

AMENDED IN SENATE MAY 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 568

Introduced by Assembly Member Skinner

February 16, 2011

An act to amend Sections 5007.7 and 6030 of the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 568, as amended, Skinner. Pregnant inmates and wards: least restrictive restraints.

Existing law requires the Corrections Standards Authority to establish minimum standards for state and local correctional facilities, including standards restricting the shackling of women in labor, during childbirth, and while in recovery after giving birth, and to review those standards biennially and make any appropriate revisions, as specified.

This bill would require that the standards ensure that women who are pregnant ~~shall~~ not be shackled by the wrists, ankles, around the abdomen, or to another person, including during time spent outside a ~~state or local~~ correctional facility, during transport to or from a correctional facility, during labor, delivery, and while in recovery after giving birth, except that the least restrictive restraints possible may be used when deemed necessary for the inmate, consistent with the legitimate security needs of the inmate, the staff, and the public, *and the restraints would only remain in place as long as the threat exists*. The bill would require the authority to develop these standards regarding the shackling of pregnant women as part of its biennial review of its standards.

Under existing law, pregnant inmates of the Department of Corrections and Rehabilitation, wards of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, and wards in the custody of a local juvenile facility, are to be transported in the least restrictive way possible when being taken to a hospital for purposes of childbirth.

This bill would prohibit inmates and wards of these facilities who are known to be pregnant from being shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for the safety and security of the inmate or ward, the staff, and the public. If restraints are deemed necessary, ~~this~~ *the* bill would require the least restrictive means be used, consistent with the legitimate security needs of each inmate or ward, *and the restraints would only remain in place as long as the threat exists*. The bill would provide that these provisions are applicable to movement within the correctional facility, transport to and from the facility, time spent outside the facility to receive medical or dental care, to attend court, or other appointments.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) California has the third largest population of incarcerated
4 women in the country. Tens of thousands of women go through
5 county jails every year and an average of 4 to 7 percent are
6 pregnant.
- 7 (b) The health and safety of pregnant inmates shall be a primary
8 concern of all adult and juvenile state and local correctional and
9 detention facilities.
- 10 (c) Using restraints that significantly limit a pregnant inmate's
11 mobility can cause serious and undue health risks to the woman
12 and her pregnancy.
- 13 (d) Potentially harmful methods of restraint include, but are not
14 limited to, shackling by the ankles, by the wrists in front or behind
15 the body, across the abdomen, or to another person.
- 16 (e) To avoid threatening the health of pregnant women and
17 potential legal challenges, it is critical that policies are adopted
18 ensuring that restraints are properly used with this vulnerable
19 population.

1 (f) It is critical that, adult and juvenile state and local
2 correctional and detention facilities develop policies that ensure
3 that inmates who are known to be pregnant are not restrained unless
4 deemed necessary for the security of the inmate, staff, or the public,
5 or all combined. Should restraints be necessary under these
6 circumstances, facilities are instructed to use the least restrictive
7 means of restraint as determined by the Corrections Standards
8 Authority.

9 (g) These policies must meet the minimum standards established
10 by the Corrections Standards Authority for the proper use of
11 restraints on pregnant inmates during transport, as established
12 pursuant to Section 6030 of the Penal Code.

13 (h) Pursuant to Section 6030 of the Penal Code, the Corrections
14 Standards Authority has the authority to issue minimum standards
15 for treatment of people incarcerated within correctional facilities,
16 treatment of inmates in custody during temporary appointments
17 outside correctional facilities, and transportation of inmates among
18 correctional facilities and to and from appointments outside of
19 correctional facilities. The Corrections Standards Authority has
20 previously promulgated transportation regulations, including, but
21 not limited to, requiring local correctional facilities to provide
22 transportation for inmates in need of medical services as set forth
23 in subdivision (c) of Section 1206 of Title 15 of the California
24 Code of Regulations, and requiring all juvenile facilities to provide
25 transportation for minors to mental health facilities as set forth in
26 subdivision (f) of Section 1437 of Title 15 of the California Code
27 of Regulations, and that all juvenile facilities have adequate
28 transportation staff as set forth in subdivision (g) of Section 1321
29 of Title 15 of the California Code of Regulations. The Corrections
30 Standards Authority has also previously established regulations
31 addressing the treatment of inmates temporarily taken outside of
32 correctional facilities, including requiring local correctional
33 facilities to create policies and procedures for handling situations
34 such as furloughs and other temporary releases, and requiring
35 facilities to have adequate field supervision staff, as set forth in
36 Sections 1027, 1029, and 1351 of Title 15 of the California Code
37 of Regulations.

