregnant, in labor, in delivery, or in the immediate postpartum period, other than the use of wrist restraints fastened in front of the body. The written report shall not contain any individually identifying information of any prisoner. ~~prisoner or detainee.~~ Such reports shall be made available for public inspection.