

Senate File 2019 - Introduced

SENATE FILE 2019

BY PETERSEN

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. There are serious known medical risks associated with the
4 use of restraints on pregnant women.

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 any of the
20 following apply:

21 a. The inmate or detainee refuses to undergo a urine-based
22 pregnancy test, if not visibly pregnant.

23 b. The inmate has been confined for less than twenty-four
24 hours at a correctional institution other than a state
25 correctional institution.

26 c. A corrections officer makes an individualized
27 determination that the use of a restraint on the inmate or
28 detainee is necessary due to an extraordinary medical or
29 security circumstance described under subsection 2.

30 2. A corrections officer may make an individualized
31 determination that use of a restraint is necessary for a
32 pregnant inmate or detainee because the inmate or detainee is a
33 substantial flight risk or some other extraordinary medical or
34 security circumstance dictates the use of restraints to ensure
35 the safety and security of the inmate or detainee, the staff of

1 the correctional institution or medical facility, the general
2 public, or other inmates or detainees.

3 3. Notwithstanding subsections 1 and 2, restraints shall
4 not be used under the following circumstances:

5 a. If a physician, nurse, or other health professional
6 treating the inmate or detainee requests the restraints not be
7 used. If such a request is made pursuant to this paragraph,
8 the corrections officer accompanying the inmate or detainee
9 shall immediately remove the restraints, unless the corrections
10 officer determines that removing the restraints would pose an
11 imminent extraordinary security circumstance described under
12 subsection 2.

13 b. If the correctional institution has actual and
14 constructive knowledge of the pregnancy and the inmate or
15 detainee is in at least the twenty-first week of pregnancy.
16 However, in such circumstances leg or waist restraints may be
17 used under the direction of the physician, nurse, or other
18 health professional treating the inmate or detainee.

19 c. During labor or childbirth.

20 4. If a corrections officer is requested to be present
21 in the birthing room during the labor or childbirth, the
22 corrections officer shall be female if practicable.

23 5. a. If a restraint is used pursuant to this section, the
24 restraint used shall be used in the least restrictive manner.

25 b. A corrections officer making the determination to use a
26 restraint pursuant to this section shall make written findings
27 within ten days of the decision to use such a restraint. The
28 findings shall be kept for at least five years and are public
29 records, except no individually identifying information of an
30 inmate or detainee shall be made public without the written
31 consent of the inmate or detainee.

32 Sec. 4. NEW SECTION. 904.1003 **Transportation of a pregnant**
33 **inmate or detainee.**

34 A correctional institution shall use a wheelchair to
35 transport a known pregnant inmate or detainee to or from a

1 transport vehicle or to or from any appointment unless directed
2 otherwise by the physician, nurse, or other health professional
3 treating the inmate or detainee.

4 Sec. 5. NEW SECTION. 904.1004 Birth plan.

5 1. A correctional institution shall develop a birth
6 plan with a known pregnant inmate or detainee if the inmate
7 or detainee is likely to be confined at the correctional
8 institution during the childbirth. The birth plan shall
9 include a support person designated by the inmate or detainee
10 who may be present in the birthing room with the inmate or
11 detainee during labor and childbirth.

12 2. The correctional institution may, for good cause, reject
13 the support person designated in the birth plan from being
14 present in the birthing room. If the correctional institution
15 rejects the support person, the correctional institution shall
16 specify the reasons for rejecting the support person in writing
17 to the inmate or detainee as soon as possible if practicable
18 under the circumstances, in order to allow the inmate or
19 detainee to designate a new support person to be present in the
20 birthing room.

21 Sec. 6. NEW SECTION. 904.1005 Damages.

22 In addition to any other remedy authorized by law, a
23 correctional institution that restrains an inmate or detainee
24 in violation of this division may be liable for civil damages
25 and reasonable attorney fees and costs.

26 Sec. 7. NEW SECTION. 904.1006 Report.

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

34 Sec. 8. RULES. The department of corrections, in
35 conjunction with other entities supervising inmates and

1 detainees in the state, and after reviewing the most current
2 accepted medical practices and standards relating to pregnant
3 women, shall commence rulemaking for the implementation and
4 administration of this Act within sixty days of the effective
5 date of this Act. The department shall not adopt emergency
6 rules under section 17A.4, subsection 3, or section 17A.5,
7 subsection 2, paragraph "b", to implement the provisions of
8 this Act.

9 Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
10 immediate importance, takes effect upon enactment.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill relates to the use of restraints on a pregnant
15 inmate or detainee.

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

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

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

30 The bill prohibits a correctional institution from using
31 a restraint on an inmate or detainee known to be pregnant,
32 including during labor, delivery, or postpartum recovery,
33 unless any of the following apply: the inmate or detainee
34 refuses to undergo a urine-based pregnancy test, if not visibly
35 pregnant; the inmate has been confined for less than 24 hours

1 at a correctional institution other than a state correctional
2 institution; or a 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 A corrections officer may make an individualized
6 determination under the bill if any of the following
7 extraordinary circumstances apply: the inmate or detainee is
8 a substantial flight risk or some other medical or security
9 circumstance dictates the use of restraints to ensure the
10 safety and security of the inmate or other persons.

11 The bill prohibits the use of restraints on a pregnant
12 inmate or detainee under the following circumstances: when
13 medical personnel request the restraints not be used, unless a
14 corrections officer determines the inmate or detainee poses an
15 imminent security risk; when the correctional institution has
16 actual knowledge of the pregnancy and the inmate or detainee
17 is in at least the twenty-first week of pregnancy, except leg
18 or waist restraints may be used under the direction of medical
19 personnel; or during labor or childbirth. If a corrections
20 officer makes a determination that restraints be used because
21 the inmate poses an imminent security risk, the bill requires
22 the correctional officer to make written findings within 10
23 days of the decision to use the restraints.

24 The bill requires a correctional institution to use a
25 wheelchair to transport a known pregnant inmate or detainee
26 to or from a transport vehicle or to or from any appointment,
27 unless otherwise directed by medical personnel.

28 The bill requires the correctional institution to develop
29 a birth plan with a known pregnant inmate or detainee if the
30 inmate or detainee is likely to be confined at the institution
31 during the childbirth. The plan shall include a support person
32 designated by the inmate or detainee who may be present in the
33 birthing room with the inmate or detainee during labor and
34 childbirth. The bill permits the correctional institution to
35 reject, for good cause, the support person from being present

1 in the birthing room. If the correctional institution rejects
2 the presence of the support person in the birthing room, the
3 bill allows the inmate or detainee to designate another support
4 person if practicable under the circumstances.

5 The bill specifies that in addition to any other remedy
6 authorized by law, a correctional institution that restrains an
7 inmate or detainee in violation of the bill may be liable for
8 civil damages and reasonable attorney fees.

9 The bill requires the department of corrections, in
10 conjunction with the other entities supervising inmates and
11 detainees in the state, to file a report with the general
12 assembly by August 1 of each fiscal year, detailing every
13 instance in which restraints were used on a pregnant inmate or
14 detainee pursuant to the bill. The report shall not contain
15 personal identifying information of any inmate or detainee.

16 The bill requires the department of corrections and other
17 entities supervising inmates and detainees to commence
18 rulemaking after reviewing the latest accepted medical
19 practices and standards relating to pregnant women, within 60
20 days of the effective date of the bill. The bill specifically
21 prohibits the adoption of emergency rules.

22 The bill takes effect upon enactment.