

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1259 Incarcerated Pregnant Women

SPONSOR(S): Justice Appropriations Subcommittee and Criminal Justice Subcommittee, Jones, Mercado and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 852

FINAL HOUSE FLOOR ACTION: 112 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS HB 1259 passed the House on March 10, 2020. The bill was amended in the Senate on March 11, 2020, and returned to the House. The House concurred in the Senate amendment as amended on March 13, 2020. The Senate concurred in the House amendment and passed the bill as amended on March 13, 2020.

Pregnant women in the criminal justice system are at a particularly high risk, as their health is often compromised by a lack of prenatal care, poor nutrition, and untreated or undertreated chronic medical and psychiatric conditions. While the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), and detention facilities provide pregnant women in their respective facilities medical care and nutrition, nothing currently prevents the placement of a pregnant prisoner in restrictive housing or another form of isolation or confinement. Consequently, pregnant prisoners are sometimes housed alone, whether in medical isolation cells or other types of restrictive housing, for days or weeks at a time. In isolation, pregnant prisoners are at increased risk of psychological trauma, dangerous blood clots due to an inability to freely move around, and of having their medical needs overlooked.

The bill:

- Prohibits DOC, DJJ, and any detention facility from involuntarily placing a pregnant prisoner in restrictive housing unless the corrections official determines that such placement is necessary to protect the health and safety of the pregnant prisoner or others or to preserve the correctional institution's security and order and there are no less restrictive means available.
 - Requires a corrections official to write a report after placing a pregnant prisoner in restrictive housing and provide a copy of the report to the pregnant prisoner within 12 hours.
- Requires that a pregnant prisoner placed in restrictive housing be:
 - Seen by a qualified healthcare professional at least once every 24 hours;
 - Observed by a correctional officer at least once every hour;
 - Housed in the least restrictive setting consistent with her health and safety; and
 - Given a medical treatment plan if she does not already have one in place.
- Provides that a pregnant prisoner needing medical care or who has passed her due date must be placed in a designated medical housing unit or admitted to the infirmary and given the same access to specified privileges as prisoners in the general population unless:
 - The corrections official determines that such access poses a danger to the correctional institution's safety and security, or
 - A qualified healthcare professional determines that such access poses a risk of adverse clinical consequences for the prisoner or another.
- Requires DOC and DJJ to adopt rules and detention facilities to adopt written policies or procedures relating to restraining or performing invasive body searches on pregnant prisoners.
- Expands an enforcement provision to allow a prisoner to file a grievance if she is housed in violation of the restrictive housing provisions created by the bill.

The bill may have an insignificant fiscal impact on state expenditures and an indeterminate fiscal impact on local governments, to the extent additional staff and training are necessary to implement the bill.

The bill was approved by the Governor on June 23, 2020, ch. 2020-89 L.O.F., and will become effective on July 1, 2020.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1259z1.CRJ.DOCX

DATE: 6/25/2020

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Incarcerated Pregnant Women

An estimated 10 percent of women admitted to prisons or jails in the United States are pregnant at the time of their admission.¹ Pregnant women in the criminal justice system are at a particularly high risk, as their health is often compromised by a lack of prenatal care, poor nutrition, and untreated or undertreated chronic medical and psychiatric conditions.² Further, pregnant women are often housed alone for days or weeks at a time for medical observation or minor disciplinary infractions.³ Such isolation puts pregnant women at risk of psychological trauma, dangerous blood clots due to an inability to freely move around, and having their medical needs overlooked.⁴

Department of Corrections

The Department of Corrections (DOC) assigns female prisoners to one of five female prisons in the state based on a prisoner classification scheme designed to stabilize total prisoner population and meet the needs of individual prisoners.⁵ All pregnant prisoners are housed at Lowell Correctional Institution in Ocala, Florida, the only state prison designed and staffed to care for pregnant and postpartum prisoners, for the duration of their pregnancies and for six weeks post-delivery.⁶ However, a pregnant prisoner is transferred to an outside hospital for delivery, where she remains until discharged by her attending obstetrician.⁷

In FY 2018-19, DOC housed 101 pregnant prisoners.⁸ When pregnancy is confirmed, DOC refers the pregnant prisoner to a licensed physician for obstetrical care for the duration of her pregnancy.⁹ A pregnant prisoner also receives prenatal counseling, vitamins, exams, and a prenatal diet adjusted for the caloric and nutritional needs of pregnancy.¹⁰

Department of Juvenile Justice

The Department of Juvenile Justice (DJJ) screens every female youth admitted to a juvenile justice facility and any female youth who reports her menstrual cycle is two or more weeks late for pregnancy.¹¹ The Designated Health Authority must be notified within 12 hours of a positive pregnancy screening, and a pregnant youth must receive medical care from either an obstetrician or a perinatologist for the duration of her pregnancy.¹² Such medical care must include a routine medical oversight evaluation at least every 30 days, daily monitoring of and observation for pregnancy-related

¹ Ginnette G. Ferszt, Michelle Palmer, and Christine McGrane, *Where Does Your State Stand on Shackling of Pregnant Incarcerated Women*, 22 *Nursing for Women's Health* 1 (Feb. 2018), [https://nwhjournal.org/article/S1751-4851\(17\)30335-5/pdf](https://nwhjournal.org/article/S1751-4851(17)30335-5/pdf) (last visited Mar. 19, 2020).