38 SEC. 2. Section 5007.7 of the Penal Code is amended to read:

39 5007.7. An inmate known to be pregnant shall not be shackled
40 by the wrists, ankles, around the abdomen, or to another person,

1 unless deemed necessary for the safety and security of the inmate,
2 the staff, or the public. In cases where restraints are deemed
3 necessary, the least restrictive means shall be used, *which may*
4 *include cuffing an inmate's wrists in front*, consistent with the
5 legitimate security needs of each inmate. *The restraints shall*
6 *remain in place only as long as the threat exists*. These provisions
7 apply to, but are not limited to, movement within the correctional
8 facility, transport to and from the facility, and time spent outside
9 of the facility to receive medical or dental care, to attend court, or
10 any other appointment.

11 SEC. 3. Section 6030 of the Penal Code is amended to read:

12 6030. (a) The Corrections Standards Authority shall establish
13 minimum standards for state and local correctional facilities. The
14 authority shall review those standards biennially and make any
15 appropriate revisions.

16 (b) The standards shall include, but not be limited to, the
17 following: health and sanitary conditions, fire and life safety,
18 security, rehabilitation programs, recreation, treatment of persons
19 confined in state and local correctional facilities, and personnel
20 training.

21 (c) The standards shall require that at least one person on duty
22 at the facility is knowledgeable in the area of fire and life safety
23 procedures.

24 (d) The standards shall also include requirements relating to the
25 acquisition, storage, labeling, packaging, and dispensing of drugs.

26 (e) The standards shall require that inmates who are received
27 by the facility while they are pregnant are provided all of the
28 following:

29 (1) A balanced, nutritious diet approved by a doctor.

30 (2) Prenatal and postpartum information and health care,
31 including, but not limited to, access to necessary vitamins as
32 recommended by a doctor.

33 (3) Information pertaining to childbirth education and infant
34 care.

35 (4) A dental cleaning while in a state facility.

36 (f) The standards shall provide that a woman known to be
37 pregnant shall not be shackled by the wrists, ankles, around the
38 abdomen, or to another person, *except as provided in Section*
39 *5007.7*. This includes, but is not limited to, time spent outside a
40 ~~state or local~~ correctional facility, during transport to or from a

1 ~~state or local~~ correctional facility, during labor, during delivery,
2 and while in recovery after giving birth, except as provided in
3 Section 5007.7. The authority shall develop ~~new~~ standards
4 regarding the shackling of pregnant women pursuant to the
5 amendments made to this subdivision ~~in the 2011-12 Regular~~
6 ~~Session of the Legislature~~ as part of its biennial review of the
7 standards established pursuant to this section.

8 (g) In establishing minimum standards, the authority shall seek
9 the advice of the following:

10 (1) For health and sanitary conditions:

11 The State Department of Health Services, physicians,
12 psychiatrists, local public health officials, and other interested
13 persons.

14 (2) For fire and life safety:

15 The State Fire Marshal, local fire officials, and other interested
16 persons.

17 (3) For security, rehabilitation programs, recreation, and
18 treatment of persons confined in correctional facilities:

19 The Department of Corrections and Rehabilitation, state and
20 local juvenile justice commissions, state and local correctional
21 officials, experts in criminology and penology, and other interested
22 persons.

23 (4) For personnel training:

24 The Commission on Peace Officer Standards and Training,
25 psychiatrists, experts in criminology and penology, the Department
26 of Corrections and Rehabilitation, state and local correctional
27 officials, and other interested persons.

