An Act To Prevent the Shackling of Pregnant Prisoners

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

Presented by Senator HASKELL of Cumberland.
Cosponsored by Representative MAKER of Calais and
Senators: BREEN of Cumberland, HILL of York, MILLETT of Cumberland, ROSEN of Hancock,
VALENTINO of York, Representatives: ALLEY of Beals, BABBIDGE of Kennebunk, BATES of
Westbrook, BEAVERS of South Berwick, BEEBE-CENTER of Rockland, BLUME of York, BROOKS
of Lewiston, BRYANT of Windham, BURSTEIN of Lincolnville, CHENETTE of Saco, COOPER of
Yarmouth, DAUGHERTY of Brunswick, DAVITT of Hampden, DeCHANT of Bath, DEVIN of
Newcastle, DOORE of Augusta, DUNPHY of Old Town, ESPLING of New Gloucester,
EVANGELOS of Friendship, FOWLE of Vassalboro, GIDEON of Freeport, GILBERT of Jay,
GINZLER of Bridgton, GRANT of Gardiner, GUERIN of Glenburn, HARLOW of Portland, HERBIG
of Belfast, HICKMAN of Winthrop, HOBINS of Saco, HOGAN of Old Orchard Beach,
HYMANSON of York, KINNEY of Knox, KORNFIELD of Bangor, MALABY of Hancock, MARTIN
of Sinclair, MASTRACCIO of Sanford, McCABE of Skowhegan, McCREIGHT of Harpswell,
MELARAGNO of Auburn, MONAGHAN of Cape Elizabeth, MOONEN of Portland, NADEAU of
Winslow, PIERCE of Falmouth, POWERS of Naples, ROTUNDO of Lewiston, RUSSELL of Portland,
SANBORN of Gorham, SANDERSON of Chelsea, SHAW of Standish, SHORT of Pittsfield,
STUCKEY of Portland, TEPLER of Topsham, WARREN of Hallowell, WELSH of Rockport.
Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA c. 13, sub-c. 2-A is enacted to read:

SUBCHAPTER 2-A

PREGNANT PRISONERS

§1581. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Corrections official. "Corrections official" means the official who is responsible for oversight of a jail or other county correctional facility or that official's designee.

2. Detainee. "Detainee" means an adult or juvenile person detained under the immigration laws of the United States at a jail or other county correctional facility.

3. Labor. "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.

4. Postpartum recovery. "Postpartum recovery" means, as determined by a woman's physician, the period immediately following delivery, including the entire period the woman is in the hospital or infirmary after giving birth.

5. Prisoner. "Prisoner" means an adult or juvenile person incarcerated or detained in a jail or other county correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program or a juvenile adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.

6. Restraints. "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's or detainee's body or limbs, including, but not limited to, flex cuffs or disposable restraints, soft restraints, hard metal handcuffs, a so-called black box security restraint system, Chubb handcuffs, leg irons, belly chains, a security or tether chain and a convex shield.

§1582. Restraint of prisoners and detainees

1. Restraints prohibited. A jail or other county correctional facility may not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility or birthing center, delivery and postpartum recovery, unless a corrections official makes a determination that the prisoner or detainee presents an extraordinary circumstance as described in subsection 2.
2. **Exceptions.** Restraints for an extraordinary circumstance are permitted only if a corrections official makes a determination that there is a substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the prisoner or detainee, the staff of the jail or other county correctional facility or medical facility, other prisoners or detainees or the public, except that:

A. If a doctor, nurse or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

B. Notwithstanding this subsection, leg or waist restraints may not be used at any time, and restraints may not be used on a prisoner or detainee in labor or childbirth.

3. **Procedures.** If restraints are used on a prisoner or detainee pursuant to subsection 2:

A. The corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary; and

B. The corrections official shall make written findings within 10 days as to the extraordinary circumstance that required the use of the restraints. These findings must be kept on file by the jail or other county correctional facility for at least 5 years and must be made available for public inspection, except that individually identifying information of any prisoner or detainee may not be made public under this paragraph or in violation of Title 34-A, section 1216 without the prisoner's or detainee's prior written consent.

4. **Privacy.** When a prisoner or detainee is admitted to a medical facility or birthing center for labor or childbirth, a corrections officer may not remain present in the room during labor or childbirth unless specifically requested by medical personnel. If a corrections officer's presence is requested by medical personnel, the corrections officer must be female if practicable.