² *Id.*

³ Sarah McCammon, *Pregnant, Locked Up, and Alone*, <https://www.npr.org/2019/06/16/732109546/pregnant-locked-up-and-alone> (last visited Mar. 19, 2020).

⁴ *Id.*

⁵ These prisons are Gadsden Correctional Facility (Quincy), Lowell Correctional Institution (Ocala), Florida Women's Reception Center (Ocala), Hernando Correctional Institution (Brooksville), and Homestead Correctional Institution (Florida City). See Florida Department of Corrections ("DOC"), Agency Analysis of HB 1259, p. 2 (Jan. 14, 2020).

⁶ *Id.*

⁷ *Id.*

⁸ DOC, *supra* note 5, at p. 3.

⁹ DOC, *supra* note 5, at p. 2.

¹⁰ *Id.*

¹¹ DJJ, *Detention Services: Facility Medical Policies (Procedure No. 8030)*, <http://www.djj.state.fl.us/docs/services/8030-pregnancy7A6980CD83A9.pdf?sfvrsn=2> (last visited Mar. 19, 2020).

¹² *Id.*

medical complications, and meals modified to meet the nutritional needs of pregnancy.¹³ In 2019, DJJ housed and treated 65 pregnant youths.¹⁴

Detention Facilities

The Florida Model Jail Standards¹⁵ (“FMJS”) require that a pregnant prisoner in a detention facility receive timely and appropriate prenatal care from a qualified medical practitioner.¹⁶ Such care must include medical examinations, advice on appropriate levels of activity and safety precautions, nutritional guidance, and counseling.¹⁷ In spite of these standards, in April of 2019, a woman incarcerated in the Broward County Jail gave birth alone in an isolation cell without medical assistance during the delivery.¹⁸ The woman was reportedly placed in an isolation cell due to her pregnancy.¹⁹

Restrictive Housing – DOC

All prisoners in the custody of DOC, including pregnant prisoners, are placed in a specified housing status, which may include restrictive housing such as:²⁰

- “Administrative confinement,” meaning the temporary removal of a prisoner from the general population for security and safety reasons until a more permanent prisoner management process concludes.²¹
- “Disciplinary confinement,” meaning a form of punishment in which a prisoner found guilty of violating DOC rules is confined for periods of time to an individual cell based upon authorized penalties for prohibited conduct.²²
- “Close management,” meaning the confinement of a prisoner who demonstrates, through her behavior, an inability to live in the general population without abusing the rights and privileges of others or who threatens the institution’s security or the safety of others.²³
- “Protective management,” meaning the removal of a prisoner from the general population for the prisoner’s safety and security.²⁴
- “Medical isolation,” meaning the confinement of a prisoner to a medical isolation cell in the infirmary due to the prisoner’s illness or injury.²⁵

¹³ *Id.*

¹⁴ Florida Department of Juvenile Justice, Agency Analysis of HB 1259, p. 2 (Jan. 31, 2020).

¹⁵ The FMJS are minimum standards which jails across Florida must meet to protect the constitutional rights of those incarcerated. Florida Sheriffs Association, *Florida Model Jail Standards*, <https://www.flsheriffs.org/law-enforcement-programs/training/florida-model-jail-standards> (last visited Mar. 19, 2020).

¹⁶ The FMJS R. 7.22 (2019).

¹⁷ *Id.*

¹⁸ Sandra E. Garcia, *Ordeal of Woman Who Gave Birth in Florida Jail Cell Prompts Internal Investigation*, The New York Times (May 7, 2019), <https://www.nytimes.com/2019/05/07/us/woman-gives-birth-jail-cell.html> (last visited Mar. 19, 2020).

¹⁹ *Id.*

²⁰ DOC, *supra* note 5, at p. 3.

²¹ A prisoner may be placed in such confinement if disciplinary charges are pending against the prisoner and she needs to be temporarily removed from the general population pending a disciplinary hearing, the prisoner is received from another prison when classification staff is not available to classify the prisoner into the general population, or for other reasons set out in rule. R. 33-602.220(1)-(3), F.A.C.

²² R. 33-602.222(1)(f), F.A.C.