28 (5) For female inmates and pregnant inmates in local adult and
29 juvenile facilities:

30 The California State Sheriffs' Association and Chief Probation
31 Officers' Association of California, and other interested persons.

32 SEC. 4. Section 222 of the Welfare and Institutions Code is
33 amended to read:

34 222. (a) Any female in the custody of a local juvenile facility
35 shall have the right to summon and receive the services of any
36 physician and surgeon of her choice in order to determine whether
37 she is pregnant. If she is found to be pregnant, she is entitled to a
38 determination of the extent of the medical services needed by her
39 and to the receipt of those services from the physician and surgeon
40 of her choice. Any expenses occasioned by the services of a

1 physician and surgeon whose services are not provided by the
2 facility shall be borne by the female.

3 (b) A ward known to be pregnant shall not be shackled by the
4 wrists, ankles, around the abdomen, or to another person, unless
5 deemed necessary for the safety and security of the ward, the staff,
6 or the public. In cases where restraints are deemed necessary, the
7 ~~least restrictive means shall be used, consistent with the legitimate~~
8 ~~security needs of each ward.~~ *restrictive means shall be used, which*
9 *may include cuffing an inmate's wrists in front, consistent with*
10 *the legitimate security needs of each ward. The restraints shall*
11 *remain in place only as long as the threat exists.* These provisions
12 apply to, but are not limited to, movement within the correctional
13 facility, transport to and from the facility, and time spent outside
14 of the facility to receive medical or dental care, to attend court, or
15 any other appointment.

16 (c) For purposes of this section, "local juvenile facility" means
17 any city, county, or regional facility used for the confinement of
18 juveniles for more than 24 hours.

19 (d) The rights provided to females by this section shall be posted
20 in at least one conspicuous place to which all female wards have
21 access.

22 SEC. 5. Section 1774 of the Welfare and Institutions Code is
23 amended to read:

24 1774. (a) Any female who has been committed to the
25 Department of Corrections and Rehabilitation, Division of Juvenile
26 Facilities shall have the right to summon and receive the services
27 of any physician and surgeon of her choice in order to determine
28 whether she is pregnant. The Chief Deputy Secretary for Juvenile
29 Justice may adopt reasonable rules and regulations with regard to
30 the conduct of examinations to effectuate that determination.

31 (b) If she is found to be pregnant, she is entitled to a
32 determination of the extent of the medical services needed by her
33 and to the receipt of those services from the physician and surgeon
34 of her choice. Any expenses occasioned by the services of a
35 physician and surgeon whose services are not provided by the
36 facility shall be borne by the female.

37 (c) A ward who gives birth while under the jurisdiction of the
38 Department of Corrections and Rehabilitation, Division of Juvenile
39 Facilities, or a community treatment program has the right to the
40 following services:

- 1 (1) Prenatal care.
- 2 (2) Access to prenatal vitamins.
- 3 (3) Childbirth education.

4 (d) A ward known to be pregnant shall not be shackled by the
5 wrists, ankles, around the abdomen, or to another person, unless
6 deemed necessary for the safety and security of the ward, the staff,
7 and the public. In cases where restraints are deemed necessary,
8 the least restrictive means shall be used, ~~consistent with the~~
9 ~~legitimate security needs of each ward.~~ *which may include cuffing*
10 *an inmate's wrists in front, consistent with the legitimate security*
11 *needs of each ward. The restraints shall remain in place only as*
12 *long as the threat exists.* These provisions apply to, but are not
13 limited to, movement within the correctional facility, transport to
14 and from the facility, and time spent outside of the facility to
15 receive medical or dental care, to attend court, or any other
16 appointment.

17 (e) Any physician providing services pursuant to this section
18 shall possess a current, valid, and unrevoked certificate to engage
19 in the practice of medicine issued pursuant to Chapter 5
20 (commencing with Section 2000) of Division 2 of the Business
21 and Professions Code.

22 (f) The rights provided to females by this section shall be posted
23 in at least one conspicuous place to which all female wards have
24 access.