

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
92nd General Assembly
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As Engrossed: H3/7/19 S3/18/19
A Bill

HOUSE BILL 1523

By: Representative Petty
By: Senator Bledsoe

For An Act To Be Entitled

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

Subtitle

CONCERNING THE TREATMENT OF FEMALE
INMATES AND DETAINÉES IN CORRECTIONAL OR
DETENTION FACILITIES; AND CONCERNING
PREGNANT INMATES AND DETAINÉES.

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

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

Chapter 32 – Treatment of Female Inmates or Detainees

12-32-101. Definitions.

As used in this chapter:

(1) "Correctional or detention facility" means:

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

(B) A post-incarceration residential reentry facility



designed to house a person on parole;

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

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

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

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

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

(i) Flex cuffs;

(ii) Soft restraints;

(iii) Hard metal handcuffs;

(iv) A black box;

(v) Chubb cuffs;

(vi) Leg irons;

(vii) Belly chains;

(viii) A security tether or chain;

(ix) A convex shield; and

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

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

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

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

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

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

(A) Ensure the safety and security of:

(i) The inmate, detainee, or child;

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

(iii) Other inmates or detainees; or

(iv) The public; or

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

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

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

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

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

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

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

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

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

(3) Only soft restraints may be used; and

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

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

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

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

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

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

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

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

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

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

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

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

/s/Petty