



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1958

by Rep. Robyn Gabel

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-15003.6
730 ILCS 5/3-6-7
730 ILCS 125/17.5
745 ILCS 10/4-105

from Ch. 85, par. 4-105

Amends the Counties Code, the Unified Code of Corrections, and the County Jail Act. Provides that a county department of corrections and the Illinois Department of Corrections shall not apply security restraints to a prisoner that has been determined by a qualified medical professional to be pregnant and is known by the county department of corrections or the Illinois Department of Corrections to be pregnant or in postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents a substantial flight risk or some other extraordinary circumstance that dictates security restraints be used to ensure the safety and security of the prisoner, her child or unborn child, the staff of the Illinois Department of Corrections, a county department of corrections, or the medical facility, other prisoners, or the public. Provides that leg irons, shackles, or waist shackles shall not be used on any pregnant or postpartum prisoner regardless of security classification. Amends the Local Governmental and Governmental Employees Tort Immunity Act. Provides that the county department of corrections official is immune from civil liability when applying security restraints to pregnant prisoners or those in postpartum recovery, except for willful and wanton conduct.

LRB097 08003 RLC 50873 b

1 AN ACT concerning corrections.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Counties Code is amended by changing Section
5 3-15003.6 as follows:

6 (55 ILCS 5/3-15003.6)

7 Sec. 3-15003.6. Pregnant female prisoners.

8 (a) Definitions. For the purpose of this Section:

9 (1) "Restraints" means any physical restraint or
10 mechanical device used to control the movement of a
11 prisoner's body or limbs, or both, including, but not
12 limited to, flex cuffs, soft restraints, hard metal
13 handcuffs, a black box, Chubb cuffs, leg irons, belly
14 chains, a security (tether) chain, or a convex shield, or
15 shackles of any kind.

16 (2) "Labor" means the period of time before a birth and
17 shall include any medical condition in which a woman is
18 sent or brought to the hospital for the purpose of
19 delivering her baby. These situations include: induction
20 of labor, prodromal labor, pre-term labor, prelabor
21 rupture of membranes, the 3 stages of active labor, uterine
22 hemorrhage during the third trimester of pregnancy, and
23 caesarian delivery including pre-operative preparation.

1 (3) "Post-partum" means, as determined by her
2 physician, the period immediately following delivery,
3 including the entire period a woman is in the hospital or
4 infirmary after birth.

5 (4) "Correctional institution" means any entity under
6 the authority of any state, county, or municipal law
7 enforcement division that has the power to detain or
8 restrain, or both, a person under the laws of the State.

9 (5) "Corrections official" means the official that is
10 responsible for oversight of a correctional institution,
11 or his or her designee.

12 (6) "Prisoner" means any person incarcerated or
13 detained in any facility who is accused of, convicted of,
14 sentenced for, or adjudicated delinquent for, violations
15 of criminal law or the terms and conditions of parole,
16 probation, pretrial release, or diversionary program, and
17 any person detained under the immigration laws of the
18 United States at any correctional facility.

19 (7) "Extraordinary circumstance" means an
20 extraordinary medical or security circumstance, including
21 a substantial flight risk, that dictates restraints be used
22 to ensure the safety and security of the prisoner, the
23 staff of the correctional institution or medical facility,
24 other prisoners, or the public.

25 (b) A county department of corrections shall not apply
26 security restraints to a prisoner that has been determined by a

1 qualified medical professional to be pregnant and is known by
2 the county department of corrections to be pregnant or in
3 postpartum recovery, which is the entire period a woman is in
4 the medical facility after birth, unless the corrections
5 official makes an individualized determination that the
6 prisoner presents a substantial flight risk or some other
7 extraordinary circumstance that dictates security restraints
8 be used to ensure the safety and security of the prisoner, her
9 child or unborn child, the staff of the county department of
10 corrections or medical facility, other prisoners, or the
11 public. The protections set out in clauses (b) (3) and (b) (4) of
12 this Section shall apply to security restraints used pursuant
13 to this subsection. The corrections official shall immediately
14 remove all restraints upon the written or oral request of
15 medical personnel. When medical personnel makes an oral
16 request, that request will be verified in writing as promptly
17 as reasonably possible.

18 (1) Qualified authorized health staff shall have the
19 authority to order therapeutic restraints for a pregnant or
20 postpartum prisoner who is a danger to herself, her child,
21 unborn child, or other persons due to a psychiatric or
22 medical disorder. Therapeutic restraints may only be
23 initiated, monitored and discontinued by qualified and
24 authorized health staff and used to safely limit a
25 prisoner's mobility for psychiatric or medical reasons. No
26 order for therapeutic restraints shall be written unless

1 medical or mental health personnel, after personally
2 observing and examining the prisoner, are clinically
3 satisfied that the use of therapeutic restraints is
4 justified and permitted in accordance with hospital
5 policies and applicable State law. Metal handcuffs or
6 shackles are not considered therapeutic restraints.

