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No. 1013

S.P. 353

In Senate, March 19, 2015

An Act To Prevent the Shackling of Pregnant Prisoners

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator HASKELL of Cumberland.
Cosponsored by Representative MAKER of Calais and
Senators: BREEN of Cumberland, HILL of York, MILLETT of Cumberland, ROSEN of Hancock, VALENTINO of York, Representatives: ALLEY of Beals, BABBIDGE of Kennebunk, BATES of Westbrook, BEAVERS of South Berwick, BEEBE-CENTER of Rockland, BLUME of York, BROOKS of Lewiston, BRYANT of Windham, BURSTEIN of Lincolnville, CHENETTE of Saco, COOPER of Yarmouth, DAUGHTRY of Brunswick, DAVITT of Hampden, DeCHANT of Bath, DEVIN of Newcastle, DOORE of Augusta, DUNPHY of Old Town, ESPLING of New Gloucester, EVANGELOS of Friendship, FOWLE of Vassalboro, GIDEON of Freeport, GILBERT of Jay, GINZLER of Bridgton, GRANT of Gardiner, GUERIN of Glenburn, HARLOW of Portland, HERBIG of Belfast, HICKMAN of Winthrop, HOBBS of Saco, HOGAN of Old Orchard Beach, HYMANSON of York, KINNEY of Knox, KORNFIELD of Bangor, MALABY of Hancock, MARTIN of Sinclair, MASTRACCIO of Sanford, McCABE of Skowhegan, McCREIGHT of Harpswell, MELARAGNO of Auburn, MONAGHAN of Cape Elizabeth, MOONEN of Portland, NADEAU of Winslow, PIERCE of Falmouth, POWERS of Naples, ROTUNDO of Lewiston, RUSSELL of Portland, SANBORN of Gorham, SANDERSON of Chelsea, SHAW of Standish, SHORT of Pittsfield, STUCKEY of Portland, TEPLER of Topsham, WARREN of Hallowell, WELSH of Rockport.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 30-A MRSA c. 13, sub-c. 2-A** is enacted to read:

3 **SUBCHAPTER 2-A**

4 **PREGNANT PRISONERS**

5 **§1581. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following
7 terms have the following meanings.

8 **1. Corrections official.** "Corrections official" means the official who is responsible
9 for oversight of a jail or other county correctional facility or that official's designee.

10 **2. Detainee.** "Detainee" means an adult or juvenile person detained under the
11 immigration laws of the United States at a jail or other county correctional facility.

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

15 **4. Postpartum recovery.** "Postpartum recovery" means, as determined by a
16 woman's physician, the period immediately following delivery, including the entire
17 period the woman is in the hospital or infirmary after giving birth.

18 **5. Prisoner.** "Prisoner" means an adult or juvenile person incarcerated or detained in
19 a jail or other county correctional facility who is accused of, convicted of or sentenced for
20 a violation of criminal law or the terms and conditions of parole, probation, pretrial
21 release or a diversionary program or a juvenile adjudicated delinquent for a violation of
22 criminal law or the terms and conditions of parole, probation, pretrial release or a
23 diversionary program.

24 **6. Restraints.** "Restraints" means any physical restraint or mechanical device used
25 to control the movement of a prisoner's or detainee's body or limbs, including, but not
26 limited to, flex cuffs or disposable restraints, soft restraints, hard metal handcuffs, a so-
27 called black box security restraint system, Chubb handcuffs, leg irons, belly chains, a
28 security or tether chain and a convex shield.

29 **§1582. Restraint of prisoners and detainees**

30 **1. Restraints prohibited.** A jail or other county correctional facility may not use
31 restraints on a prisoner or detainee known to be pregnant, including during labor,
32 transport to a medical facility or birthing center, delivery and postpartum recovery, unless
33 a corrections official makes a determination that the prisoner or detainee presents an
34 extraordinary circumstance as described in subsection 2.

1 **2. Exceptions.** Restraints for an extraordinary circumstance are permitted only if a
2 corrections official makes a determination that there is a substantial flight risk or other
3 extraordinary medical or security circumstance that requires restraints to be used to
4 ensure the safety and security of the prisoner or detainee, the staff of the jail or other
5 county correctional facility or medical facility, other prisoners or detainees or the public,
6 except that:

7 A. If a doctor, nurse or other health professional treating the prisoner or detainee
8 requests that restraints not be used, the corrections officer accompanying the prisoner
9 or detainee shall immediately remove all restraints; and

10 B. Notwithstanding this subsection, leg or waist restraints may not be used at any
11 time, and restraints may not be used on a prisoner or detainee in labor or childbirth.

