SLS 12RS-509 **ENGROSSED**

Regular Session, 2012

SENATE BILL NO. 256

BY SENATOR MARTINY

CRIMINAL JUSTICE. Provides relative to the treatment of pregnant offenders in custody. (8/1/12)

AN ACT

To enact Part I-D of Chapter 7 of Title 15 of the Louisiana Revised Statutes of 1950, comprised of R.S. 15:744 through 744.8, relative to prisoners and correctional institutions; to provide relative to the use of restraints on pregnant prisoners; to provide relative to medical treatment and monitoring of pregnant prisoners; to provide for reporting and record keeping; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part I-D of Chapter 7 of Title 15 of the Louisiana Revised Statutes of 1950, comprised of R.S. 15:744 through 744.8, is hereby enacted to read as follows:

PART I-D. SAFE PREGNANCY FOR INCARCERATED WOMEN

§744. Title

This Part shall be known as the Safe Pregnancy for Incarcerated Women Act.

§744.1. Legislative findings

A. The legislature hereby finds that restraining a pregnant woman can pose undue health risks to both the woman and the fetus.

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B. The vast majority of female prisoners or detainees in Louisiana are non-violent offenders.

C. Restraining pregnant prisoners and detainees increases the potential for physical harm from an accidental trip or fall.

D. 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, and restraints can further interfere with medical staff's ability to appropriately assist in childbirth or to conduct emergency procedures.

E. Public health organizations have expressed opposition to shackling pregnant women because of the dangers posed to a woman's health and well-being.

§744.2. Restraint during second and third trimesters

Whenever a prison has actual or constructive knowledge that a prisoner is in the second or third trimester of pregnancy:

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

(2) An electronic restraint belt shall never be used.

(3) The prisoner shall never be handcuffed behind the back.

(4) The prisoner shall never be restrained using leg irons.

(5) The prisoner shall never be placed in a face down position.

§744.3. Restraint during childbirth

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

B. No restraints shall be used on a prisoner known to be pregnant during any pregnancy-related medical distress, or while she is being transported

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to a medical facility or the Louisiana Correctional Institute for Women (LCIW) for delivery or during any pregnancy-related medical distress, or during postpartum recovery, unless there are compelling grounds to believe that the prisoner presents:

(1) An immediate and serious threat of physical harm to herself, staff, or others.

(2) A substantial flight risk and the prisoner cannot be reasonably contained by other means.

C. Notwithstanding the provisions of Subsection B:

(1) If the doctor, nurse, or other health professional treating the prisoner requests, based on his or her professional medical judgment, that restraints not be used, the prison staff accompanying the prisoner shall immediately remove all restraints.

(2) If restraints are used on the prisoner, the type of restraint applied and the application of the restraint shall be done in the least restrictive manner necessary.

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

§744.4. Monitoring

Consistent with established policy and practice, it shall be the duty and responsibility of the prison to provide adequate personnel to monitor a pregnant prisoner during transport to and from a medical facility and during the prisoner's stay at the medical facility. Such personnel shall have the ability to release any restraint should a release from restraint become medically necessary.

§744.5. Definitions

For purposes of this Part:

(1) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity and duration to bring about

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effacement and progressive dilation of the cervix. The determination of when labor has commenced shall rest solely with the medical providers of the prisoner.

(2) "Postpartum" means the period following delivery before a prisoner or detainee has been discharged from a medical facility.

(3) "Prison" means any state or local jail, prison, or other correctional facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law.

(4) "Prisoner" means any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program, and includes any person detained under the immigration laws of the United States at any correctional facility. A person's status as a "prisoner" is determined as of the time the cause of action arises. Subsequent events, including post trial judicial action or release from custody, shall not affect such status.

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

§744.6. Notice

All prisoners potentially affected by the provisions of this Part shall be advised in writing of the requirements of this Part upon admission to the prison and when known to be pregnant.

§744.7. Recordkeeping and retention

A. The prison authorizing the use of restraints on a pregnant prisoner pursuant to this Part shall, within ten days of the use of restraints, make a written record of the use of restraints, which record shall include the type of

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restraint used, the circumstances that necessitated the use of restraints, and the length of time that restraints were used.