7 (2) Whenever therapeutic restraints are used by
8 medical personnel, Section 2-108 of the Mental Health and
9 Developmental Disabilities Code shall apply.

10 (3) Leg irons, shackles or waist shackles shall not be
11 used on any pregnant or postpartum prisoner regardless of
12 security classification.

13 (4) When a pregnant or postpartum prisoner must be
14 restrained, restraints used shall be the least restrictive
15 restraints possible to ensure the safety and security of
16 the prisoner, her child, unborn child, the staff of the
17 county department of corrections or medical facility,
18 other prisoners, or the public, and in no case shall
19 include leg irons, shackles or waist shackles.

20 (5) Upon the pregnant prisoner's entry into a hospital
21 room, and completion of initial room inspection, a
22 corrections official shall be posted immediately outside
23 the hospital room, unless requested to be in the room by
24 medical personnel attending to the prisoner's medical
25 needs.

26 (6) The county department of corrections shall provide

1 adequate corrections personnel to monitor the pregnant
2 prisoner during her transport to and from the hospital and
3 during her stay at the hospital.

4 (7) Where the county department of corrections
5 requires prisoner safety assessments, a corrections
6 official may enter the hospital room to conduct periodic
7 prisoner safety assessments, except during a medical
8 examination or the delivery process.

9 (8) Upon discharge from a medical facility, postpartum
10 prisoners shall be restrained only with handcuffs in front
11 of the body during transport to the county department of
12 corrections. A corrections official shall immediately
13 remove all security restraints upon written or oral request
14 by medical personnel. When medical personnel makes an oral
15 request, that request shall be verified in writing as
16 promptly as reasonably possible.

17 (c) Enforcement. No later than 30 days before the end of
18 each fiscal year, the county sheriff or corrections official of
19 each municipal and county correctional institution where a
20 pregnant prisoner has been restrained during that previous
21 fiscal year, shall each submit a written report to the Office
22 of the Illinois Attorney General that includes an account of
23 every instance of prisoner restraint pursuant to this Section.
24 The written report shall state the date, time, location and
25 rationale for each instance in which restraints are used. The
26 written report shall not contain any individually identifying

1 information of any prisoner. Such reports shall be made
2 available for public inspection.

3 (d) Section 4-105 of the Local Governmental and
4 Governmental Employees Tort Immunity Act shall be applicable to
5 actions taken by corrections officials or prisoners in
6 accordance with this Section.

7 ~~Notwithstanding any other statute, directive, or~~
8 ~~administrative regulation, when a pregnant female prisoner is~~
9 ~~brought to a hospital from a County Department of Corrections~~
10 ~~facility for the purpose of delivering her baby, no handcuffs,~~
11 ~~shackles, or restraints of any kind may be used during her~~
12 ~~transport to a medical facility for the purpose of delivering~~
13 ~~her baby. Under no circumstances may leg irons or shackles or~~
14 ~~waist shackles be used on any pregnant female prisoner who is~~
15 ~~in labor. Upon the pregnant female prisoner's entry to the~~
16 ~~hospital delivery room, a county correctional officer must be~~
17 ~~posted immediately outside the delivery room. The Sheriff must~~
18 ~~provide for adequate personnel to monitor the pregnant female~~
19 ~~prisoner during her transport to and from the hospital and~~
20 ~~during her stay at the hospital.~~

21 (Source: P.A. 91-253, eff. 1-1-00.)

22 Section 10. The Unified Code of Corrections is amended by
23 changing Section 3-6-7 as follows:

24 (730 ILCS 5/3-6-7)

1 Sec. 3-6-7. Pregnant female committed persons.

2 (a) Definitions. For the purpose of this Section:

3 (1) "Restraints" means any physical restraint or
4 mechanical device used to control the movement of a
5 prisoner's body or limbs, or both, including, but not
6 limited to, flex cuffs, soft restraints, hard metal
7 handcuffs, a black box, Chubb cuffs, leg irons, belly
8 chains, a security (tether) chain, or a convex shield, or
9 shackles of any kind.

10 (2) "Labor" means the period of time before a birth and
11 shall include any medical condition in which a woman is
12 sent or brought to the hospital for the purpose of
13 delivering her baby. These situations include: induction
14 of labor, prodromal labor, pre-term labor, prelabor
15 rupture of membranes, the 3 stages of active labor, uterine
16 hemorrhage during the third trimester of pregnancy, and
17 caesarian delivery including pre-operative preparation.

