

SB393-FN

Bill Details

Title: relative to the use of restraints on pregnant women in the custody of a state or county correctional facility.

Sponsors: [\(Prime\) Whitley \(D\)](#), [Watters \(D\)](#), [Rosenwald \(D\)](#), [Hennessey \(R\)](#), [Kahn \(D\)](#), [Sherman \(D\)](#), [Perkins Kwoka \(D\)](#), [Prentiss \(D\)](#), [Wazir \(D\)](#), [Myler \(D\)](#), [Wallner \(D\)](#)

LSR Number: 22-3045

General Status: PASSED

House:

Committee: Criminal Justice and Public Safety

Due Out: 4/28/2022

Status: PASSED/ADOPTED WITH AMENDMENT

Senate:

Committee: Judiciary

Floor Date: 5/12/2022

Status: CONCURRED

SB 393-FN - VERSION ADOPTED BY BOTH BODIES

02/03/2022 0327s

4May2022... 1654h

2022 SESSION

22-3045

04/05

SENATE BILL **393-FN**

AN ACT relative to the use of restraints on pregnant women in the custody of a state or county correctional facility.

SPONSORS: Sen. Whitley, Dist 15; Sen. Watters, Dist 4; Sen. Rosenwald, Dist 13; Sen. Hennessey, Dist 1; Sen. Kahn, Dist 10; Sen. Sherman, Dist 24; Sen. Perkins Kwoka, Dist 21; Sen. Prentiss, Dist 5; Rep. Wazir, Merr. 17; Rep. Myler, Merr. 10; Rep. Wallner, Merr. 10

COMMITTEE: Judiciary

ANALYSIS

This bill establishes procedures for the use of restraints on pregnant women in county or state correctional custody.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~in brackets and struck through~~.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

02/03/2022 0327s

4May2022... 1654h 22-3045

04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the use of restraints on pregnant women in the custody of a state or county correctional facility.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Section; Use of Restraints on Pregnant Women in County Correctional Custody. Amend RSA 623-C by inserting after section 1 the following new section:

623-C:1-a Use of Restraints on Pregnant Women in County Correctional Custody.

I. The use of restraints on pregnant women under county correctional custody shall be limited to absolute necessity only. The use of restraints shall be considered absolutely necessary only when there is evidence of imminent risk of escape or harm to the pregnant woman, her fetus or newborn, or others, and these risks cannot be managed by other reasonable means, including but not limited to, enhanced security measures in the area, or increased staffing.

II. Pregnant residents classified to a halfway house or transitional housing unit shall not be restrained. All other pregnant residents may be restrained only if absolutely necessary, and if deemed absolutely necessary, may be restrained as follows:

(a) In the first, second, and third trimester, front handcuffs only. If wrist restraints must be applied, they shall have a chain between the wrists and shall be applied in such a way that the pregnant woman may be able to protect herself and her fetus in the event of a forward fall (in front of her body). No belly chains, leg restraints, or ankle restraints shall be used under any circumstances. No additional restraints shall be used during transportation unless approved by the county correctional facility's chief medical officer after an individualized determination is made that there is an extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the resident or detainee, the staff of the county correctional facility, other residents or detainees, or the public; except that if the doctor, nurse or other health professional treating the resident or detainee requests that restraints not be used, the corrections officer accompanying the resident or detainee shall immediately remove all restraints unless the correctional officer can identify there is an extraordinary risk to the public and receives authorization from the superintendent of the county correctional facility or designee. This authorization shall be documented in an incident report which shall, at a minimum, contain the following:

- (1) The rationale for use or conditions that led to the conclusion that restraints were necessary and specify whether and what kind of alternatives were tried/considered.
- (2) The name of each person who reviewed these conditions and concluded that restraints were warranted.
- (3) The type of restraints used and in what manner.

- (4) How frequently the use of restraints was reevaluated and by whom and result of such reassessments.
 - (5) Change in conditions that led to the conclusion that restraints were no longer necessary.
 - (6) When restraints were removed.
 - (7) Length of time or total duration of restraint use.
- (b) The life of the infant and or mother shall not be put at risk. Any additional restraint shall be the least restrictive possible.

III. Advance planning among members of the pregnant female’s health care team, including on site, hospital-based, and corrections professionals shall be conducted before hospital admittance to prepare for any foreseen circumstances which may involve the use of restraint. During transportation for labor or delivery, after delivery, or while in postpartum recovery, a resident shall not be restrained, unless approved by the county correctional facility's chief medical officer after an individualized determination is made that there is some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the resident or detainee. If the doctor, nurse, or other health professional treating the resident or detainee requests that restraints not be used, the corrections officer accompanying the resident or detainee shall immediately remove all restraints. Restraints, if previously authorized prior to the medical staff requiring them removed, may be reapplied once the medical professional determines the immediate threat to the mother or child has passed. Any additional restraint shall be the least restrictive possible and approval of such restraint shall be documented in writing with the reason for the restraint as required in subparagraph II(a).

