

House Study Bill 95 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON MILLER)

A BILL FOR

1 An Act relating to the use of restraints against a pregnant
2 inmate or detainee and including effective date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. LEGISLATIVE FINDINGS. The general assembly
2 finds all of the following:

3 1. Restraining a pregnant woman can pose undue health risks
4 to the woman and her pregnancy.

5 2. The vast majority of female inmates or detainees in this
6 state are nonviolent offenders.

7 3. Restraining pregnant prison inmates increases the
8 potential for physical harm from an accidental trip or fall.

9 4. Freedom from physical restraints is especially critical
10 during labor, delivery, and postpartum recovery after delivery,
11 because a woman often needs to move around during labor and
12 recovery.

13 5. Restraints on a pregnant woman can interfere with the
14 ability of medical staff to appropriately assist in childbirth
15 or to conduct sudden emergency procedures.

16 Sec. 2. NEW SECTION. 904.1001 Definitions.

17 As used in this division, unless the context otherwise
18 requires:

19 1. "*Correctional institution*" means any state correctional
20 institution under this chapter, county jail or municipal
21 holding facility under chapter 356, county detention facility
22 under chapter 356A, or other detention facility that is used to
23 detain or restrain a person, including a juvenile, under the
24 laws of this state or the United States.

25 2. "*Corrections officer*" means the official who is
26 responsible for oversight of a correctional institution or the
27 official's designee.

28 3. "*Detainee*" means any adult or juvenile person detained or
29 restrained under the immigration laws of the United States at
30 any correctional institution.

31 4. "*Inmate*" means any adult or juvenile person incarcerated
32 or detained in a correctional institution who is accused
33 of, convicted or adjudicated guilty of, or sentenced for, a
34 criminal or immigration law violation including persons on
35 probation, parole, or pretrial release, or in any diversionary

1 program.

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

6 6. "*Postpartum recovery*" means, as determined by the
7 attending physician, the period immediately following delivery,
8 including the entire period a woman is in the hospital or
9 infirmary after birth.

10 7. "*Restraint*" means any physical restraint or mechanical
11 device used to control the body or limb movement of an inmate
12 or detainee, including but not limited to flex cuffs, soft
13 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
14 irons, belly chains, a security chain, or a convex shield.

15 Sec. 3. NEW SECTION. 904.1002 **Restraint of pregnant inmates**
16 **or detainees.**

17 1. A correctional institution shall not use restraints on
18 an inmate or detainee known to be pregnant, including during
19 labor, delivery, or postpartum recovery, unless the corrections
20 officer makes an individualized determination that the use of
21 a restraint on the inmate or detainee is necessary due to an
22 extraordinary circumstance under subsection 2.

23 2. A corrections officer may make an individualized
24 determination that use of a restraint is necessary for a
25 pregnant inmate or detainee through the first twenty weeks of
26 a pregnancy because the inmate or detainee is a substantial
27 flight risk or some other extraordinary medical or security
28 circumstance dictates the use of restraints to ensure the
29 safety and security of the inmate or detainee, the staff of
30 the correctional institution or medical facility, the general
31 public, or other inmates or detainees.

32 3. a. Notwithstanding subsection 2, a restraint shall
33 not be used on a pregnant inmate or detainee under any of the
34 following circumstances:

35 (1) A physician, nurse, or other health professional

1 treating the inmate or detainee requests the restraints be
2 removed.

3 (2) After the twenty-fourth week of pregnancy.

4 (3) During labor or childbirth.

5 *b.* Notwithstanding paragraph "a", a leg or waist restraint
6 may be used after the twenty-fourth week of the pregnancy if
7 the physician, nurse, or other health professional treating the
8 inmate or detainee approves the use of the restraint.

9 4. *a.* Upon admission of an inmate or detainee to a medical
10 facility or birthing center for childbirth, no corrections
11 officer shall remain present in the birthing room during the
12 labor or childbirth, unless specifically requested by the
13 physician, nurse, or other medical personnel treating the
14 inmate or detainee.

15 *b.* If a corrections officer is requested to be present
16 in the birthing room during the labor or childbirth, the
17 corrections officer shall be female if practicable.

18 5. *a.* If a restraint is used pursuant to subsection 2, the
19 restraint used shall be used in the least restrictive manner.

