

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/26/09 S3/30/09

A Bill

SENATE BILL 839

5 By: Senator Salmon
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7

For An Act To Be Entitled

9 AN ACT TO PROTECT THE HEALTH AND SAFETY OF
10 PREGNANT WOMEN IN DETENTION FACILITIES IN
11 ARKANSAS; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO PROTECT THE HEALTH AND SAFETY
15 OF PREGNANT WOMEN IN DETENTION
16 FACILITIES IN ARKANSAS.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code Title 12, Chapter 29, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 7 – Pregnant Females

24 12-29-701. Definitions.

25 As used in this subchapter:

26 (1) “Correctional institution” means any entity under the authority of
27 a state law enforcement agency that has the power to detain or restrain a
28 person under the laws of the state;

29 (2) “Detainee” includes a person detained under the immigration laws
30 of the United States at a state correctional facility;

31 (3) “Labor” means the period of time before a birth during which
32 contractions are of sufficient frequency, intensity, and duration to bring
33 about effacement and progressive dilation of the cervix;

34 (4) “Post-partum” means, as determined by her physician, the period
35 immediately following delivery, including the entire period a woman is in the
36 hospital or infirmary after the birth of her child or children;



1 (5) "Prisoner" means any person incarcerated or detained in a facility
2 who is accused of, convicted of, sentenced for, or adjudicated delinquent for
3 violations of criminal law or the terms and conditions of parole, probation,
4 pretrial release, or a diversionary program; and

5 (6)(A) "Restraints" means any physical restraint or mechanical device
6 used to control the movement of a prisoner's or detainee's body or limbs,
7 including without limitation flex cuffs, soft restraints, hard metal
8 handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security
9 tether or chain, or a convex shield.

10 (B) "Restraints" does not mean a door to a room.

11 12-29-702. Restraint of Prisoners and Detainees.

12 (a) A correctional institution shall not restrain a prisoner or
13 detainee known to be pregnant during labor, transport to a medical facility,
14 delivery, and post-partum, unless the correctional institution makes an
15 individualized determination that the prisoner or detainee presents a
16 substantial flight risk or if an extraordinary medical or security
17 circumstance dictates that the prisoner or detainee be restrained to ensure
18 the safety and security of the prisoner or detainee, the staff of the
19 correctional institution or medical facility, other prisoners or detainees,
20 or the public, except that:

21 (1) If a doctor, nurse, or other health professional requests
22 that the prisoner or detainee not be restrained, the corrections officer
23 accompanying the prisoner or detainee shall immediately remove all
24 restraints;

25 (2) Under no circumstances shall leg or waist restraints be used
26 on any prisoner or detainee who is in labor; and

27 (3)(A) The doctor, nurse, or other health professional providing
28 prisoner or detainee obstetric care shall have final decision making
29 authority on the use of restraints;

30 (B) If the prisoner or detainee is not under the care of a
31 doctor, nurse, or other medical professional, the official at the
32 correctional institution primarily responsible for medical care of prisoners
33 or detainees shall have final decision-making authority on the use of
34 restraints, consistent with the preceding sections, and shall consult with a
35 doctor or nurse who specializes in obstetrics about the use of restraints on
36 the pregnant prisoner or detainee.

1 (b) If restraints are used on a prisoner or detainee under subsection
2 (a) of this section:

3 (1) The type of restraint applied and the application of the
4 restraint must both be done in the least restrictive manner necessary;

5 (2) Only medical restraints may be used; and

6 (3)(A) The correctional institution shall make written findings
7 within ten (10) days regarding the substantial flight risk of that prisoner
8 or detainee or other extraordinary medical or security circumstances that
9 dictated the prisoner or detainee be restrained to ensure the safety and
10 security of the prisoner or detainee, the staff of the correctional
11 institution or medical facility, other prisoners or detainees, or the public.

12 (B) The written findings under subdivision (b)(3)(A) shall
13 be maintained by the correctional institution for at least five (5) years and
14 be made available for public inspection, except that information identifying
15 any prisoner or detainee shall not be made public.

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17 12-29-703. Annual Report.

18 (a) At least thirty (30) days before the end of each fiscal year, the
19 Director of the Department of Correction shall submit to the Governor a
20 written report containing detailed information regarding the restraining of
21 any pregnant prisoner or detainee in the Department of Correction's custody
22 under § 12-29-702 during the preceding fiscal year.

23 (b) The written report shall not contain any identifying information
24 of any prisoner or detainee.

25 (c) The written report shall be made available for public inspection.