²³ There are three close management levels, with close management I (“CMI”) being the most restrictive and close management III (“CMIII”) being the least restrictive. A prisoner may be placed in CMI for offenses including causing death or injury, taking a hostage, or escaping using violence or a weapon. A prisoner may be placed in close management II for offenses including a pattern of predatory actions making the prisoner a threat to others or participating in a riot or disturbance. A prisoner may be placed in CMIII for offenses including assisting or aiding in an escape attempt or possessing unauthorized drugs. R. 33-601.800(2), F.A.C.

²⁴ R. 33-602.221(1)(j), F.A.C.

²⁵ DOC, *supra* note 5, at p. 3.

When a prisoner is placed in restrictive housing, the placement must be justified after attempting all other less-restrictive housing options, and the placement must be reviewed by multiple DOC staff members.²⁶ All DOC staff are trained to observe prisoner behavior for signs of medical or mental health distress, and a prisoner may request aid at any time.²⁷ Further, a prisoner in restrictive housing receives regular staff visits and necessary medical care, including a medical evaluation prior to placement, and some prisoners retain privileges similar to those in the general population.²⁸

Restrictive Housing – DJJ

DJJ has implemented the Juvenile Detention Alternatives Initiative (JDAI) standards, a widely-recognized set of national best practices for juvenile justice facility conditions.²⁹ The JDAI standards prohibit placing a youth in solitary confinement for punishment or discipline and limits solitary confinement, when permissible, to no more than four hours.³⁰ DJJ uses solitary confinement, known as secured detention, only to house youth pending adjudication, disposition of her case, placement in a juvenile detention facility, or when ordered to do so by the court.³¹ Solitary confinement is not used for a youth housed in a residential commitment facility or a detention facility, but DJJ does utilize restrictive housing in these settings, including:³²

- “Medical confinement,” meaning the placement of a youth in a secured room to allow the youth to rest and recover from illness or to prevent the spread of a communicable illness.³³
- “Behavioral confinement,” meaning the placement of a youth in a secure room during a volatile situation in which a youth’s sudden or unforeseen behavior imminently and substantially threatens the safety of the youth or others.³⁴
- “Room restriction,” meaning the temporary confinement of a youth in her sleeping quarters when the youth is out of control or a suicide risk.³⁵
- “Controlled observation,” meaning the temporary placement of a youth in a separate, safe, and secure observation room when de-escalation strategies are not successful and:
 - There is imminent risk of the youth physically harming herself, staff, or others; or
 - The youth is engaged in major property destruction likely to compromise the program’s security or jeopardize the youth’s safety or the safety of others.³⁶
- “Precautionary observation,” meaning the constant supervision of a suicide risk youth in a secure designated observation area.³⁷

When a youth is placed in restrictive housing, DJJ staff must regularly visit and observe the youth, and in some instances, staff observation must be continuous.³⁸ A youth in restrictive housing typically loses access to some or all of the privileges granted to other youths, but placement in restrictive housing is limited in duration by administrative rule.³⁹ Further, if a youth in restrictive housing complains of illness or injury, the youth must receive a timely medical assessment and any necessary treatment.⁴⁰

²⁶ See generally Rules 33-602.220, 33-602.221, and 33-602.222, F.A.C.

²⁷ *Id.*; DOC, *supra* note 5, at p. 5.

²⁸ *Id.*

²⁹ DJJ, *Juvenile Detention Alternatives Initiative (JDAI)*, [http://www.djj.state.fl.us/research/latest-initiatives/juvenile-detention-alternatives-initiative-\(j dai\)](http://www.djj.state.fl.us/research/latest-initiatives/juvenile-detention-alternatives-initiative-(j dai)) (last visited Mar. 19, 2020).

³⁰ JDAI, *Juvenile Detention Facility Assessment 2014 Update* (Dec. 2014), <http://www.cclp.org/wp-content/uploads/2016/06/JDAI-Detention-Facility-Assessment-Standards.pdf> (last visited Mar. 19, 2020).

³¹ R. 63G-2.013(58), F.A.C.

³² Department of Juvenile Justice, *Agency Analysis of 2019 Senate Bill 624*, p. 2 (Feb. 28, 2019).

³³ R. 63G-2.014(50), F.A.C.

³⁴ R. 63G-2.014(7), F.A.C.

³⁵ R. 63E-7.107(15), F.A.C.

³⁶ R. 63E-7.107(14)(a), F.A.C.

³⁷ R. 63G-2.014(52), F.A.C.

³⁸ See generally Rules 63E-7.107 and 63G-2.022, F.A.C.

³⁹ For example, a youth may be placed in controlled observation for no more than two hours, unless the program director extends the placement in two-hour increments for up to 24 hours. See generally Rules 63E-7.107 and 63G-2.022, F.A.C.

⁴⁰ See generally Rules 63E-7.107 and 63G-2.022, F.A.C.