18 (3) "Post-partum" means, as determined by her
19 physician, the period immediately following delivery,
20 including the entire period a woman is in the hospital or
21 infirmary after birth.

22 (4) "Correctional institution" means any entity under
23 the authority of any state, county, or municipal law
24 enforcement division that has the power to detain or
25 restrain, or both, a person under the laws of the State.

26 (5) "Corrections official" means the official that is

1 responsible for oversight of a correctional institution,
2 or his or her designee.

3 (6) "Prisoner" means any person incarcerated or
4 detained in any facility who is accused of, convicted of,
5 sentenced for, or adjudicated delinquent for, violations
6 of criminal law or the terms and conditions of parole,
7 probation, pretrial release, or diversionary program, and
8 any person detained under the immigration laws of the
9 United States at any correctional facility.

10 (7) "Extraordinary circumstance" means an
11 extraordinary medical or security circumstance, including
12 a substantial flight risk, that dictates restraints be used
13 to ensure the safety and security of the prisoner, the
14 staff of the correctional institution or medical facility,
15 other prisoners, or the public.

16 (b) The Illinois Department of Corrections shall not apply
17 security restraints to a prisoner that has been determined by a
18 qualified medical professional to be pregnant and is known by
19 the Department of Corrections to be pregnant or in postpartum
20 recovery, which is the entire period a woman is in the medical
21 facility after birth, unless the corrections official makes an
22 individualized determination that the prisoner presents a
23 substantial flight risk or some other extraordinary security
24 circumstance that dictates security restraints be used to
25 ensure the safety and security of the prisoner, her child or
26 unborn child, the staff of the Department of Corrections or

1 medical facility, other prisoners, or the public. The
2 protections set out in clauses (b)(3) and (b)(4) of this
3 Section shall apply to security restraints used pursuant to
4 this subsection. The corrections official shall immediately
5 remove all restraints upon the written or oral request of
6 medical personnel. When medical personnel makes an oral
7 request, that request shall be verified in writing as promptly
8 as reasonably possible.

9 (1) Qualified and authorized health staff shall have
10 the authority to order therapeutic restraints for a
11 pregnant or postpartum prisoner who is a danger to herself,
12 her child, unborn child, or other persons due to a
13 psychiatric or medical disorder. Therapeutic restraints
14 may only be initiated, monitored and discontinued only by
15 qualified and authorized health staff and used to safely
16 limit a prisoner's mobility for psychiatric or medical
17 reasons. No order for therapeutic restraints shall be
18 written unless medical or mental health personnel, after
19 personally observing and examining the prisoner, are
20 clinically satisfied that the use of therapeutic
21 restraints is justified and permitted in accordance with
22 hospital policies and applicable State law. Metal
23 handcuffs or shackles are not considered therapeutic
24 restraints.

25 (2) Whenever therapeutic restraints are used by
26 medical personnel, Section 2-108 of the Mental Health and

1 Developmental Disabilities Code shall apply.

2 (3) Leg irons, shackles or waist shackles shall not be
3 used on any pregnant or postpartum prisoner regardless of
4 security classification.

5 (4) When a pregnant or postpartum prisoner must be
6 restrained, restraints used shall be the least restrictive
7 restraints possible to ensure the safety and security of
8 the prisoner, her child, unborn child, the staff of the
9 Department of Corrections or medical facility, other
10 prisoners, or the public.

11 (5) Upon the pregnant prisoner's entry into a hospital
12 room, and completion of initial room inspection, a
13 corrections official shall be posted immediately outside
14 the hospital room, unless requested to be in the room by
15 medical personnel attending to the prisoner's medical
16 needs.

17 (6) The Department of Corrections shall provide
18 adequate personnel to monitor the pregnant prisoner during
19 her transport to and from the hospital and during her stay
20 at the hospital.

21 (7) Where the Department of Corrections requires
22 prisoner safety assessments, a corrections official may
23 enter the hospital room to conduct periodic prisoner safety
24 assessments, except during a medical examination or the
25 delivery process.

26 (8) Upon discharge from a medical facility, postpartum

1 prisoners shall be restrained only with handcuffs in front
2 of the body during transport to the department of
3 corrections facility. The corrections official shall
4 immediately remove all security restraints upon written or
5 oral request by medical personnel. When medical personnel
6 makes an oral request, that request shall be verified in
7 writing as promptly as reasonably possible.

