

HOUSE BILL REPORT

ESHB 2747

As Amended by the Senate

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.

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.
- 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- 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 assumes custody.
- Requires notice of the requirements of this act be provided to all women or youth who are or may become pregnant at the time that an institution or detention facility assumes custody.
- Requires notice of the requirements of this act to be posted in locations in which medical care is provided.

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, based upon custody level or past behavior of the pregnant woman or youth that restraints will be necessary to prevent escape or injury to herself, medical or correctional personnel or others. Prior authorization must be obtained from medical personnel before the use of restraints is permitted, and the authorization must identify the type of restraints that are appropriate to address the risk of escape or injury.

A corrections officer may use restraints upon a pregnant woman or youth where the officer determines, based upon current behavior, if such restraints are necessary to prevent escape or injury to the pregnant woman or youth, medical or correctional personnel, or others.

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 must be provided to all women or youth who may become pregnant at the time that an institution (as defined in Chapter 13.04) or a detention facility assumes custody. Notice of the requirements of this act must be posted in locations in an institution, detention or correctional facility, in which medical care is provided.

EFFECT OF SENATE AMENDMENT(S):

- Removes the requirement of prior authorization from medical personnel where a corrections officer makes an individualized determination that restraints are to be used on pregnant women and youth; and removes the requirement that an individualized determination is to be based upon custody level and past behavior.
- Adds a requirement that a corrections or jail officer must document in writing when there is a use of restraints, including the kind of restraints and the reasons for their use.
- Allows restraints to be on a pregnant youth or woman is in labor or childbirth when requested by a treating physician licensed under Title 18 RCW, rather than "medical personnel".
- Adds a requirement that notice of the provisions of the act must be placed in a conspicuous location in the Washington state correctional facilities.
- Removes the requirement that notice of the requirements of the act must be given to women and youth who may become pregnant, and only requires notice to be given to women who are pregnant.
- Includes amendments to RCW 72.05 in addition to 72.09, 70.48, and 13.40.

- Grants immunity to county jails and their employees regarding the use of restraints except in cases of gross negligence.
- Makes technical changes, rearranging and removing subsections.

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.