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27 SECTION 2. Arkansas Code Title 12, Chapter 41, is amended to add an
28 additional subchapter to read as follows:

29 Subchapter 9 – Pregnant Females

30 12-41-901. Definitions.

31 As used in this subchapter:

32 (1) “Correctional institution” means any entity under the authority of
33 a local law enforcement agency that has the power to detain or restrain a
34 person under the laws of the state;

35 (2) “Detainee” includes a person detained under the immigration laws
36 of the United States at a local correctional facility;

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

4 (4) "Post-partum" means, as determined by her physician, the period
5 immediately following delivery, including the entire period a woman is in the
6 hospital or infirmary after the birth of her child or children;

7 (5) "Prisoner" means any person incarcerated or detained in a local
8 facility who is accused of, convicted of, sentenced for, or adjudicated
9 delinquent for violations of criminal law or the terms and conditions of
10 parole, probation, pretrial release, or a diversionary program; and

11 (6)(A) "Restraints" means any physical restraint or mechanical device
12 used to control the movement of a prisoner's or detainee's body or limbs,
13 including without limitation flex cuffs, soft restraints, hard metal
14 handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security
15 tether or chain, or a convex shield.

16 (B) "Restraints" does not mean a door to a room.

17 12-41-902. Restraint of Prisoners and Detainees.

18 (a) A correctional institution shall not restrain a prisoner or
19 detainee known to be pregnant during labor, transport to a medical facility,
20 delivery, and post-partum, unless the correctional institution makes an
21 individualized determination that the prisoner or detainee presents a
22 substantial flight risk or if an extraordinary medical or security
23 circumstance dictates that the prisoner or detainee be restrained to ensure
24 the safety and security of the prisoner or detainee, the staff of the
25 correctional institution or medical facility, other prisoners or detainees,
26 or the public, except that:

27 (1) If a doctor, nurse, or other health professional requests
28 that the prisoner or detainee not be restrained, the corrections officer
29 accompanying the prisoner or detainee shall immediately remove all
30 restraints;

31 (2) Under no circumstances shall leg or waist restraints be used
32 on any prisoner or detainee who is in labor; and

33 (3)(A) The doctor, nurse, or other health professional providing
34 prisoner or detainee obstetric care shall have final decision-making
35 authority on the use of restraints.

36 (B) If a medical professional is not providing the

1 prisoner or detainee obstetric care, the final decision making authority
2 regarding use of restraints shall be the correctional institution's official
3 who is otherwise responsible for the medical treatment of prisoners or
4 detainees and he or she shall consult with the hospital or other obstetric
5 medical providers to the extent possible in making the decision regarding use
6 of restraints.

7 (b) If restraints are used on a prisoner or detainee under subsection
8 (a) of this section:

9 (1) The type of restraint applied and the application of the
10 restraint must both be done in the least restrictive manner necessary;

11 (2) Only medical restraints may be used; and

12 (3)(A) The correctional institution shall make written findings
13 within ten (10) days regarding the substantial flight risk of that prisoner
14 or detainee or other extraordinary medical or security circumstances that
15 dictated the prisoner or detainee be restrained to ensure the safety and
16 security of the prisoner or detainee, the staff of the correctional
17 institution or medical facility, other prisoners or detainees, or the public.

18 (B) The written findings under subdivision (b)(3)(A) shall
19 be maintained by the correctional institution for at least five (5) years and
20 be made available for public inspection, except that information identifying
21 any prisoner or detainee shall not be made public.

22
23 12-41-903. Annual Report.

24 (a) At least thirty (30) days before the end of each fiscal year, the
25 Director of the Department of Correction shall submit to the Governor a
26 written report containing detailed information regarding the restraining of
27 any pregnant prisoner or detainee in the Department of Correction's custody
28 during the preceding fiscal year.

29 (b) The written report shall not contain any identifying information
30 of any prisoner or detainee.

31 (c) The written report shall be made available for public inspection.
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33 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
34 General Assembly of the State of Arkansas that with the expanding prison
35 population, more and more women are being incarcerated while pregnant; that
36 it violates both medical standards and standards of parenthood to restrain

1 pregnant women during childbirth; and that this act is immediately necessary
2 because the state and local correctional institutions should be instructed to
3 immediately end the practice of restraining pregnant women during childbirth.
4 Therefore, an emergency is declared to exist and this act being immediately
5 necessary for the preservation of the public peace, health, and safety shall
6 become effective on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,
9 the expiration of the period of time during which the Governor may veto the
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

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14 */s/ Salmon*
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