An incarcerated pregnant person in labor, delivery, and postpartum recovery shall be given the maximum level of privacy possible. If possible, any corrections officer present in the room should be of the same gender and shall stand in a place that grants as much privacy as possible. “Postpartum recovery” means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth. If restraints are used while the inmate is in labor or in the hospital during recovery after delivery, the superintendent of the county correctional facility shall make written findings as to the reasons why mechanical restraints were necessary to prevent escape or to ensure the safety of the inmate, medical, and correctional personnel, or the public.

2 New Section; Use of Restraints on Pregnant Women in State Correctional Custody. Amend RSA 623-C by inserting after section 2 the following new section:

623-C:2-a Use of Restraints on Pregnant Women in State Correctional Custody.

I. The use of restraints on pregnant women under state correctional custody shall be limited to absolute necessity only. The use of restraints shall be considered absolutely necessary only when there is evidence of imminent risk of escape or harm to the pregnant woman, her fetus or newborn, or others, and these risks cannot be managed by other reasonable means, including but not limited to, enhanced security measures in the area, or increased staffing.

II. Pregnant residents classified to a halfway house or transitional housing unit shall not be restrained. All other pregnant residents may be restrained only if absolutely necessary, and if deemed absolutely necessary, may be restrained as follows:

(a) In the first, second, and third trimester, front handcuffs only. If wrist restraints must be applied, they shall have a chain between the wrists and shall be applied in such a way that the pregnant woman may be able to protect herself and her fetus in the event of a forward fall (in front of her body. No belly chains, leg restraints, or ankle restraints shall be used under any circumstances. No additional restraints shall be used during transportation unless approved by the director of medical and forensic services after an individualized determination is made that there is an extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the resident or detainee, the staff of the state correctional facility, other residents or detainees, or the public; except that if the doctor, nurse or other health professional treating the resident or detainee requests that restraints not be used, the corrections officer accompanying the resident or detainee shall immediately remove all restraints unless the correctional officer can identify there is an extraordinary risk to the public and receives authorization from the warden of the correctional facility or designee. This authorization shall be documented in an incident report which shall, at a minimum, contain the following:

- (1) The rationale for use or conditions that led to the conclusion that restraints were necessary and specify whether and what kind of alternatives were tried/considered.
- (2) The name of each person who reviewed these conditions and concluded that restraints were warranted.
- (3) The type of restraints used and in what manner.
- (4) How frequently the use of restraints was reevaluated and by whom and result of such reassessments.
- (5) Change in conditions that led to the conclusion that restraints were no longer necessary.
- (6) When restraints were removed.
- (7) Length of time or total duration of restraint use.

(b) The life of the infant and or mother shall not be put at risk. Any additional restraint shall be the least restrictive possible.

III. Advance planning among members of the pregnant female’s health care team, including on site, hospital-based, and corrections professionals shall be conducted before hospital admittance to prepare for any foreseen circumstances which may involve the use of restraint. During transportation for labor or delivery, after delivery, or while in postpartum recovery, a resident shall not be restrained, unless approved by the director of medical and forensic services after an individualized determination is made that there is some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the resident or detainee. If the doctor, nurse, or other health professional treating the resident or detainee requests that restraints not be used, the corrections officer accompanying the resident or detainee shall immediately remove all restraints. Restraints, if previously authorized prior to the medical staff requiring them removed, may be reapplied once the medical professional determines the immediate threat to the mother or child has passed. Any additional restraint shall be the least restrictive possible and approval of such restraint shall be documented in writing with the reason for the restraint as required in subparagraph II(a). An incarcerated pregnant person in labor, delivery, and postpartum recovery shall be given the maximum level of privacy possible. If possible, any corrections officer present in the room should be of the same gender and shall stand in a place that grants as much privacy as possible. “Postpartum recovery” means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth. If restraints are used while the inmate is in labor or in the hospital during recovery after delivery, the warden of the state correctional facility shall make written findings as to the reasons why mechanical restraints were necessary to prevent escape or to ensure the safety of the inmate, medical, and correctional personnel, or the public.

3 Effective Date. This act shall take effect 60 days after its passage.

LBA
22-3045
Amended 5/9/22

SB 393-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2022-1654h)

AN ACT relative to the use of restraints on pregnant women in the custody of a state or county correctional facility.

FISCAL IMPACT: State County Local None

COUNTY:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill establishes procedures for the use of restraints on pregnant women in county or state correctional custody.

The New Hampshire Association of Counties indicates there would be additional costs to county correctional facilities in situations where a second officer would be required if no restraints were used. The Association is not able to determine how many pregnant individuals the county facilities may see, and is unable to determine the fiscal impact.

The Department of Corrections indicated this bill would have no fiscal impact on the Department.
It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

Department of Corrections and New Hampshire Association of Counties