

SENATE BILL NO. 470

BY SENATORS MIZELL, ABRAHAM, BARROW, BOUDREAUX, CLOUD, FESI,
HODGES, JACKSON-ANDREWS, MYERS, PRICE AND STINE AND
REPRESENTATIVES CHASSION AND MANDIE LANDRY

1 AN ACT

2 To amend and reenact R.S. 15:744.3(A), the introductory paragraph of 744.3(B) and
3 744.3(C)(3), and 744.5(2) and to enact R.S. 15:744.5(7) and 744.9 and Code of
4 Criminal Procedure Arts. 893(A)(5), 894.1(B)(34), and 894.6, relative to pregnant
5 women; to require pregnancy tests at correctional facilities; to provide relative to the
6 use of restraints on pregnant and postpartum prisoners; to provide for consideration
7 of pregnancy at sentencing; to provide for certain conditions of probation; to provide
8 for limitations; to provide for legislative findings; to provide for an effective date;
9 and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 15:744.3(A), the introductory paragraph of 744.3(B) and 744.3(C)(3),
12 and 744.5(2) are hereby amended and reenacted and R.S. 15:744.5(7) and 744.9 are hereby
13 enacted to read as follows:

14 §744.3. Restraint during ~~childbirth~~ **pregnancy and postpartum recovery**

15 A. Restraints shall not be used on a pregnant prisoner while she is in labor
16 and during delivery unless a member of the medical staff orders therapeutic restraints
17 for a prisoner who, due to a psychiatric or medical disorder, is a danger to herself,
18 her child, her unborn child, or other persons. ~~For purposes of this Section,~~
19 ~~"therapeutic restraints" shall not include metal handcuffs or shackles.~~

20 B. No restraints shall be used on a prisoner known to be pregnant during any
21 pregnancy-related medical distress, or while she is being transported to a medical
22 facility or the Louisiana Correctional Institute for Women for **prenatal care**,
23 delivery, or any pregnancy-related medical distress, or during postpartum recovery,
24 unless there are compelling grounds to believe that the prisoner presents either of the
25 following:

26 * * *

1 C. Notwithstanding the provisions of Subsection B of this Section:

2 * * *

3 (3) Under no circumstances shall waist restraints **or shackles** be used on any
4 **pregnant** prisoner ~~during transportation to a medical facility or postpartum recovery.~~

5 * * *

6 §744.5. Definitions

7 For purposes of this Part:

8 * * *

9 (2) "Postpartum" means the period ~~following delivery before a prisoner or~~
10 ~~detainee has been discharged from a medical facility~~ **that begins immediately after**
11 **childbirth and lasts for no less than six weeks. The medical professional treating**
12 **the pregnant prisoner after childbirth may extend the postpartum period**
13 **beyond six weeks based on his medical judgment if it is medically necessary to**
14 **ensure recovery.**

15 * * *

16 (7) **"Therapeutic restraint" means flex cuffs or soft restraints.**

17 * * *

18 **§744.9. Pregnancy testing**

19 **A. During the intake process at every state and local correctional facility,**
20 **a pregnancy test shall be offered to each woman aged fifty-five years or younger**
21 **who is arrested and taken into custody.**

22 **B. The woman's consent or refusal to take a pregnancy test and the**
23 **result of any test administered shall be documented.**

24 **C. The Louisiana Department of Health shall identify available**
25 **pregnancy test funding sources from nonprofit organizations or federal grants**
26 **for the purposes of this Section.**

27 **D. For purposes of this Section, "correctional facility" includes state,**
28 **parish, and municipal facilities including jails, detention centers, and prisons.**

29 Section 2. Code of Criminal Procedure Arts. 893(A)(5), 894.1(B)(34), and 894.6 are
30 hereby enacted to read as follows:

1 Art. 893. Suspension and deferral of sentence and probation in felony cases

2 A.(1)(a) * * *

3 * * *

4 **(5) In determining whether to suspend the imposition or execution of**
5 **sentence and place a defendant on probation, the court may consider, among**
6 **other relevant factors, whether the defendant is pregnant at the time of**
7 **sentencing and whether participation in a medically appropriate prenatal care**
8 **program, residential treatment program, or substance use disorder treatment**
9 **program would serve the interests of justice and public safety, consistent with**
10 **existing law.**

11 * * *

12 Art. 894.1. Sentencing guidelines; generally

13 * * *

14 B. The following grounds, while not controlling the discretion of the court,
15 shall be accorded weight in its determination of suspension of sentence or probation:

16 * * *

17 **(34) Whether the defendant is pregnant at the time of sentencing and**
18 **whether an alternative sentence involving community-based supervision and**
19 **participation in a prenatal care, maternal health, or substance use disorder**
20 **treatment program would be appropriate, consistent with existing law.**

21 * * *

22 **Art. 894.6. Sentencing considerations and conditions of probation for pregnant**
23 **defendants**

24 **A. Nothing in this Article shall be construed to authorize the suspension**
25 **of sentence or probation for any offense for which such relief is otherwise**
26 **prohibited by law. This Article shall not be interpreted to expand or modify**
27 **eligibility for probation or suspension of sentence.**

28 **B. For any defendant who is pregnant at the time of sentencing and is**
29 **otherwise eligible for suspension of sentence or probation under existing law,**
30 **the court may consider the provisions of this Article.**

1 C. For a defendant described in Paragraph B of this Article, the court
 2 may suspend the imposition or execution of sentence and place the defendant
 3 on probation in accordance with existing law, and may require, as a condition
 4 of probation, that the defendant:

5 (1) Participate in and successfully complete a court-approved prenatal
 6 care program, pregnancy support program, or maternal health program.

7 (2) Participate in and successfully complete a residential or outpatient
 8 substance use disorder treatment program, including medically supervised
 9 detoxification when appropriate.

10 (3) Comply with all recommended prenatal and postnatal medical care.

11 (4) Participate in parenting education, life skills training, or case
 12 management services as deemed appropriate by the court.

13 (5) Comply with any additional conditions of probation authorized by
 14 law.

15 D. In determining whether to impose a sentence pursuant to this Article,
 16 the court shall consider public safety, the nature of the offense, the criminal
 17 history of the defendant, and the availability of appropriate programs.

18 E. The Louisiana Department of Health shall maintain and make
 19 available to courts, upon request, a list of publicly and privately available
 20 programs that may satisfy the requirements of this Article.

21 Section 3.(A) The legislature hereby finds and declares that the state of Louisiana has
 22 a compelling interest in protecting maternal health, promoting healthy births, and supporting
 23 family stability.

24 (B) Pregnant defendants in the criminal justice system may present unique medical
 25 and rehabilitative needs that can, in appropriate cases, be addressed through
 26 community-based supervision and treatment.

27 (C) It is the intent of the legislature to ensure that courts may consider pregnancy as
 28 a relevant factor at sentencing and, where a defendant is otherwise eligible under existing
 29 law, utilize appropriate alternatives to incarceration.

30 (D) Nothing in this Act is intended to expand or modify eligibility for probation or

1 suspension of sentence as otherwise provided by law.

2 Section 4. This Act shall become effective upon signature by the governor or, if not
3 signed by the governor, upon expiration of the time for bills to become law without signature
4 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
5 vetoed by the governor and subsequently approved by the legislature, this Act shall become
6 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____