

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 690

Introduced by Cavanaugh, 6.

Read first time January 23, 2019

Committee:

- 1 A BILL FOR AN ACT relating to treatment and corrections; to adopt the
- 2 Healthy Pregnancies for Incarcerated Women Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 7 of this act shall be known and may be
2 cited as the Healthy Pregnancies for Incarcerated Women Act.

3 Sec. 2. The Legislature find and declares:

4 (1) Restraining a pregnant woman can pose undue health risks to the
5 woman and her Pregnancy;

6 (2) The majority of female prisoners and detainees in Nebraska are
7 nonviolent offenders;

8 (3) Restraining prisoners and detainees increases their potential
9 for physical harm from an accidental trip or fall. The impact of such
10 harm to a pregnant woman can negatively impact her pregnancy;

11 (4) Freedom from physical restraints is especially critical during
12 labor, delivery, and postpartum recovery after delivery. Women often need
13 to move around during labor and recovery, including moving their legs as
14 part of the birthing process. Restraints on a pregnant woman can
15 interfere with medical staff's ability to appropriately assist in
16 childbirth or to conduct sudden emergency procedures; and

17 (5) The Federal Bureau of Prisons, the United States Marshals
18 Service, the American Correctional Association, the American College of
19 Obstetricians and Gynecologists, the American Medical Association, and
20 the American Public Health Association all oppose or severely limit the
21 routine shackling of women during labor, delivery, and postpartum
22 recovery because it is unnecessary and dangerous to a woman's health and
23 well-being and creates an unnecessary risk to the baby during birth.

24 Sec. 3. For the purposes of the Healthy Pregnancies for
25 Incarcerated Women Act:

26 (1) Administrator means the Director of Correctional Services, the
27 sheriff or other person charged with administration of a jail, or any
28 other official responsible for the administration of a detention
29 facility;

30 (2) Detainee includes any adult or juvenile female detained under
31 the immigration laws of the United States at any detention facility;

1 (3) Detention facility means any:

2 (a) Facility operated by the Department of Correctional Services;

3 (b) City or county jail;

4 (c) Juvenile detention facility or staff secure juvenile facility as
5 such terms are defined in section 83-4,125; or

6 (d) Any other entity or institution operated by the state, a
7 political subdivision, or a combination of political subdivisions for the
8 careful keeping or rehabilitative needs of prisoners or detainees;

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

12 (5) Postpartum recovery means, as determined by her physician, the
13 period immediately following delivery, including the entire period a
14 woman is in the hospital or infirmary after birth;

15 (6) Prisoner means any adult or juvenile incarcerated or detained in
16 any detention facility and includes, but is not limited to, any adult or
17 juvenile who is accused of, convicted of, sentenced for, or adjudicated
18 for violations of criminal law or the terms and conditions of parole,
19 probation, pretrial release, post-release supervision, or a diversionary
20 program; and

21 (7) Restraints means any physical restraint or mechanical device
22 used to control the movement of a prisoner or detainee's body or limbs,
23 including, but not limited to, flex cuffs, soft restraints, hard metal
24 handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security
25 or tether chain, or a convex shield.

26 Sec. 4. (1) A detention facility shall not use restraints on a
27 prisoner or detainee known to be pregnant, including during labor,
28 delivery, or postpartum recovery or during transport to a medical
29 facility or birthing center, unless the administrator makes an
30 individualized determination that there are extraordinary circumstances
31 as described in subsection (2) of this section.

1 (2) Restraints for an extraordinary circumstance are only permitted
2 if the administrator makes an individualized determination that there is
3 a substantial flight risk or some other extraordinary medical or security
4 circumstance that dictates restraints be used to ensure the safety and
5 security of the prisoner or detainee known to be pregnant, the staff of
6 the detention facility or medical facility, other prisoners or detainees,
7 or the public, except that:

8 (a) If the doctor, nurse, or other health professional treating the
9 prisoner or detainee known to be pregnant requests that restraints not be
10 used, any detention facility employee accompanying the prisoner or
11 detainee shall immediately remove all restraints;

12 (b) Under no circumstances shall leg or waist restraints be used on
13 the prisoner or detainee known to be pregnant; and

14 (c) Under no circumstances shall any restraints be used on any
15 prisoner or detainee in labor or during childbirth.

16 (3) Upon a prisoner or detainee's admission to a medical facility or
17 birthing center for labor or childbirth, no detention facility employee
18 shall remain present in the room during labor or childbirth, unless
19 specifically requested by medical personnel. If a detention facility
20 employee's presence is requested by medical personnel, the employee
21 shall, if practicable, be female.

22 (4) If restraints are used on a prisoner or detainee known to be
23 pregnant pursuant to subsection (2) of this section:

24 (a) The type of restraint applied and the application of the
25 restraint must be done in the least restrictive manner necessary; and

26 (b) The administrator shall make written findings within ten days as
27 to the extraordinary circumstances that dictated the use of the
28 restraints. These findings shall be kept on file by the detention
29 facility for at least five years and be made available for public
30 inspection, except that no individually identifying information of the
31 prisoner or detainee shall be made public under this section without the

1 prisoner or detainee's prior written consent.

2 Sec. 5. (1) Any prisoner or detainee restrained in violation of the
3 Healthy Pregnancies for Incarcerated Women Act may bring a civil action
4 to recover the greater of:

5 (a) Economic and noneconomic damages proximately caused by violation
6 of the act, including damages for emotional distress whether or not
7 accompanied by other damages; or

8 (b) Statutory damages not to exceed ten thousand dollars against
9 each defendant. In determining the amount of statutory damages awarded
10 under this subdivision, consideration must be given to the manner and
11 duration of restraint, whether injury resulted to the prisoner or
12 detainee or her child, and other exacerbating or mitigating factors.

13 (2) In an action under the act, the court may also award a
14 prevailing plaintiff:

15 (a) Reasonable attorney's fees and costs; and

16 (b) Other appropriate relief, including injunctive relief.

17 (3) A court may also award punitive damages in an action under this
18 section, considering the same factors as provided under subdivision (1)
19 (b) of this section. Any punitive damages awarded shall be remitted to
20 the State Treasurer for distribution in accordance with Article VII,
21 section 5, of the Constitution of Nebraska.

22 (4) An action under this section shall be brought within four years
23 of the violation.

24 (5) The remedies provided in this section are supplemental to any
25 other remedies, administrative or otherwise, under state or federal law.

26 Sec. 6. (1) On or before October 1, 2019, each detention facility
27 in this state shall adopt and promulgate rules and regulations to carry
28 out the Healthy Pregnancies for Incarcerated Women Act. A detention
29 facility may also adopt and promulgate rules and regulations developed by
30 the Jail Standards Board or the Nebraska Commission on Law Enforcement
31 and Criminal Justice. Such rules and regulations shall be included in any

1 handbook for prisoners or detainees.

2 (2) On and after October 1, 2019, a detention facility shall inform
3 each prisoner or detainee of the rules and regulations adopted and
4 promulgated under this section upon admission to the detention facility.

5 (3) On or before November 1, 2019, a detention facility shall inform
6 any prisoner or detainee in custody of the detention facility, who has
7 not previously been informed, of the rules and regulations adopted and
8 promulgated under this section.

9 Sec. 7. On or before June 1, 2020, and each June 1 thereafter, each
10 administrator of a detention facility shall submit a report to the office
11 of Inspector General of the Nebraska Correctional System describing any
12 use of restraints on a pregnant prisoner or detainee in the preceding
13 calendar year. The report shall not contain individually identifying
14 information of any prisoner or detainee. Such reports shall be made
15 available for public inspection.