

1 HB36  
2 208194-1  
3 By Representative Hall  
4 RFD: Public Safety and Homeland Security  
5 First Read: 02-FEB-21  
6 PFD: 11/30/2020

SYNOPSIS:           The federal First Step Act established guidelines for the treatment of prisoners, including procedures for the use of restraints on pregnant federal prisoners.

                  This bill would adopt the federal procedures relating to use of restraints on pregnant prisoners as state law, and would extend the application of those procedures to arrest, jail, and transport settings as soon as law enforcement is made aware of a pregnancy.

A BILL  
TO BE ENTITLED  
AN ACT

                  Relating to prisoners; to adopt federal standards and recommendations relating to the use of restraints on pregnant detainees in the custody of the Alabama Department of Corrections or law enforcement at the county or municipal level.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. For the purposes of this act, the  
3 following words shall have the following meanings:

4 (1) COMMISSIONER. The Commissioner of the Alabama  
5 Department of Corrections.

6 (2) CORRECTIONS OFFICER. An official of the Alabama  
7 Department of Corrections or the Alabama State Law Enforcement  
8 Agency or any law enforcement officer, including transport  
9 personnel.

10 (3) CUSTODY. The period of detention, confinement,  
11 or transportation of a detainee by the department or a  
12 corrections officer.

13 (4) DEPARTMENT. The Alabama Department of  
14 Corrections.

15 (5) DETAINEE. An individual who has been sentenced  
16 to a term of imprisonment pursuant to a conviction for a  
17 criminal offense, or an individual in the custody of the  
18 Alabama Department of Corrections or a corrections officer,  
19 including transport personnel, after conviction or while  
20 pending trial.

21 (6) POSTPARTUM RECOVERY. The 12-week period, or  
22 longer as determined by the health care professional  
23 responsible for the health and safety of a detainee, following  
24 delivery. This term shall include the entire period that the  
25 detainee is in the hospital or infirmary following delivery.

26 (7) PROFESSIONAL GUIDELINES. Guidelines affirmed by  
27 the American College of Obstetricians and Gynecologists,

1 American College of Nurse Midwives, American Medical  
2 Association, National Commission on Correctional Health Care,  
3 and Federal Bureau of Prisons regarding the use of restraints  
4 on pregnant women incarcerated or detained at the federal,  
5 state, county, or municipal level.

6 (8) RESTRAINTS. Any physical or mechanical device  
7 used to control the movement of a detainee's body, limbs, or  
8 both. This includes, but is not limited to, handcuffs, leg  
9 shackles, belly chains, and all chemical restraints.

10 (9) SOLITARY CONFINEMENT. The isolation of a  
11 detainee in a separate cell as a mode of punishment.

12 Section 2. (a) Except as provided in subsection (b),  
13 beginning on the date on which correction officers have been  
14 made aware of the pregnancy of a detainee and ending at the  
15 conclusion of postpartum recovery, a pregnant detainee in  
16 custody shall not be placed in restraints or solitary  
17 confinement.

18 (b) (1) The prohibition in subsection (a) shall not  
19 apply under any of the following circumstances:

20 a. A corrections officer determines that the  
21 detainee is an immediate and credible flight risk that cannot  
22 reasonably be prevented by any other means.

23 b. A corrections officer determines that the  
24 detainee poses an immediate and serious threat of harm to  
25 herself or others that cannot reasonably be prevented by any  
26 other means.

1                   (2) Any use of restraints pursuant to subdivision  
2 (1) is to be recorded and reported, pursuant to subsection  
3 (c).

4                   (3) If restraints are used under subdivision (1),  
5 only the least restrictive restraints necessary to prevent the  
6 harm or risk of escape may be used. The least restrictive  
7 restraints necessary shall never be interpreted to include any  
8 of the following, pursuant to professional guidelines:

9                   a. Restraints around the ankles, legs, or waist of a  
10 detainee.

11                   b. Restraining of a detainee's hands behind her  
12 back.

13                   c. Four-point restraints.

14                   d. The attaching of a detainee to another detainee.

15                   e. Solitary confinement of a detainee.