8 (c) Enforcement. No later than 30 days before the end of
9 each fiscal year, the Director of the Department of Corrections
10 shall submit a written report to the Office of the Illinois
11 Attorney General that includes an account of every instance of
12 prisoner restraint pursuant to this Section. The written report
13 shall state the date, time, location and rationale for each
14 instance in which restraints are used. The written report shall
15 not contain any individually identifying information of any
16 prisoner. Such reports shall be made available for public
17 inspection.

18 ~~Notwithstanding any other statute, directive, or~~
19 ~~administrative regulation, when a pregnant female committed~~
20 ~~person is brought to a hospital from an Illinois correctional~~
21 ~~center for the purpose of delivering her baby, no handcuffs,~~
22 ~~shackles, or restraints of any kind may be used during her~~
23 ~~transport to a medical facility for the purpose of delivering~~
24 ~~her baby. Under no circumstances may leg irons or shackles or~~
25 ~~waist shackles be used on any pregnant female committed person~~
26 ~~who is in labor. Upon the pregnant female committed person's~~

1 ~~entry to the hospital delivery room, a correctional officer~~
2 ~~must be posted immediately outside the delivery room. The~~
3 ~~Department must provide for adequate personnel to monitor the~~
4 ~~pregnant female committed person during her transport to and~~
5 ~~from the hospital and during her stay at the hospital.~~

6 (Source: P.A. 91-253, eff. 1-1-00.)

7 Section 15. The County Jail Act is amended by changing
8 Section 17.5 as follows:

9 (730 ILCS 125/17.5)

10 Sec. 17.5. Pregnant female prisoners.

11 (a) Definitions. For the purpose of this Section:

12 (1) "Restraints" means any physical restraint or
13 mechanical device used to control the movement of a
14 prisoner's body or limbs, or both, including, but not
15 limited to, flex cuffs, soft restraints, hard metal
16 handcuffs, a black box, Chubb cuffs, leg irons, belly
17 chains, a security (tether) chain, or a convex shield, or
18 shackles of any kind.

19 (2) "Labor" means the period of time before a birth and
20 shall include any medical condition in which a woman is
21 sent or brought to the hospital for the purpose of
22 delivering her baby. These situations include: induction
23 of labor, prodromal labor, pre-term labor, prelabor
24 rupture of membranes, the 3 stages of active labor, uterine

1 hemorrhage during the third trimester of pregnancy, and
2 caesarian delivery including pre-operative preparation.

3 (3) "Post-partum" means, as determined by her
4 physician, the period immediately following delivery,
5 including the entire period a woman is in the hospital or
6 infirmary after birth.

7 (4) "Correctional institution" means any entity under
8 the authority of any state, county, or municipal law
9 enforcement division that has the power to detain or
10 restrain, or both, a person under the laws of the State.

11 (5) "Corrections official" means the official that is
12 responsible for oversight of a correctional institution,
13 or his or her designee.

14 (6) "Prisoner" means any person incarcerated or
15 detained in any facility who is accused of, convicted of,
16 sentenced for, or adjudicated delinquent for, violations
17 of criminal law or the terms and conditions of parole,
18 probation, pretrial release, or diversionary program, and
19 any person detained under the immigration laws of the
20 United States at any correctional facility.

21 (7) "Extraordinary circumstance" means an
22 extraordinary medical or security circumstance, including
23 a substantial flight risk, that dictates restraints be used
24 to ensure the safety and security of the prisoner, the
25 staff of the correctional institution or medical facility,
26 other prisoners, or the public.

1 (b) A county department of corrections shall not apply
2 security restraints to a prisoner that has been determined by a
3 qualified medical professional to be pregnant and is known by
4 the county department of corrections to be pregnant or in
5 postpartum recovery, which is the entire period a woman is in
6 the medical facility after birth, unless the corrections
7 official makes an individualized determination that the
8 prisoner presents a substantial flight risk or some other
9 extraordinary security circumstance that dictates security
10 restraints be used to ensure the safety and security of the
11 prisoner, her child or unborn child, the staff of the county
12 department of corrections or medical facility, other
13 prisoners, or the public. The protections set out in clauses
14 (b) (3) and (b) (4) of this Section shall apply to security
15 restraints used pursuant to this subsection. The corrections
16 official shall immediately remove all restraints upon the
17 written or oral request of medical personnel. When medical
18 personnel makes an oral request, that request will be verified
19 in writing as promptly as reasonably possible.

