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SENATE DRS45314-LL-101B (2/26)

Short Title: Healthy Pregnancies/Prisoners and Detainees. (Public)

Sponsors: Senators Smith-Ingram, Van Duyn, and Foushee (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENSURE HEALTHY PREGNANCIES FOR FEMALE PRISONERS AND
3 DETAINEES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 15A of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 84C.

8 "Treatment of Pregnant Prisoners and Detainees.

9 **§ 15A-1369.10. Definitions.**

10 As used in this Article:

- 11 (1) "Correctional institution" means any unit of the State prison system, local
12 confinement facility, juvenile detention facility, or other entity under the
13 authority of any State or local law enforcement agency that has the power to
14 detain or restrain a person under the laws of this State.
- 15 (2) "Corrections official" means the official that is responsible for oversight of a
16 correctional institution, or that official's designee.
- 17 (3) "Detainee" includes any person detained under the immigration laws of the
18 United States at any correctional facility.
- 19 (4) "Extraordinary circumstance" means a substantial flight risk or some other
20 extraordinary medical or security circumstance that dictates restraints be
21 used to ensure the safety and security of the prisoner or detainee, the staff of
22 the correctional institution or medical facility, other prisoners or detainees,
23 or the public.
- 24 (5) "Labor" means the period of time before a birth during which contractions
25 are of sufficient frequency, intensity, and duration to bring about effacement
26 and progressive dilation of the cervix.
- 27 (6) "Postpartum recovery" means, as determined by a woman's physician, the
28 period immediately following delivery, including the entire period a woman
29 is in the hospital or infirmary after giving birth.
- 30 (7) "Prisoner" means any person incarcerated or detained in any facility who is
31 accused of, convicted of, sentenced for, or adjudicated delinquent for,
32 violations of criminal law or the terms and conditions of parole, probation,
33 pretrial release, or diversionary program.
- 34 (8) "Restraints" means any physical restraint or mechanical device used to
35 control the movement of a prisoner or detainee's body or limbs.



"§ 15A-1369.11. Restraint of prisoners and detainees.

(a) A correctional institution shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance, except that:

(1) If the doctor, nurse, or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints.

(2) Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.

(b) If restraints are used on a prisoner or detainee pursuant to subsection (a) of this section:

(1) The type of restraint applied and the application of the restraint shall be accomplished in the least restrictive manner necessary.

(2) The corrections official shall make written findings within 10 days as to the extraordinary circumstance that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least five years and be made available for public inspection, except that no individually identifying information of any prisoner or detainee shall be made public under this Article without the prisoner or detainee's prior written consent.

"§ 15A-1369.12. Enforcement.

(a) Notwithstanding any relief or claims afforded by federal or State law, any person who has been restrained in violation of this Article may file a complaint within two years of the occurrence of the violation. If the complainant is no longer in the custody of the correctional institution, has exhausted the correctional institution's established grievance procedures or protocols, or the correctional institution has not responded to a complaint within 120 days, the complainant may institute suit in superior court.

(b) Any correctional institution found to have violated any provision of this Article or any rule adopted under this Article shall be civilly liable to the person restrained in violation of this Article. A court or adjudicatory body may award punitive damages per incident. A court or adjudicatory body may further award attorneys' fees, litigation costs, and compensatory damages.

(c) Nothing in this Article shall prevent a woman harmed in violation of this Article from filing a complaint under any other relevant provision of federal or State law.

(d) Notwithstanding the provisions of G.S. 150B-1(d), the Division of Adult Correction and all local governments that operate correctional institutions in this State shall develop rules pursuant to this Article and shall inform prisoners and detainees of those rules developed upon admission to the correctional institution, include policies and practices in compliance with the provisions of this Article in any prisoner handbook, and post those policies and practices in locations in the correctional institution where such notices are commonly posted, including common housing areas and medical care facilities.

(e) The Division of Adult Correction, and any local confinement facility, as applicable, shall report to the Joint Legislative Oversight Committee on Justice and Public Safety by May 1 of each year on every instance in which a pregnant prisoner or detainee has been subjected to the use of restraints as defined in this Article. These reports shall not contain any information identifying an individual prisoner or detainee and shall be made available for public inspection."

SECTION 2. All correctional facilities in the State shall develop the rules mandated under this act within 30 days of the date this act becomes law and shall inform

1 prisoners and detainees within their custody of those rules within 60 days of the date this act
2 becomes law.

3 **SECTION 3.** This act is effective when it becomes law.