

2011 -- H 5257 SUBSTITUTE A

LC00727/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT

Introduced By: Representatives Walsh, Ruggiero, Tanzi, Ajello, and Costa

Date Introduced: February 03, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND GOVERNMENT" is hereby amended by adding thereto the following chapter:

CHAPTER 56.3

THE HEALTHY PREGNANCIES FOR INCARCERATED WOMEN ACT

42-56.3-1. Title. -- This chapter shall be known and may be cited as "The Healthy Pregnancies for Incarcerated Women Act."

42-56.3-2. Findings. -- (a) Restraining a pregnant woman can pose undue health risks to the woman and her pregnancy.

(b) The vast majority of female prisoners or detainees in Rhode Island 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.

42-56.3-3. Restraint of prisoners and detainees. -- (a) Whenever the department of

1 corrections has actual or constructive knowledge that a prisoner or detainee is in the second or
2 third trimester of pregnancy, any restraints used on the pregnant prisoner or detainee shall be only
3 those deemed medically appropriate.

4 (b) No handcuffs, shackles or other restraints shall be used on a prisoner or detainee
5 known to be pregnant during transport to a medical facility, labor, delivery, or postpartum
6 recovery, unless there are compelling grounds to believe that the prisoner or detainee presents:

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

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

9 (c) Notwithstanding the provisions of subsection (b):

10 (1) If the doctor, nurse or other health professional treating the prisoner or detainee
11 requests, based on his or her professional medical judgment, that restraints not be used, any
12 correctional officer accompanying the prisoner or detainee shall immediately remove all
13 restraints; provided further, however, that in the absence of exigent circumstances, as determined
14 by the health professional, the medical director of the department of corrections shall first be
15 consulted;

16 (2) Under no circumstances shall leg or waist restraints be used on any prisoner or
17 detainee who is in labor or delivery, nor shall waist restraints be used under any circumstances
18 during postpartum recovery; and

19 (3) Upon confirmation by the medical director of the department of corrections that a
20 prisoner or detainee in postpartum recovery may be subject to restraint pursuant to subsection (b),
21 the treating health professional shall, in consultation with the medical director, determine whether
22 leg or hand restraints shall be used.

23 (d) If restraints are used on a prisoner or detainee pursuant to subsection (a) or (b), the
24 type of restraint applied and the application of the restraint shall be done in the least restrictive
25 manner necessary; and

26 (e) If restraints are used on a prisoner or detainee pursuant to subsection (b), the
27 correctional officer shall submit to the department within five (5) days written findings
28 articulating the grounds that dictated the use of the restraints. These findings shall be kept on file
29 and be made available for public inspection, except that no individually identifying information
30 of any prisoner or detainee shall be made public without the prisoner or detainee's written
31 consent.

32 **42-56.3-4. Enforcement.** – In addition to any other rights and remedies afforded by law,
33 any person who has been restrained in violation of this chapter may file a civil action for damages
34 and any appropriate and equitable relief in Superior Court. The court may also award a prevailing

1 plaintiff reasonable attorneys' fees and costs.

2 **42-56.3-5. Regulations and notice to prisoners and detainees.** – (a) The department
3 shall promulgate rules and regulations in accordance with chapter 35 of title 42 to implement this
4 chapter.

5 (b) All prisoners and detainees potentially affected by this chapter shall be advised of the
6 requirements of this chapter and the rules promulgated pursuant to subsection (a) upon admission
7 to the correctional institution and when known to be pregnant.

8 **42-56.3-6. Training school for youth.** – The provisions of this chapter shall also apply
9 to the training school for youth.

10 **42-56.3-7. Postpartum recovery defined.** – For purposes of this chapter, “postpartum
11 recovery” means, as determined by her physician, the period immediately following delivery,
12 including the entire period a woman is in the hospital or infirmary after birth.

13 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would create the Healthy Pregnancies for Incarcerated Women Act in order to
- 2 provide restrictions on the physical restraint of pregnant prisoners.
- 3 This act would take effect upon passage.

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