20 (1) Qualified and authorized health staff shall have
21 the authority to order therapeutic restraints for a
22 pregnant or postpartum prisoner who is a danger to herself,
23 her child, unborn child, or other persons due to a
24 psychiatric or medical disorder. Therapeutic restraints
25 may only be initiated, monitored and discontinued only by
26 qualified and authorized health staff and used to safely

1 limit a prisoner's mobility for psychiatric or medical
2 reasons. No order for therapeutic restraints shall be
3 written unless medical or mental health personnel, after
4 personally observing and examining the prisoner, are
5 clinically satisfied that the use of therapeutic
6 restraints is justified and permitted in accordance with
7 hospital policies and applicable State law. Metal
8 handcuffs or shackles are not considered therapeutic
9 restraints.

10 (2) Whenever therapeutic restraints are used by
11 medical personnel, Section 2-108 of the Mental Health and
12 Developmental Disabilities Code shall apply.

13 (3) Leg irons, shackles or waist shackles shall not be
14 used on any pregnant or postpartum prisoner regardless of
15 security classification.

16 (4) When a pregnant or postpartum prisoner must be
17 restrained, restraints used shall be the least restrictive
18 restraints possible to ensure the safety and security of
19 the prisoner, her child, unborn child, the staff of the
20 county department of corrections or medical facility,
21 other prisoners, or the public.

22 (5) Upon the pregnant prisoner's entry into a hospital
23 room, and completion of initial room inspection, a
24 corrections official shall be posted immediately outside
25 the hospital room, unless requested to be in the room by
26 medical personnel attending to the prisoner's medical

1 needs.

2 (6) The county department of corrections shall provide
3 adequate personnel to monitor the pregnant prisoner during
4 her transport to and from the hospital and during her stay
5 at the hospital.

6 (7) Where the county department of corrections
7 requires prisoner safety assessments, a corrections
8 official may enter the hospital room to conduct periodic
9 prisoner safety assessments, except during a medical
10 examination or the delivery process.

11 (8) Upon discharge from a medical facility, postpartum
12 prisoners shall be restrained only with handcuffs in front
13 of the body during transport to the county department of
14 corrections. The corrections official shall immediately
15 remove all security restraints upon written or oral request
16 by medical personnel. When medical personnel makes an oral
17 request, that request will be verified in writing as
18 promptly as reasonably possible.

19 (c) Enforcement.

20 No later than 30 days before the end of each fiscal year,
21 the county sheriff or corrections official of each municipal
22 and county correctional institution where a pregnant prisoner
23 has been restrained during that previous fiscal year, shall
24 each submit a written report to the Office of the Illinois
25 Attorney General that includes an account of every instance of
26 prisoner restraint pursuant to this Section. The written report

1 shall state the date, time, location and rationale for each
2 instance in which restraints are used. The written report shall
3 not contain any individually identifying information of any
4 prisoner. Such reports shall be made available for public
5 inspection.

6 (d) Section 4-105 of the Local Governmental and
7 Governmental Employees Tort Immunity Act shall be applicable to
8 actions taken by corrections officials or prisoners in
9 accordance with this Section.

10 ~~Notwithstanding any other statute, directive, or~~
11 ~~administrative regulation, when a pregnant female prisoner is~~
12 ~~brought to a hospital from a county jail for the purpose of~~
13 ~~delivering her baby, no handcuffs, shackles, or restraints of~~
14 ~~any kind may be used during her transport to a medical facility~~
15 ~~for the purpose of delivering her baby. Under no circumstances~~
16 ~~may leg irons or shackles or waist shackles be used on any~~
17 ~~pregnant female prisoner who is in labor. Upon the pregnant~~
18 ~~female prisoner's entry to the hospital delivery room, a county~~
19 ~~correctional officer must be posted immediately outside the~~
20 ~~delivery room. The Sheriff must provide for adequate personnel~~
21 ~~to monitor the pregnant female prisoner during her transport to~~
22 ~~and from the hospital and during her stay at the hospital.~~

23 (Source: P.A. 91-253, eff. 1-1-00.)

24 Section 20. The Local Governmental and Governmental
25 Employees Tort Immunity Act is amended by changing Section

1 4-105 as follows:

2 (745 ILCS 10/4-105) (from Ch. 85, par. 4-105)

3 Sec. 4-105. Neither a local public entity nor a public
4 employee is liable for injury proximately caused by the failure
5 of the employee to furnish or obtain medical care for a
6 prisoner in his custody; but this Section shall not apply where
7 the employee, acting within the scope of his employment, knows
8 from his observation of conditions that the prisoner is in need
9 of immediate medical care and, through willful and wanton
10 conduct, fails to take reasonable action to summon medical
11 care. Nothing in this Section requires the periodic inspection
12 of prisoners. This Section shall be applicable to actions taken
13 by corrections officials or prisoners pursuant to Section 17.5
14 of the Counties Code.

15 (Source: P.A. 84-1431.)