§1583. **Notice to prisoners and detainees**

1. **Minimum standards for pregnant prisoners and detainees.** Within 60 days after the effective date of this subchapter, the Commissioner of Corrections shall establish minimum standards necessary to implement this subchapter and must enforce those standards as provided under Title 34-A, section 1208.

2. **Notice.** Within 30 days of the establishment of minimum standards pursuant to subsection 1, a jail or other county correctional facility shall inform prisoners and detainees within the custody of the jail or other county correctional facility of the minimum standards.

Sec. 2. **30-A MRSA §1660, sub-$4** is enacted to read:

4. **Information on pregnant prisoners.** The report required in this section must include the following information for each county corrections facility about pregnant inmates restrained pursuant to subchapter 2-A during the prior calendar year:
A. The total number of pregnant inmates;
B. The total number of pregnant inmates who were restrained;
C. The length of time each pregnant inmate was restrained; and
D. The reasons for each instance of restraining a pregnant inmate.

Sec. 3. 34-A MRSA c. 3, sub-c. 1, art. 4 is enacted to read:

ARTICLE 4

PREGNANT PRISONERS

§3101. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Corrections official. "Corrections official" means the official who is responsible for oversight of a correctional facility or detention facility or that official's designee.

2. Detainee. "Detainee" means an adult or juvenile person detained under the immigration laws of the United States at a correctional facility or detention facility.

3. Labor. "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.

4. Postpartum recovery. "Postpartum recovery" means, as determined by a woman's physician, the period immediately following delivery, including the entire period the woman is in the hospital or infirmary after giving birth.

5. Prisoner. "Prisoner" means an adult or juvenile person incarcerated or detained in a correctional facility or detention facility who is accused of, convicted of or sentenced for a violation of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program or a juvenile adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.

6. Restraints. "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner's or detainee's body or limbs, including, but not limited to, flex cuffs or disposable restraints, soft restraints, hard metal handcuffs, a so-called black box security restraint system, Chubb handcuffs, leg irons, belly chains, a security or tether chain and a convex shield.

§3102. Restraint of prisoners and detainees

1. Restraints prohibited. A correctional facility or a detention facility may not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility or birthing center, delivery and postpartum recovery, unless
a corrections official makes a determination that the prisoner or detainee presents an extraordinary circumstance as described in subsection 2.

2. Exceptions. Restraints for an extraordinary circumstance are permitted only if a corrections official makes a determination that there is a substantial flight risk or other extraordinary medical or security circumstance that requires restraints to be used to ensure the safety and security of the prisoner or detainee, the staff of the correctional facility, detention facility or medical facility, other prisoners or detainees or the public, except that:

A. If a doctor, nurse or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

B. Notwithstanding this subsection, leg or waist restraints may not be used at any time, and restraints may not be used on a prisoner or detainee in labor or childbirth.

3. Procedures. If restraints are used on a prisoner or detainee pursuant to subsection 2:

A. The corrections officer must apply the least restrictive type of restraints in the least restrictive manner necessary; and

B. The corrections official shall make written findings within 10 days as to the extraordinary circumstance that required the use of the restraints. These findings must be kept on file by the correctional facility or detention facility for at least 5 years and must be made available for public inspection, except that individually identifying information of any prisoner or detainee may not be made public under this paragraph or in violation of section 1216 without the prisoner's or detainee's prior written consent.

4. Privacy. When a prisoner or detainee is admitted to a medical facility or birthing center for labor or childbirth, a corrections officer may not remain present in the room during labor or childbirth unless specifically requested by medical personnel. If a corrections officer's presence is requested by medical personnel, the corrections officer must be female if practicable.

§3103. Rulemaking

Within 30 days after the effective date of this article, the department shall adopt rules necessary to implement this article. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§3104. Notice

A correctional facility or detention facility shall inform prisoners and detainees of the rules developed pursuant to section 3103 upon admission to the correctional facility or detention facility and include policies and practices pursuant to this article in any prisoner handbook.
SUMMARY

This bill prohibits the use of restraints on a pregnant prisoner or detainee except in extraordinary circumstances. When restraints are used, the corrections official must document the extraordinary circumstance that required the use of restraints. The bill clarifies that when a pregnant prisoner or detainee is admitted to a medical facility or birthing center, a corrections officer may not be present in the room during labor or childbirth unless specifically requested by medical personnel. The bill also requires the adoption of policies on the treatment of pregnant prisoners and detainees and requires that information about those policies be disseminated to all prisoners and detainees.