

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 S4/6/09

A Bill

SENATE BILL 839

5 By: Senator Salmon
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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 when the prisoner or detainee is known to be in the third trimester of
15 pregnancy, delivery, and post-partum, unless the correctional institution
16 makes an individualized determination that the prisoner or detainee presents
17 a substantial flight risk or if an extraordinary medical or security
18 circumstance dictates that the prisoner or detainee be restrained to ensure
19 the safety and security of the prisoner or detainee, the staff of the
20 correctional institution or medical facility, other prisoners or detainees,
21 or the public, except that:

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

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

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

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

1 the pregnant prisoner or detainee.

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

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

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

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

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

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18 12-29-703. Annual Report.

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

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

26 (c) The written report shall be made available for public inspection.
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28 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
29 General Assembly of the State of Arkansas that with the expanding prison
30 population, more and more women are being incarcerated while pregnant; that
31 it violates both medical standards and standards of parenthood to restrain
32 pregnant women during childbirth; and that this act is immediately necessary
33 because the state and local correctional institutions should be instructed to
34 immediately end the practice of restraining pregnant women during childbirth.
35 Therefore, an emergency is declared to exist and this act being immediately
36 necessary for the preservation of the public peace, health, and safety shall

1 become effective on:

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

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

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

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/s/ Salmon

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