B. The prison shall retain this written record for a minimum of five years and shall make the record available for public inspection with individually identifying information redacted from the record unless the prisoner who is the subject of the record gives prior written consent for the public release of the record. The written record of the use of restraints shall not constitute a medical record for purposes of state or federal law.

§744.8. Return to prison

After childbirth or any pregnancy-related medical distress and upon return to the prison, the prisoner may, upon her request, have a member of the prison's medical staff present during any "strip search", "visual body cavity search", or "body cavity search" as defined by department rules and regulations.

The original instrument was prepared by Alden A. Clement, Jr. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy Wells.

DIGEST

Martiny (SB 256)

Proposed law provides that whenever a prison has actual or constructive knowledge that a prisoner is in the second or third trimester of pregnancy:

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

2. An electronic restraint belt can never be used.

3. The prisoner can never be handcuffed behind the back.

4. The prisoner can never be restrained using leg irons.

5. The prisoner can never be placed in a face down position.

Proposed law provides that restraints cannot be used on a pregnant prisoner while she is in labor and during delivery unless a member of the medical staff orders therapeutic restraints for a prisoner who is a danger to herself, her child, unborn child, or other persons due to a psychiatric or medical disorder. Proposed law further provides that "therapeutic restraints" do not include metal handcuffs or shackles.

Proposed law provides that restraints cannot be used on a prisoner known to be pregnant during any pregnancy-related medical distress, or while she is being transported to a medical

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facility or the Louisiana Correctional Institute for Women (LCIW) for delivery or during any pregnancy-related medical distress, or during postpartum recovery, unless there are compelling grounds to believe that the prisoner presents:

1. An immediate and serious threat of physical harm to herself, staff, or others.

2. A substantial flight risk and the prisoner cannot be reasonably contained by other means.

Proposed law provides that:

1. If the doctor, nurse, or other health professional treating the prisoner requests, based on his or her professional medical judgment, that restraints not be used, the prison staff accompanying the prisoner must immediately remove all restraints.

2. If restraints are used on the prisoner, the type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary.

3. Under no circumstances can waist restraints be used on any prisoner during transportation to a medical facility or postpartum recovery.

Proposed law provides that it is the duty and responsibility of the prison to provide adequate personnel to monitor a pregnant prisoner during transport to and from a medical facility and during the prisoner's stay at the medical facility, and such personnel are to have the ability to release any restraint should a release from restraint become medically necessary.

Proposed law provides the following definitions:

1. "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, and the determination of when labor has commenced rests solely with the medical providers of the prisoner.

2. "Postpartum" means the period following delivery before a prisoner or detainee has been discharged from a medical facility.

3. "Prison" means any state or local jail, prison, or other correctional facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law.

4. "Prisoner" means any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program, and includes any person detained under the immigration laws of the United States at any correctional facility. Proposed law further provides that a person's status as a "prisoner" is determined as of the time the cause of action arises, and subsequent events, including post trial judicial action or release from custody, do not affect such status.

5. "Restraint" or "physical restraint" means any physical hold or mechanical device used to control the movement of a prisoner's body and limbs, including, but not limited to, shackles, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security tether or chain, or a convex shield.

Proposed law provides that all prisoners potentially affected by the provisions of proposed law are to be advised in writing of the requirements of proposed law upon admission to the prison and when known to be pregnant.

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Proposed law provides that the prison authorizing the use of restraints on a pregnant prisoner pursuant to proposed law must, within 10 days of the use of restraints, make a written record of the use of restraints, which record is to include the type of restraint used, the circumstances that necessitated the use of restraints, and the length of time that restraints were used. Proposed law further provides that the prison must retain this written record for a minimum of five years and make the record available for public inspection with individually identifying information redacted from the record, unless the prisoner who is the subject of the record gives prior written consent for the public release of the record. Proposed law further provides that the written record of the use of restraints does not constitute a medical record for purposes of state or federal law.

Proposed law further provides that after childbirth or any pregnancy-related medical distress and upon return to the prison, the prisoner may, upon her request, have a member of the prison's medical staff present during any "strip search", "visual body cavity search", or "body cavity search" as defined by department rules and regulations.

Effective August 1, 2012.

(Adds R.S. 15:744-744.8)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary B to the original bill.

1. Removes provisions requiring prison personnel to be posted immediately outside of the medical treatment room.

2. Removes provisions authorizing prison personnel to enter the medical treatment room to perform periodic safety assessments.

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