

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB690

Hearing Date: Wednesday March 06, 2019
Committee On: Judiciary
Introducer: Cavanaugh
One Liner: Adopt the Healthy Pregnancies for Incarcerated Women Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Pansing Brooks, Wayne
Nay:		
Absent:		
Present Not Voting:	1	Senator Slama

Oral Testimony:

Proponents:

Senator Michaela Cavanaugh
Scout Richters
Kellee Kucera Moreno
Marion Miner

Representing:

Introducer
ACLU of Nebraska
self
Nebraska Catholic Conference

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 690 prohibits an incarcerated pregnant woman from being restrained during labor, delivery, or postpartum. This includes during transport to a medical facility. Under certain circumstances restraints may be used but must be removed at the request of a health professional's request. The bill also provides for a civil action if the provisions are violated. Detention facilities are required to adopt rules and regulations and an annual report to the Inspector General is required.

Section 1 Title Healthy Pregnancies for Incarcerated Women Act

Section 2 Findings Restraining a pregnant woman can pose health risks; Majority of female offenders are nonviolent; Restraining prisoners increases potential for harm from falls and such harm can be detrimental to a pregnancy; Restraints during labor and delivery can interfere with medical assistance; Numerous groups including Federal Bureau of Prisons, American Correctional Association, and American Medical Association oppose or limit shackling during labor and delivery.

Section 3 Definitions

Administrator Director of Correctional Services
Detainee Female detained under immigration laws
Detention facility DCS facility, city or county jail, juvenile detention facility, other facility keeping prisoners or detainees

- Labor Period of time prior to birth that includes contractions
- Postpartum recovery period of time after birth including hospital or infirmary stay
- Prisoner Person incarcerated or detained for criminal violation, violation of parole or probation or diversionary program
- Restraints Device used to control body or limbs including handcuffs, flex cuffs, leg irons and others.

Section 4 Use of restraints on a prisoner known to be pregnant is prohibited including during labor deliver or postpartum including during transport to a medical facility unless extraordinary circumstances exist. The administrator makes an individualized decision that extraordinary circumstances exist due to flight risk, safety of the prisoner, staff or others. At health professional's request restraints are removed. Leg or waist restraints may not be used on a pregnant prisoner and no restraints may be used during labor or delivery. No detention personnel may be present in the room during labor or delivery unless medical personnel request. In such situation the detention employee should be female if possible. If restraints are used must be least restrictive necessary. Administrator must make written findings within 10 days if extraordinary circumstances exist and the findings are retained for five years.

Section 5 A prisoner restrained in violation of the Act may bring a civil action. Damages include economic and non economic damages including emotional distress. Statutory damages not to exceed \$10,000 may be awarded considering the duration of the restraint, injury to the prisoner or child and other exacerbating or mitigating factors. Other awards include attorney's fees, injunctive relief and punitive damages remitted to the State Treasurer. The civil action must be brought within four years.

Section 6 By October 1, 2019 detention facilities shall adopt rules and regulations and include in prisoner handbooks. Beginning October 1, 2019 prisoners entering detention facilities shall be informed of the rules and regulations and by November 1, 2019 all prisoners in the facility shall be informed.

Section 7 By June 1, 2020 and annually thereafter, administrator shall submit a report to the Inspector General describing any restraint use on a pregnant prisoner in the preceding calendar year.

Explanation of amendments:

AM 1488 removes provisions of LB 690 that provided the ability to bring a civil action and outlined damages and limitations for violations of the Act. The amendment replaces the original civil action provisions with the ability to file an action under the Political Subdivision or State Tort Claims Act.

Steve Lathrop, Chairperson