20 *b.* The corrections officer making the determination to use a
21 restraint pursuant to subsection 2 shall make written findings
22 within ten days of the decision to use such a restraint. The
23 findings shall be kept for at least five years and are public
24 records, except no individually identifying information of an
25 inmate or detainee shall be made public without the written
26 consent of the inmate or detainee.

27 **Sec. 4. NEW SECTION. 904.1003 Transportation of a pregnant**
28 **inmate or detainee.**

29 A correctional institution shall use a wheelchair to
30 transport a pregnant inmate or detainee to or from a transport
31 vehicle or to or from any appointment.

32 **Sec. 5. NEW SECTION. 904.1004 Damages.**

33 In addition to any other remedy authorized by law, a
34 correctional institution that restrains an inmate or detainee
35 in violation of this division may be liable for civil damages

1 and reasonable attorney fees and costs.

2 Sec. 6. NEW SECTION. 904.1005 Report.

3 The department of corrections, in conjunction with the
4 other entities supervising inmates and detainees in the state,
5 shall file a report with the general assembly by August 1 of
6 each fiscal year, detailing every instance in which restraints
7 were used on a pregnant inmate or detainee pursuant to this
8 division. The report shall not contain personal identifying
9 information of any inmate or detainee.

10 Sec. 7. RULES. The department of corrections, in
11 conjunction with other entities supervising inmates and
12 detainees in the state, shall commence rulemaking for the
13 implementation and administration of this Act within sixty days
14 of the effective date of this Act.

15 Sec. 8. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
16 immediate importance, takes effect upon enactment.

17 EXPLANATION

18 This bill relates to the use of restraints on a pregnant
19 inmate or detainee.

20 The bill defines "correctional institution" to mean any
21 state correctional institution, county jail, municipal holding
22 facility, county detention facility, or other detention
23 facility that is used to detain or restrain a person, including
24 a juvenile, under the laws of this state or the United States.

25 The bill defines "inmate" to mean any adult or juvenile
26 person incarcerated or detained in a correctional institution
27 who is accused of, convicted or adjudicated guilty of, or
28 sentenced for, a criminal or immigration law violation
29 including persons on probation, parole, or pretrial release,
30 or in any diversionary program.

31 The bill defines "detainee" to mean any adult or juvenile
32 person detained or restrained under the immigration laws of the
33 United States at any correctional institution.

34 The bill prohibits a correctional institution from using
35 a restraint on an inmate or detainee known to be pregnant,

1 including during labor, delivery, or postpartum recovery,
2 unless the corrections officer makes an individualized
3 determination that the use of a restraint on a pregnant inmate
4 or detainee is necessary due to an extraordinary circumstance.

5 The bill permits a corrections officer to make an
6 individualized determination that a restraint is necessary for
7 a pregnant inmate or detainee through the first 20 weeks of
8 a pregnancy because the inmate or detainee is a substantial
9 flight risk or some other extraordinary medical or security
10 circumstance dictates the use of a restraint to ensure the
11 safety and security of the inmate or other persons.

12 The bill prohibits the use of a restraint if a health
13 professional treating the inmate or detainee requests the
14 restraints be removed, the pregnancy is at more than 24
15 weeks, or during labor or childbirth. However, a leg or
16 waist restraint may be used after the twenty-fourth week of
17 the pregnancy if the health professional treating the inmate
18 approves the use of the restraint.

19 Upon admission of an inmate or detainee to a medical facility
20 or birthing center for childbirth, the bill prohibits a
21 corrections officer from remaining in the birthing room during
22 labor or childbirth, unless specifically requested by the
23 medical personnel treating the inmate or detainee.

24 The corrections officer making the determination to
25 use a restraint pursuant to the bill is required to make
26 written findings within 10 days of the decision to use such a
27 restraint.

28 The bill requires the department of corrections, in
29 conjunction with the other entities supervising inmates and
30 detainees in the state, to file a report with the general
31 assembly by August 1 of each fiscal year, detailing every
32 instance in which restraints were used on a pregnant inmate or
33 detainee pursuant to the bill. The report shall not contain
34 personal identifying information of any inmate or detainee.

35 The bill requires the department of corrections and other

H.F. _____

- 1 entities supervising inmates and detainees to commence
- 2 rulemaking within 60 days of the effective date of the bill.
- 3 The bill takes effect upon enactment.