

# MAINE STATE LEGISLATURE

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# MAJORITY

L.D. 1013

Date: 6/17/15

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## CRIMINAL JUSTICE AND PUBLIC SAFETY

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### STATE OF MAINE

### SENATE

### 127TH LEGISLATURE

### FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 353, L.D. 1013, Bill, "An Act To Prevent the Shackling of Pregnant Prisoners"

Amend the bill by striking out the title and substituting the following:

**'An Act To Prevent the Shackling of Pregnant Prisoners and Pregnant Juveniles'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 30-A MRSA §1510** is enacted to read:

#### **§1510. Definitions**

For the purposes of this chapter, "prisoner" or "inmate" means an adult sentenced and committed to, transferred to or detained in the custody of a jail, including an adult in a community confinement monitoring program pursuant to section 1659-A.

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

### **SUBCHAPTER 2-A**

### **PREGNANT PRISONERS AND PREGNANT JUVENILES**

#### **§1581. Definitions**

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

**1. Corrections officer.** "Corrections officer" means a person who is responsible for the custody or direct supervision of a person confined in a jail, prison or state correctional facility pursuant to an order of a court or as a result of an arrest and who possesses a current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice Academy pursuant to Title 25, section 2803-A.

# COMMITTEE AMENDMENT

1            **2. Labor.** "Labor" means the period of time before a birth during which contractions  
2 are of sufficient frequency, intensity and duration to bring about effacement and  
3 progressive dilation of the cervix.

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

7            **4. Restraints.** "Restraints" means any physical restraint or mechanical device used  
8 to control the movement of a prisoner's or juvenile's body or limbs, including, but not  
9 limited to, disposable or soft restraints, handcuffs, a security restraint system that  
10 combines handcuffs with a rigid component, leg irons, belly chains, a security or tether  
11 chain and a convex shield.

12            **§1582. Restraint of pregnant prisoners and pregnant juveniles**

13            **1. Restraints prohibited.** A jail may not use restraints on a prisoner or juvenile  
14 known to be pregnant, including during transport to a medical facility or birthing center,  
15 labor, delivery and postpartum recovery, unless the jail administrator or the designee of  
16 the jail administrator makes a determination that the prisoner or juvenile presents an  
17 extraordinary circumstance as described in subsection 2.

18            **2. Exceptions.** Use of restraints on a pregnant prisoner or a pregnant juvenile for an  
19 extraordinary circumstance is permitted only if a jail administrator or designee of the jail  
20 administrator makes a determination that there is a substantial flight risk or other  
21 extraordinary medical or security circumstance that requires restraints to be used to  
22 ensure the safety and security of the pregnant prisoner or pregnant juvenile, the staff of  
23 the jail or medical facility, other prisoners or juveniles or the public, except that:

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

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

29            **3. Procedures.** If restraints are used on a pregnant prisoner or pregnant juvenile  
30 pursuant to subsection 2:

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

33            B. The jail administrator or designee of the jail administrator shall make written  
34 findings within 10 days as to the extraordinary circumstance that required the use of  
35 the restraints. These findings must be kept on file by the jail for at least 5 years and  
36 must be made available for public inspection, except that individually identifying  
37 information of any prisoner or juvenile may not be made public under this paragraph  
38 without the prior written consent of the prisoner or juvenile.

39            **4. Privacy.** When a prisoner or juvenile is admitted to a medical facility or birthing  
40 center for labor or childbirth, a corrections officer may not be present in the room during  
41 labor or childbirth unless specifically requested by medical personnel. If a corrections

1 officer's presence is requested by medical personnel, the corrections officer must be  
2 female if practicable.

3 **§1583. Standards; notice to female prisoners and juveniles**

4 **1. Mandatory minimum standards for pregnant prisoners and juveniles.** The  
5 Commissioner of Corrections shall adopt rules to establish mandatory minimum  
6 standards necessary to implement this subchapter and must enforce those standards as  
7 provided under Title 34-A, section 1208. Rules adopted pursuant to this subsection are  
8 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

9 **2. Notice.** The jail administrator or the jail administrator's designee shall inform all  
10 female prisoners and female juveniles upon admission to the jail of the mandatory  
11 minimum standards adopted pursuant to subsection 1.

12 **Sec. 3. 30-A MRSA §1660, sub-§4** is enacted to read:

13 **4. Information on pregnant prisoners and pregnant juveniles.** The report  
14 required in this section must include the following information for each jail about  
15 pregnant prisoners and pregnant juveniles restrained pursuant to subchapter 2-A during  
16 the prior calendar year:

17 A. The total number of pregnant prisoners and pregnant juveniles;

18 B. The total number of pregnant prisoners and pregnant juveniles who were  
19 restrained;

20 C. The length of time each pregnant prisoner or pregnant juvenile was restrained;  
21 and

22 D. The reasons for each instance of restraining a pregnant prisoner or pregnant  
23 juvenile.

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

25 **ARTICLE 4**

26 **PREGNANT PRISONERS AND PREGNANT JUVENILES**

27 **§3101. Definitions**

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

30 **1. Corrections officer.** "Corrections officer" means a person who is responsible for  
31 the custody or direct supervision of a person confined in a jail, prison or state correctional  
32 facility pursuant to an order of a court or as a result of an arrest and who possesses a  
33 current and valid certificate issued by the Board of Trustees of the Maine Criminal Justice  
34 Academy pursuant to Title 25, section 2803-A.

35 **2. Juvenile.** "Juvenile" means juvenile client or juvenile detainee.

1           **3. Labor.** "Labor" means the period of time before a birth during which contractions  
2 are of sufficient frequency, intensity and duration to bring about effacement and  
3 progressive dilation of the cervix.

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

7           **5. Restraints.** "Restraints" means any physical restraint or mechanical device used  
8 to control the movement of a prisoner's or juvenile's body or limbs, including, but not  
9 limited to, disposable or soft restraints, handcuffs, a security restraint system that  
10 combines handcuffs with a rigid component, leg irons, belly chains, a security or tether  
11 chain and a convex shield.

12           **§3102. Restraint of pregnant prisoners and pregnant juveniles**

13           **1. Restraints prohibited.** A correctional facility or a detention facility may not use  
14 restraints on a prisoner or juvenile known to be pregnant, including during transport to a  
15 medical facility or birthing center, labor, delivery and postpartum recovery, unless the  
16 chief administrative officer or the designee of the chief administrative officer makes a  
17 determination that the prisoner or juvenile presents an extraordinary circumstance as  
18 described in subsection 2.

19           **2. Exceptions.** Use of restraints on a pregnant prisoner or a pregnant juvenile for an  
20 extraordinary circumstance is permitted only if the chief administrative officer or the  
21 designee of the chief administrative officer makes a determination that there is a  
22 substantial flight risk or other extraordinary medical or security circumstance that  
23 requires restraints to be used to ensure the safety and security of the pregnant prisoner or  
24 pregnant juvenile, the staff of the correctional facility, detention facility or medical  
25 facility, other prisoners or juveniles or the public, except that:

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

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

31           **3. Procedures.** If restraints are used on a pregnant prisoner or pregnant juvenile  
32 pursuant to subsection 2:

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

35           B. The chief administrative officer or the designee of the chief administrative officer  
36 shall make written findings within 10 days as to the extraordinary circumstance that  
37 required the use of the restraints. These findings must be kept on file by the  
38 correctional facility or detention facility for at least 5 years and must be made  
39 available for public inspection, except that individually identifying information of  
40 any prisoner or juvenile may not be made public under this paragraph without the  
41 prior written consent of the prisoner or juvenile.

