

SENATE BILL NO. 256

BY SENATOR MARTINY

1 AN ACT

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

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Part I-D of Chapter 7 of Title 15 of the Louisiana Revised Statutes of
10 1950, comprised of R.S. 15:744 through 744.8, is hereby enacted to read as follows:

11 **PART I-D. SAFE PREGNANCY FOR INCARCERATED WOMEN**

12 **§744. Title**

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

15 **§744.1. Legislative findings**

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

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

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

22 **D. Freedom from physical restraints is especially critical during labor,**
23 **delivery, and postpartum recovery after delivery. Women often need to move**
24 **around during labor and recovery, and restraints can further interfere with**
25 **medical staff's ability to appropriately assist in childbirth or to conduct**
26 **emergency procedures.**

27 **E. Public health organizations have expressed opposition to shackling**

1 pregnant women because of the dangers posed to a woman's health and well-
2 being.

3 §744.2. Restraint during second and third trimesters

4 Whenever a prison operator or employee has actual or constructive
5 knowledge that a prisoner is in the second or third trimester of pregnancy the
6 prison operator shall ensure all of the following:

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

9 (2) An electronic restraint belt shall never be used on the prisoner.

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

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

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

13 §744.3. Restraint during childbirth

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

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

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

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

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

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

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

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

10 §744.4. Monitoring

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

17 §744.5. Definitions

18 For purposes of this Part:

19 (1) "Labor" means the period of time before a birth during which
20 contractions are of sufficient frequency, intensity and duration to bring about
21 effacement and progressive dilation of the cervix. The determination of when
22 labor has commenced shall rest solely with the medical providers of the
23 prisoner.

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

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

29 (4) "Prison operator" means the warden, the parish sheriff, the
30 governing authority of those parishes in which the governing authority operates

1 the parish jail, or the private entity which operates the facility in which the
2 prisoner is housed.

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

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

16 §744.6. Notice

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

20 §744.7. Recordkeeping and retention

21 A. The prison operator authorizing the use of restraints on a pregnant
22 prisoner pursuant to this Part shall, within ten days of the use of restraints,
23 make a written record of the use of restraints, which record shall include the
24 type of restraint used, the circumstances that necessitated the use of restraints,
25 and the length of time that restraints were used.

26 B. The prison operator shall retain this written record for a minimum
27 of five years and shall make the record available for public inspection with
28 individually identifying information redacted from the record unless the
29 prisoner who is the subject of the record gives prior written consent for the
30 public release of the record. The written record of the use of restraints shall not

1 constitute a medical record for purposes of state or federal law.

2 §744.8. Return to prison

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____