16                   (4) Notwithstanding subdivision (1), upon the  
17 request of a health care professional, a corrections officer  
18 shall refrain from using restraints on a pregnant detainee and  
19 shall remove any restraints in use on the detainee.

20                   (c) If a corrections officer uses restraints on a  
21 pregnant detainee under subsection (b), that officer, within  
22 30 days of placing that detainee in restraints, shall submit a  
23 written report to the commissioner and, if applicable, the  
24 appropriate health care professional. That report shall  
25 include, at a minimum, all of the following:

26                   (1) A description of all facts and circumstances  
27 surrounding the use of restraints.

1           (2) The reasoning upon which the determination to  
2 use restraints was made.

3           (3) The details of the use of restraints, including  
4 the type of restraints used and length of time during which  
5 the restraints were used.

6           (4) Any resulting physical effects on the detainee  
7 observed by or known to the corrections officer who applied  
8 the restraints, as applicable.

9           Section 3. (a) No later than one year after the  
10 effective date of this act, and annually thereafter, the  
11 commissioner shall submit to the Senate Judiciary Committee  
12 and the House Judiciary Committee a report that certifies  
13 compliance with this act and includes the information required  
14 to be reported under this act.

15           (b) The report under this section shall not contain  
16 any personally identifiable information of any detainee and  
17 shall adhere to standards set forth by the Health Insurance  
18 Portability and Accountability Act (HIPAA) within medical  
19 settings.

20           Section 4. (a) The commissioner, in consultation  
21 with the Association of County Commissions of Alabama and the  
22 League of Municipalities, shall, by rule, establish a process  
23 through which a detainee may report a violation of this  
24 section to the commissioner.

25           (b) The commissioner, in consultation with the  
26 Association of County Commissions of Alabama and the Alabama  
27 League of Municipalities, shall develop consistent training

1 guidelines regarding the use of restraints on detainees during  
2 the period of pregnancy, labor, and postpartum recovery, and  
3 shall incorporate those guidelines into appropriate training  
4 programs. The training guidelines shall include all of the  
5 following:

6 (1) Communication of professional guidelines  
7 surrounding the use of restraints on pregnant women under the  
8 supervision of corrections officers.

9 (2) Circumstances under which the exceptions under  
10 subsection (b) of Section 2 would apply.

11 (3) How to apply restraints in a way that does not  
12 harm the detainee or the fetus.

13 (4) The information required to be reported under  
14 subsection (c) of Section 2.

15 (5) How to identify certain symptoms of pregnancy  
16 that require immediate referral to a health care professional,  
17 including spontaneous term labor, preterm labor, preeclampsia,  
18 eclampsia, hemorrhage, and miscarriage.

19 (c) In developing the training guidelines under this  
20 section, the commissioner, the Association of County  
21 Commissions of Alabama, and the Alabama League of  
22 Municipalities shall consider the professional guidelines.

23 (d) The commissioner may adopt rules to implement  
24 the training guidelines created under this section, to notify  
25 law enforcement agencies of violations of this act by  
26 personnel of those agencies, and as otherwise necessary to  
27 implement this act.

1           Section 5. A constable, sheriff, and each employee  
2 of a sheriff's office shall comply with Sections 1 through 4  
3 of this act. For that purpose, the following terms defined in  
4 Section 1 shall be understood to have the following meanings:

5           (1) "Corrections officer" means a constable, any  
6 employee of a constable, or any employee of the sheriff's  
7 office, including transport personnel.

8           (2) "Department" means the office of the constable  
9 or the sheriff's office.

10          (3) "Detainee" means any individual in the custody  
11 of a constable or in the custody of any employee of the  
12 sheriff's office, including transport personnel.

13          Section 6. Each municipal law enforcement officer  
14 shall comply with Sections 1 through 4 of this act. For that  
15 purpose, the following terms defined in Section 1 shall be  
16 understood to have the following meanings:

17          (1) "Corrections officer" means any municipal law  
18 enforcement officer and any employee of a municipal law  
19 enforcement agency, including transport personnel.

20          (2) "Department" means a municipal law enforcement  
21 agency.

22          (3) "Detainee" means any individual in the custody  
23 of a municipal law enforcement officer or any employee of a  
24 municipal law enforcement agency, including transport  
25 personnel.



1                   Section 7. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.