

# HOUSE BILL REPORT

## ESHB 2747

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### As Passed Legislature

**Title:** An act relating to the use of restraints on pregnant women or youth.

**Brief Description:** Limiting the use of restraints on pregnant women or youth.

**Sponsors:** House Committee on Human Services (originally sponsored by Representatives Darneille, Cody, Williams, Kagi, Pedersen, Nelson, Dickerson, Hasegawa and Chase).

#### **Brief History:**

##### **Committee Activity:**

Human Services: 1/18/10, 1/28/10 [DPS].

##### **Floor Activity:**

Passed House: 2/13/10, 95-0.

Senate Amended.

Passed Senate: 3/2/10, 46-0.

House Concurred.

Passed House: 3/6/10, 93-1.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Prohibits restraints of any kind on any pregnant woman or youth in a correctional or detention facility while she is in labor, during childbirth, or in postpartum recovery.
- Permits use of restraints only under extraordinary circumstances of any pregnant woman or youth in a correctional or detention facility during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy.
- Defines "extraordinary circumstances" and authorization required for use of restraints under those circumstances.
- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC), the Department of Corrections, the Department of Social and Health Services, the Juvenile Rehabilitation Administration, and the Criminal Justice Training Commission, by September 1, 2010, to jointly develop an information packet for distribution describing the requirements of this act.

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- Requires the information packet developed by the WASPC and others to be distributed to all medical staff and nonmedical staff involved in the transportation of women and youth who are pregnant and in the custody of a detention or correctional facility.
- Requires notice of the requirements of this act to be provided to all women or youth who are pregnant at the time that a state correctional facility institution or detention facility assumes custody.
- Requires notice of the requirements of this act to be posted in conspicuous locations in correctional facilities, institutions, or detention facilities, including where medical care is provided.

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## HOUSE COMMITTEE ON HUMAN SERVICES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Dickerson, Chair; Orwall, Vice Chair; Dammeier, Ranking Minority Member; Darneille, Green, Herrera, O'Brien and Walsh.

**Staff:** Linda Merelle (786-7092).

### **Background:**

There are approximately 1,500 women in the custody of the Department of Corrections (DOC) and many women who are held in custody in city and county corrections facilities, and juvenile detention facilities. From November 2008 through October 2009, there were 35 births within the DOC. There are approximately 59 female juveniles in the custody of the Juvenile Rehabilitation Administration (JRA). On average, one youth in JRA's custody gives birth in a year.

### **Summary of Engrossed Substitute Bill:**

#### Use of Restraints.

No restraints of any kind may be used on any pregnant woman or youth incarcerated in a correctional or detention facility while she is in labor, during childbirth, or in postpartum recovery. Restraints may only be used in extraordinary circumstances on a pregnant woman or youth incarcerated in a correctional or detention facility during transportation to and from visits to medical providers and court proceedings during the third trimester of her pregnancy.

Extraordinary circumstances exists where an officer makes an individualized determination that restraints will be necessary to prevent escape or injury to herself, medical or correctional personnel or others. Whenever restraints are used, the corrections officer must document in writing the reasons for their use, the kind of restraint used, and the reasons why such restraints were considered the least restrictive.

Nothing in this act affects the use of hospital restraints requested for the medical safety of the patient by treating physicians.

If the doctor, nurse, or other health professional treating the pregnant woman or youth requests that restraints not be used, the corrections officer accompanying the pregnant woman or youth shall immediately remove all restraints. Anytime restraints are used on a pregnant woman or youth, they must be the least restrictive available and the most reasonable under the circumstances. In no case shall leg irons or waist chains be used on any pregnant woman or youth.

No correctional personnel shall be present during the pregnant woman's or youth's labor or childbirth while she is being attended to by medical personnel, unless specifically requested by medical personnel. If the employee's presence is requested by medical personnel, the employee should be female if practicable.

Notice.

The Washington Association of Sheriffs and Police Chiefs, the Department of Corrections, the Department of Social and Health Services, the Juvenile Rehabilitation Administration, and the Criminal Justice Training Commission must, by September 1, 2010, jointly develop an information packet for distribution. The packet must describe the requirements of this act. The information packet, once developed, must be distributed to all medical staff and nonmedical staff involved in the transportation of women and youth who are pregnant.

Notice of the requirements of this act must be provided to all women or youth who are pregnant at the time that a state correctional facility assumes custody of them. Notice of the requirements of this act must be posted in conspicuous locations in an institution, detention or correctional facility, including where medical care is provided.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill addresses pregnancies that would already be at risk and we want to keep these babies safe. Child birth is not just medical, it is also social and can be transformative. Negative birth experiences can impact women for life. Women who are restrained have options taken away which allow them to cope with labor. When a woman becomes pregnant, it changes her life. Being shackled during labor sets a woman up for failure. Memories associated with labor are hugely important to the ability to parent the child. Restraining incarcerated women during birth is to do so at one of the most sacred points in life. Shackling is medically dangerous. Other states have seen fit to ban the practice. None of the corrections institutions other than the Department of Corrections have policies in place. The attitude of a health professional changes towards a woman who is shackled. During labor, complications can happen quickly and shackling can interfere. The best way to avoid postpartum blood clots is by moving around. Walking around and moving

helps women avoid pain. Women are very vulnerable during birth and much compassion is needed.

(With concerns) There are rare instances where the prohibition of restraints may result in safety concerns for the individual, the pregnancy, the community, or employees, and we would be more comfortable with a ban on restraints except in extraordinary circumstances where it is necessary to prevent harm. We have concerns about the definition of physical restraint and would appreciate a clarification.

(Available for questions) Statistics show there have been 35 births in the last year. The DOC is not shackling at this point. We have an operational memorandum, and it drives how the DOC would manage a woman who is pregnant during transportation.

(Opposed) There can be extraordinary circumstances in which restraints may be necessary.

**Persons Testifying:** (In support) Representative Darneille, prime sponsor; Sheila Capestany and Candace Barber, Open Arms Perinatal Services; Sara Ainsworth, Legal Voice; Kimberly Mays; Dr. Caroline Mitchell; Wendy Carrillo; and Ruth Gordon, Gender and Justice Commission.

(With concerns) Ton Johnson, Washington Federation of State Employees; Candace Bock, Association of Washington Cities; and Brian Enslow, Washington State Association of Counties.

(Available for questions) Earl Wright, Department of Corrections.

(Opposed) Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Penny Bartley, City of Renton Police.

**Persons Signed In To Testify But Not Testifying:** None.