12 **3. Procedures.** If restraints are used on a prisoner or detainee pursuant to subsection
13 2:

14 A. The corrections officer must apply the least restrictive type of restraints in the
15 least restrictive manner necessary; and

16 B. The corrections official shall make written findings within 10 days as to the
17 extraordinary circumstance that required the use of the restraints. These findings
18 must be kept on file by the jail or other county correctional facility for at least 5 years
19 and must be made available for public inspection, except that individually identifying
20 information of any prisoner or detainee may not be made public under this paragraph
21 or in violation of Title 34-A, section 1216 without the prisoner's or detainee's prior
22 written consent.

23 **4. Privacy.** When a prisoner or detainee is admitted to a medical facility or birthing
24 center for labor or childbirth, a corrections officer may not remain present in the room
25 during labor or childbirth unless specifically requested by medical personnel. If a
26 corrections officer's presence is requested by medical personnel, the corrections officer
27 must be female if practicable.

28 **§1583. Notice to prisoners and detainees**

29 **1. Minimum standards for pregnant prisoners and detainees.** Within 60 days
30 after the effective date of this subchapter, the Commissioner of Corrections shall establish
31 minimum standards necessary to implement this subchapter and must enforce those
32 standards as provided under Title 34-A, section 1208.

33 **2. Notice.** Within 30 days of the establishment of minimum standards pursuant to
34 subsection 1, a jail or other county correctional facility shall inform prisoners and
35 detainees within the custody of the jail or other county correctional facility of the
36 minimum standards.

37 **Sec. 2. 30-A MRSA §1660, sub-§4** is enacted to read:

38 **4. Information on pregnant prisoners.** The report required in this section must
39 include the following information for each county corrections facility about pregnant
40 inmates restrained pursuant to subchapter 2-A during the prior calendar year:

1 a corrections official makes a determination that the prisoner or detainee presents an
2 extraordinary circumstance as described in subsection 2.

3 **2. Exceptions.** Restraints for an extraordinary circumstance are permitted only if a
4 corrections official makes a determination that there is a substantial flight risk or other
5 extraordinary medical or security circumstance that requires restraints to be used to
6 ensure the safety and security of the prisoner or detainee, the staff of the correctional
7 facility, detention facility or medical facility, other prisoners or detainees or the public,
8 except that:

9 A. If a doctor, nurse or other health professional treating the prisoner or detainee
10 requests that restraints not be used, the corrections officer accompanying the prisoner
11 or detainee shall immediately remove all restraints; and

12 B. Notwithstanding this subsection, leg or waist restraints may not be used at any
13 time, and restraints may not be used on a prisoner or detainee in labor or child birth.

14 **3. Procedures.** If restraints are used on a prisoner or detainee pursuant to subsection
15 2:

16 A. The corrections officer must apply the least restrictive type of restraints in the
17 least restrictive manner necessary; and

18 B. The corrections official shall make written findings within 10 days as to the
19 extraordinary circumstance that required the use of the restraints. These findings
20 must be kept on file by the correctional facility or detention facility for at least 5
21 years and must be made available for public inspection, except that individually
22 identifying information of any prisoner or detainee may not be made public under this
23 paragraph or in violation of section 1216 without the prisoner's or detainee's prior
24 written consent.

25 **4. Privacy.** When a prisoner or detainee is admitted to a medical facility or birthing
26 center for labor or childbirth, a corrections officer may not remain present in the room
27 during labor or childbirth unless specifically requested by medical personnel. If a
28 corrections officer's presence is requested by medical personnel, the corrections officer
29 must be female if practicable.

30 **§3103. Rulemaking**

31 Within 30 days after the effective date of this article, the department shall adopt rules
32 necessary to implement this article. Rules adopted pursuant to this section are routine
33 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **§3104. Notice**

35 A correctional facility or detention facility shall inform prisoners and detainees of the
36 rules developed pursuant to section 3103 upon admission to the correctional facility or
37 detention facility and include policies and practices pursuant to this article in any prisoner
38 handbook.

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SUMMARY

This bill prohibits the use of restraints on a pregnant prisoner or detainee except in extraordinary circumstances. When restraints are used, the corrections official must document the extraordinary circumstance that required the use of restraints. The bill clarifies that when a pregnant prisoner or detainee is admitted to a medical facility or birthing center, a corrections officer may not be present in the room during labor or childbirth unless specifically requested by medical personnel. The bill also requires the adoption of policies on the treatment of pregnant prisoners and detainees and requires that information about those policies be disseminated to all prisoners and detainees.