

SENATE BILL REPORT

SB 6500

As Reported by Senate Committee On:
Human Services & Corrections, February 3, 2010

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: Senators Fraser, Stevens, Regala, Parlette, Franklin, Pflug, McDermott, Kohl-Welles, Kauffman, Hargrove, Shin, Keiser and Kline.

Brief History:

Committee Activity: Human Services & Corrections: 1/26/10, 2/03/10 [DPS, DNP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6500 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Carrell, Kauffman and McAuliffe.

Minority Report: Do not pass.

Signed by Senator Brandland.

Staff: Jennifer Strus (786-7316)

Background: The Department of Corrections (DOC) has a policy on the use of restraints of pregnant or postnatal offenders which provides the following:

- The use of restraints of pregnant or postnatal offenders must be conducted in a manner involving minimal use of restraints and most privacy wherever possible, consistent with the safety of the public, staff, and offender.
- The use of standard restraints may be deviated from where there are serious and imminent concerns that the offender may attempt to harm herself, others, or present a credible risk of escape. In this case, soft restraints may be used in front of the body. This situation requires a physician's agreement to initiate the use of restraints and will be removed if requested by a physician.
- During transport, no restraints will be applied if the offender is on her third trimester of pregnancy.

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.

- If admitted to a hospital, but not in active labor, a single leg restraint may be used, based on the offenders designated custody level.
- No restraints will be applied during labor and delivery.
- All efforts will be made to allow the offender mother reasonable access to her baby without impeding her movements by restraints.

The restraint policy of the Juvenile Rehabilitation Administration (JRA) provides that staff may use approved physical restraint and restraint devices in the following situations:

1. when a youth presents an immediate danger to self, others, or property; or is a risk to escape; or is out of control; or is disruptive to the orderly function of the unit or activity;
2. when transporting youth in the community; or
3. when transporting a youth on institutional grounds when the youth:
 - a. presents an immediate danger to self, others, or to property;
 - b. is a risk to escape;
 - c. is out of control; or
 - d. has not been under observation for an adequate time to assess the youth's risk to escape or assault.

Although JRA does not have a restraint policy specific to pregnant youth, their practice is to not use restraints during labor.

The restraint policies used by county and city jails and juvenile detention facilities vary and few of them have restraint policies specific to pregnant women and youth.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): Except in extraordinary circumstances, a pregnant woman or youth incarcerated in a correctional facility, jail, JRA facility, or juvenile detention facility cannot be restrained if the woman or youth is in her third trimester of pregnancy and being transported to and from visits to medical providers and court proceedings, or is in postpartum recovery. Extraordinary circumstances exist when a correctional officer or employee of a facility in which the woman or youth is incarcerated makes a determination that restraints are necessary to prevent an incarcerated pregnant woman or youth from escaping; or from injuring herself, medical, or correctional or facility personnel, or others. While the pregnant woman or youth is in labor or delivery no restraints of any kind can be used unless specifically requested by medical personnel.

Restraints are defined as physical restraint or a mechanical device which includes metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons. Physical restraints are defined as the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. It does not include momentary periods of minimal physical restriction by direct person to person contact designed to prevent an offender from harming herself or others or to remove a disruptive offender who is unwilling to leave voluntarily.

Anytime restraints are used on a pregnant woman or youth, they must be the least restrictive available and the most reasonable under the circumstances, but in no case must leg irons or waist chains be used.

If a correctional officer is present during the pregnant woman or youth's labor or delivery, the office should be female if possible.

The directors of the agencies affected, the governing unit in the case of a city or county jail, and each director of the juvenile detention facilities must provide informational packets about the requirements regarding the restraint of incarcerated pregnant woman and youth to all medical staff and non-medical staff involved in the transport of woman and youth who are or may become pregnant. The informational packet is to be developed jointly by the Criminal Justice Training Commission, Washington Association of Sheriffs and Police Chiefs, DOC, and the Department of Social and Health Services. The packet is to be ready for distribution no later than September 1, 2010.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute As Passed Committee): Restraints can be used on a pregnant woman in her third trimester during transport to medical appointments and court and during postpartum recovery, but only in extraordinary circumstances. No restraints may be used on a pregnant woman or youth during labor and delivery unless requested by medical personnel. If restraints are used they must be the least restrictive and most reasonable, and cannot be leg irons or waist chains. If a correctional officer is present during the labor and delivery it should be a female officer if possible.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute As Heard in Committee:
PRO: About three years ago, we received complaints from women that had experienced varying degrees of restraint during labor, birth, and post-partum. At that time the Women's Correctional Center (WCC) had a policy that women in labor were not to be restrained. Apparently, WCC was not following its policy. A lawsuit was filed against DOC on behalf of a former inmate for restraining her during labor, contrary to policy. There is no similar policy in city and county jails, and such a policy is needed which is the reason for this bill. The attitude the hospital has towards a shackled woman giving birth is demeaning; she is treated like an animal because she is shackled. There are three reasons why shackling a pregnant woman during her third trimester of pregnancy is not a good idea: (1) medical safety - complications can arise during the birthing process and medical staff needs to be able to respond quickly. Trying to negotiate the unshackling while providing medical care is time consuming and can be dangerous to the woman and the baby. Walking during early labor can assist in the birth and trying to walk with shackles is not only difficult but dangerous because the woman could trip and fall; (2) pain management - labor is moderately painful and

walking is one way to alleviate the pain. Shackling makes it more difficult to walk and can also be dangerous; and (3) compassion - a new mother needs to bond with her infant right away and shackling right after the birth can seriously impede this process. There is a body of research showing that the treatment a woman receives during the child bearing cycle can have a long lasting impact. A woman should not come out of the process dehumanized, and shackling contributes to the dehumanizing impact that a woman can experience.

CON: There is no definition of physical restraint, so in a woman's first or second trimester when restraints are permitted, it would seem that just holding someone's arm would constitute a physical restraint contrary to the bill. The provision of the bill that does not allow restraint during the third trimester could jeopardize public safety. What can jails do if a pregnant woman in her third trimester is a danger to herself, the baby, or others? The bill is not clear what action the jails can take.

OTHER: DOC has a proactive policy in place that assists in managing pregnant offenders. The policy prohibits the use of restraints in the third trimester of pregnancy except in extraordinary circumstances. Do not like the prohibition of physical restraint in the bill because it does not allow holding an offender to calm them. Currently DOC does not restrain women in labor or post partum after consultation with the offender's physician. Pregnant offenders with a medium or higher security classification have double escorts if they leave the facility because of the possibility of escape. In the first and second trimester, DOC uses hand restraints in front and leg restraints when transporting. Pregnant offenders with a minimum security classification are not restrained at all unless they pose a threat to self or others.

Persons Testifying: PRO: Senator Fraser, prime sponsor; Sara Ainsworth, Legal Voice; Kimberly Mays, birth mother; Caroline Mitchell, physician; Michelle Sarju, Open Arms Perinatal Services.

CON: Joanna Arlow, WASPC.

OTHER: Doug Cole and Belinda Stewart, DOC.