

1 SB386  
2 200337-1  
3 By Senators Smitherman, Figures, Coleman-Madison,  
4 Sanders-Fortier and Singleton  
5 RFD: Judiciary  
6 First Read: 07-MAY-19

SYNOPSIS:           The federal First Step Act established guidelines for the treatment of prisoners, including procedures for the use of restraints on pregnant federal prisoners.

                  This bill would adopt the procedures relating to pregnant prisoners as Alabama law.

A BILL  
TO BE ENTITLED  
AN ACT

                  Relating to prisoners; to adopt federal standards relating to the use of restraints on pregnant prisoners in the custody of the Alabama Department of Corrections or a law enforcement officer.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

                  Section 1. For the purposes of this act, the following words shall have the following meanings:

                  (1) COMMISSIONER. The Commissioner of the Alabama Department of Corrections.

1 (2) CORRECTIONS OFFICIAL. An official of the Alabama  
2 Department of Corrections.

3 (3) DEPARTMENT. The Alabama Department of  
4 Corrections.

5 (4) POSTPARTUM RECOVERY. The 12-week period, or  
6 longer as determined by the health care professional  
7 responsible for the health and safety of the prisoner,  
8 following delivery. This term shall also include the entire  
9 period that the prisoner is in the hospital or infirmary.

10 (5) PRISONER. An individual who has been sentenced  
11 to a term of imprisonment pursuant to a conviction for a  
12 criminal offense, or an individual in the custody of the  
13 Alabama Department of Corrections.

14 (6) RESTRAINTS. Any physical or mechanical device  
15 used to control the movement of a prisoner's body, limbs, or  
16 both.

17 Section 2. (a) Except as provided in subsection (b),  
18 beginning on the date on which pregnancy is confirmed by a  
19 health care professional, and ending at the conclusion of  
20 postpartum recovery, a pregnant prisoner in the custody of the  
21 department or in the custody of any law enforcement officer  
22 shall not be placed in restraints.

23 (b) (1) The prohibition under subsection (a) shall  
24 not apply under any of the following circumstances:

25 a. An appropriate corrections official, or a law  
26 enforcement officer, as applicable, makes a determination that

1 the prisoner is an immediate and credible flight risk that  
2 cannot reasonably be prevented by other means.

3 b. An appropriate corrections official, or a law  
4 enforcement officer, as applicable, makes a determination that  
5 the prisoner poses an immediate and serious threat of harm to  
6 themselves or others that cannot reasonably be prevented by  
7 any other means.

8 c. A health care professional responsible for the  
9 health and safety of the prisoner determines that the use of  
10 restraints is appropriate for the medical safety of the  
11 prisoner.

12 (2) The use of restraints is to be recorded and  
13 reported, pursuant to subsection (c).

14 (3) If restraints are used under subdivision (1),  
15 only the least restrictive restraints necessary to prevent the  
16 harm or risk of escape may be used. The least restrictive  
17 restraints necessary shall never be interpreted to include any  
18 of the following:

19 a. Restraints around the ankles, legs, or waist of a  
20 prisoner.

21 b. Restraining of a prisoner's hands behind his or  
22 her back.

23 c. Four-point restraints.

24 d. The attaching of a prisoner to another prisoner.

25 (4) Notwithstanding subdivision (1), upon the  
26 request of a health care professional who is responsible for  
27 the health and safety of a prisoner, a corrections official or

1 a law enforcement officer, as applicable, shall refrain from  
2 using restraints on the prisoner and shall remove any  
3 restraints in use on the prisoner.

4 (c) If a corrections official or a law enforcement  
5 officer uses restraints on a prisoner under subsection (b),  
6 that official or officer, within 30 days of placing that  
7 prisoner in restraints, shall submit a written report to the  
8 commissioner, the Warden of Julia Tutwiler Prison in Wetumpka,  
9 and the health care professional responsible for the health  
10 and safety of the prisoner. That report shall include, at a  
11 minimum, all of the following:

12 (1) A description of all facts and circumstances  
13 surrounding the use of restraints.

14 (2) The reasoning upon which the determination to  
15 use restraints was made.

16 (3) The details of the use of restraints, including  
17 the type of restraints used and length of time during which  
18 the restraints were used.

19 (4) Any resulting physical effects on the prisoner  
20 observed by or known to the corrections official or the law  
21 enforcement officer who applied the restraints, as applicable.

22 (d) Upon receipt of a report under subsection (c),  
23 the health care professional responsible for the health and  
24 safety of the prisoner may submit to the commissioner such  
25 information as the health care professional determines is  
26 relevant to the use of restraints on the prisoner.

1           (e) (1) No later than one year after the effective  
2 date of this act, and annually thereafter, the commissioner  
3 and the Secretary of the Alabama State Law Enforcement Agency  
4 shall each submit to the Senate Judiciary Committee and the  
5 House Judiciary Committee a report that certifies compliance  
6 with this act and includes the information required to be  
7 reported under each subsection.

8           (2) The report under this subsection shall not  
9 contain any personally identifiable information of any  
10 prisoner and shall adhere to standards set forth by the Health  
11 Insurance Portability and Accountability Act (HIPAA) within  
12 medical settings.

13           (f) No later than 48 hours after the confirmation of  
14 a prisoner's pregnancy by a health care professional, that  
15 prisoner shall be notified by an appropriate health care  
16 professional, corrections official, or law enforcement  
17 officer, as applicable, of the restrictions on the use of  
18 restraints under this section.

19           (g) The commissioner, in consultation with the  
20 Secretary of the Alabama State Law Enforcement Agency, shall  
21 establish a process through which a prisoner may report a  
22 violation of this section.

23           (h) The commissioner, the Secretary of the Alabama  
24 State Law Enforcement Agency, and the Warden of Julia Tutwiler  
25 Prison in Wetumpka shall each develop training guidelines  
26 regarding the use of restraints on prisoners during the period  
27 of pregnancy, labor, and postpartum recovery, and shall

1 incorporate those guidelines into appropriate training  
2 programs. The training guidelines shall include all of the  
3 following:

4 (1) How to identify certain symptoms of pregnancy  
5 that require immediate referral to a health care professional,  
6 including preterm labor, preeclampsia, eclampsia, hemorrhage,  
7 and miscarriage.

8 (2) Circumstances under which the exceptions under  
9 subsection (b) would apply.

10 (3) In the case that an exception under subsection  
11 (b) applies, how to apply restraints in a way that does not  
12 harm the prisoner, the fetus, or the neonate.

13 (4) The information required to be reported under  
14 subsection (c).

15 (5) The right of a health care professional to  
16 request that restraints not be used, and the requirement under  
17 subdivision (c)(4) to comply with that request.

18 (i) In developing the guidelines under subsection  
19 (h), the commissioner, the Secretary of the Alabama State Law  
20 Enforcement Agency, and the Warden of Julia Tutwiler Prison in  
21 Wetumpka shall each consult with health care professionals  
22 with expertise in caring for women during the period of  
23 pregnancy and postpartum recovery.

24 Section 3. This act shall become effective on the  
25 first day of the third month following its passage and  
26 approval by the Governor, or its otherwise becoming law.