

1 State of Arkansas *As Engrossed: H3/7/19 S3/18/19*

2 92nd General Assembly

A Bill

3 Regular Session, 2019

HOUSE BILL 1523

4

5 By: Representative Petty

6 By: Senator Bledsoe

7

8

For An Act To Be Entitled

9 AN ACT CONCERNING THE TREATMENT OF FEMALE INMATES AND
10 DETAINEES IN CORRECTIONAL OR DETENTION FACILITIES;
11 CONCERNING PREGNANT INMATES AND DETAINEES; AND FOR
12 OTHER PURPOSES.

13

14

15

Subtitle

16

CONCERNING THE TREATMENT OF FEMALE
17 INMATES AND DETAINEES IN CORRECTIONAL OR
18 DETENTION FACILITIES; AND CONCERNING
19 PREGNANT INMATES AND DETAINEES.

20

21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23

24 *SECTION 1. Arkansas Code Title 12 is amended to add an additional*
25 *chapter to read as follows:*

26

27 *Chapter 32 – Treatment of Female Inmates or Detainees*

28

29 *12-32-101. Definitions.*

30 *As used in this chapter:*

31 *(1) "Correctional or detention facility" means:*

32 *(A) A local or state correctional facility or detention*
33 *facility that has the power to detain or restrain a person under the laws of*
34 *the state, including a city jail, county jail, or facility operated by the*
35 *Department of Correction or the Department of Community Correction; or*

36 *(B) A post-incarceration residential reentry facility*



1 designed to house a person on parole;

2 (2) "Detainee" includes a person detained under the immigration
3 laws of the United States;

4 (3) "Inmate" means any person incarcerated in a correctional or
5 detention facility for any reason;

6 (4) "Labor" means the period of time before a birth during which
7 contractions are of sufficient frequency, intensity, and duration to bring
8 about effacement and progressive dilation of the cervix;

9 (5) "Post-partum" means, as determined by the physician of the
10 inmate or detainee, the thirty-day period following delivery of a child; and

11 (6)(A) "Restraints" means a physical restraint or mechanical
12 device used to control the movement of an inmate's or detainee's body or
13 limbs, including without limitation:

14 (i) Flex cuffs;

15 (ii) Soft restraints;

16 (iii) Hard metal handcuffs;

17 (iv) A black box;

18 (v) Chubb cuffs;

19 (vi) Leg irons;

20 (vii) Belly chains;

21 (viii) A security tether or chain;

22 (ix) A convex shield; and

23 (x) Restraints connecting more than one (1) inmate
24 or detainee.

25 (B) "Restraints" does not include a door to a room.

26
27 12-32-102. Restraint of pregnant inmate or detainee.

28 (a) A correctional or detention facility shall not place an inmate or
29 detainee verified to be pregnant, in labor, or in post-partum recovery in
30 restraints unless:

31 (1) The correctional or detention facility makes a reasonable
32 and individualized determination that the inmate or detainee presents a
33 substantial flight risk; or

34 (2) An extraordinary medical or security circumstance dictates
35 that the inmate or detainee be restrained to:

36 (A) Ensure the safety and security of:

1 (i) The inmate, detainee, or child;

2 (ii) The staff of the correctional or detention
3 facility, or medical facility;

4 (iii) Other inmates or detainees; or

5 (iv) The public; or

6 (B) Prevent the risk of escape by the inmate or detainee
7 that cannot be reasonably minimized through a safer method than restraints.

8 (b)(1) If the correctional or detention facility determines that the
9 inmate or detainee is required to be restrained under subsection (a) of this
10 section, the restraints shall be removed if a physician, nurse, or other
11 health professional requests that the inmate or detainee not be restrained.

12 (2)(A) The physician, nurse, or other health professional
13 providing inmate or detainee obstetric care shall have final decision-making
14 authority on the use of restraints while the inmate or detainee is in labor
15 or delivery.

16 (B) If the inmate or detainee is not under the care of a
17 physician, nurse, or other health professional, the official at the
18 correctional or detention facility primarily responsible for medical care of
19 inmates or detainees shall have final decision-making authority on the use of
20 restraints and shall consult with a physician, nurse, or other healthcare
21 provider who specializes in obstetrics about the use of restraints on the
22 inmate or detainee.

23 (c) If restraints are used on a pregnant inmate or detainee under
24 subsection (a) of this section:

25 (1)(A) The type of restraints shall be the least restrictive
26 type necessary, and the restraints shall be applied in the least restrictive
27 manner necessary.

28 (B) Leg or waist restraints shall not be used on any
29 inmate or detainee who is in labor.

30 (C) Leg restraints shall not be used on a pregnant inmate
31 who is not in a wheelchair, bed, or gurney;

32 (2) The restraints shall always be forward-facing, designed to
33 restrain the person's hands in front of the person to protect the person and
34 others;

35 (3) Only soft restraints may be used; and

36 (4)(A) The correctional or detention facility shall make written

1 findings within ten (10) days regarding the substantial flight risk of that
2 inmate or detainee or other extraordinary medical or security circumstance
3 that dictated the inmate or detainee be restrained to ensure the safety and
4 security of the inmate or detainee, the child, staff of the correctional or
5 detention facility, or medical facility, other inmates or detainees, or the
6 public.

7 (B) The written findings under subdivision (c)(4)(A) of
8 this section shall be maintained by the correctional or detention facility
9 for at least five (5) years and be made available for public inspection,
10 except that information identifying any inmate or detainee or that could lead
11 to the identity of the inmate or detainee shall not be made public.

12 (d) If restraints are used during labor, the Department of Correction
13 or the Department of Community Correction, as applicable, shall report the
14 use of restraints during labor to the Board of Corrections and to the
15 Attorney General.

16
17 12-32-103. Necessary female prenatal nutrition and hygiene products
18 required.

19 (a) A correctional or detention facility shall establish a policy for
20 providing:

21 (1) Necessary prenatal vitamins and nutrition for pregnant
22 inmates and detainees;

23 (2) A necessary number of hygiene products for female inmates
24 and detainees;

25 (3) A necessary number of undergarments for female inmates and
26 detainees;

27 (4) A lower bunk for a pregnant inmate or detainee; and

28 (5) Unless otherwise provided for by the correctional or
29 detention facility, access for a pregnant inmate or detainee to nonprofit
30 educational programming, such as prenatal care, pregnancy-specific hygiene,
31 and parenting classes.

32 (b) A policy under this section may be approved annually by the
33 Charitable, Penal and Correctional Institutions Subcommittee of the
34 Legislative Council.

35 /s/Petty

36 APPROVED: 3/27/19