Restrictive Housing – Detention Facilities

The FMJS allow segregation of a prisoner in a detention facility from the general population for disciplinary reasons in “disciplinary confinement” and for medical reasons in “medical confinement.”⁴¹ The FMJS also allow placement of a prisoner in a detention facility in “administrative confinement” to ensure immediate control and supervision when the prisoner is a threat to herself, to others, or to the facility’s safety and security.⁴² Incident reports must be created for each confinement placement, and any person charged with a disciplinary violation is entitled to a disciplinary hearing within seven working days of the incident.⁴³

A prisoner in administrative confinement receives housing, food, clothing, medical care, exercise, visitation, showers, and other services and privileges comparable to those available to the general population except where a prisoner’s classification status or special needs⁴⁴ justify restrictions.⁴⁵ Prisoners with special needs in confinement must be checked by medical staff at least every 72 hours, and a physician must examine a prisoner in medical isolation within 48 hours after her confinement.⁴⁶ Further, facility staff must visit the prisoner at least twice a day and document the prisoner’s general condition with each visit.⁴⁷

Effect of the Bill

The bill prohibits DOC, DJJ, and any county, municipal, or private detention facility from involuntarily placing a pregnant prisoner in restrictive housing⁴⁸ absent an individualized determination by the corrections official⁴⁹ of the correctional institution that such placement is necessary to protect the health and safety of the pregnant prisoner or others or the institution’s security and order and that there are no less restrictive means available. After placing a pregnant prisoner in restrictive housing, the corrections official must write a report, which must be provided to the pregnant prisoner within 12 hours of her placement, stating the reason restrictive housing is necessary, the reason less restrictive means are unavailable, and whether a qualified healthcare professional objected to the placement.

The bill requires that a pregnant prisoner:

- Needing medical care be placed in a designated medical housing unit or admitted to the infirmary by a primary care nurse practitioner or obstetrician.
- Who passes her due date be placed in a designated medical housing unit or admitted to the infirmary until labor begins.

⁴¹ FMJS R. 1.17 (2019).

⁴² FMJS R. 13.13 (2019).

⁴³ FMJS R. 13.8 (2019).

⁴⁴ FMJS defines “special needs prisoners” as “prisoners who have been determined by the health authority to be mentally ill, suicidal, alcoholic, or drug addicted going through withdrawal and in need of close monitoring.” Rule 5.4 (2019).

⁴⁵ FMJS R. 13.13(b) (2019).

⁴⁶ FMJS R. 13.13(c) (2019).

⁴⁷ FMJS R. 13.14 (2019).

⁴⁸ The bill defines “restrictive housing” as housing a prisoner separately from the general population of a correctional institution and imposing restrictions on her movement, behavior, and privileges. The term also includes placing a prisoner in medical isolation, in a medical housing unit, or in the infirmary.

⁴⁹ “Corrections official” means the official responsible for oversight of a correctional institution or his or her designee. S. 944.241(1)(b), F.S.

A pregnant prisoner placed in a designated medical housing unit or admitted to the infirmary must be given the same access to outdoor recreation, visitation, mail, classes, telephone calls, and other privileges available to prisoners in the general population unless:

- The corrections official determines, after consulting with a qualified healthcare professional, that such access poses a danger to the correctional institution's safety and security; or
- A qualified healthcare professional determines that such access poses a danger of adverse clinical consequences for the pregnant prisoner or others.

Further, the bill requires that a pregnant prisoner in restrictive housing be:

- Seen by a qualified healthcare professional at least once every 24 hours;
- Observed by a correctional officer at least once every hour;
- Housed in the least restrictive setting consistent with her health and safety; and
- Given a medical treatment plan developed and approved by a qualified healthcare professional if she does not already have one in place.

Finally, the bill:

- Expands enforcement provisions to allow a prisoner to file a grievance if she is housed in violation of the restrictive housing provisions created by the bill;
- Requires DOC and DJJ to adopt rules and each detention facility to adopt written policies or procedures relating to restraining or performing an invasive body search⁵⁰ on a pregnant prisoner; and
- Requires that an invasive body search only be performed on a pregnant prisoner according to such rules, policies, or procedures.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant impact on DOC, which could be absorbed within existing resources.

DJJ reviewed a prior version of the bill and determined it would not have a significant fiscal impact on the Department.⁵¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁵⁰ The bill defines "invasive body search" to mean a search involving the manual inspection of the breasts or a manual inspection using touch, insertion, or probing of the cavities of the human body, including the genitals, buttocks, or anus.

⁵¹ Florida Department of Juvenile Justice, Agency Analysis of 2020 HB 1259 (Feb. 6, 2020).

2. Expenditures:

The bill may increase costs to local governments by an indeterminate amount, to the extent additional jail staff and training are necessary to implement the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.