

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 introduced, 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. 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 bill would require the least restrictive means be used, consistent with the legitimate security needs of each inmate or ward. 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.
- 20 (f) It is critical that, adult and juvenile state and local
- 21 correctional and detention facilities develop policies that ensure
- 22 that inmates who are known to be pregnant are not restrained unless

1 deemed necessary for the security of the inmate, staff, or the public,
2 or all combined. Should restraints be necessary under these
3 circumstances, facilities are instructed to use the least restrictive
4 means of restraint as determined by the Corrections Standards
5 Authority.

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

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

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

36 5007.7. ~~Pregnant inmates temporarily taken to a hospital outside~~
37 ~~the prison for the purposes of childbirth shall be transported in the~~
38 ~~least restrictive way possible. An inmate known to be pregnant~~
39 ~~shall not be shackled by the wrists, ankles, around the abdomen,~~
40 ~~or to another person, unless deemed necessary for the safety and~~

1 security of the inmate, the staff, or the public. In cases where
2 restraints are deemed necessary, the least restrictive means shall
3 be used, consistent with the legitimate security needs of each
4 inmate. ~~Upon arrival at the hospital, once the inmate has been~~
5 ~~declared by the attending physician to be in active labor, the inmate~~
6 ~~shall not be shackled by the wrists, ankles, or both, unless deemed~~
7 ~~necessary for the safety and security of the inmate, the staff, and~~
8 ~~the public. These provisions apply to, but are not limited to,~~
9 ~~movement within the correctional facility, transport to and from~~
10 ~~the facility, and time spent outside of the facility to receive medical~~
11 ~~or dental care, to attend court, or any other appointment.~~

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

13 6030. (a) The Corrections Standards Authority shall establish
14 minimum standards for state and local correctional facilities. ~~The~~
15 ~~standards for state correctional facilities shall be established by~~
16 ~~January 1, 2007.~~ The authority shall review those standards
17 biennially and make any appropriate revisions.

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

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

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

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

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

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

35 (3) Information pertaining to childbirth education and infant
36 care.

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

38 (f) The standards shall provide that ~~at no time shall a woman~~
39 ~~who is in labor be a woman known to be pregnant shall not be~~
40 ~~shackled by the wrists, ankles, or both including around the~~

1 *abdomen, or to another person. This includes, but is not limited*
2 *to, time spent outside a state or local correctional facility, during*
3 *transport to a hospital, during or from a state or local correctional*
4 *facility, during labor, during delivery, and while in recovery after*
5 *giving birth, except as provided in Section 5007.7. The authority*
6 *shall develop new standards regarding the shackling of pregnant*
7 *women pursuant to the amendments made to this subdivision in*
8 *the 2011–12 Regular Session of the Legislature as part of its*
9 *biennial review of the standards established pursuant to this*
10 *section.*

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

13 (1) For health and sanitary conditions:

14 The State Department of Health Services, physicians,
15 psychiatrists, local public health officials, and other interested
16 persons.

17 (2) For fire and life safety:

18 The State Fire Marshal, local fire officials, and other interested
19 persons.

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

22 The Department of Corrections and Rehabilitation, state and
23 local juvenile justice commissions, state and local correctional
24 officials, experts in criminology and penology, and other interested
25 persons.

26 (4) For personnel training:

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

31 (5) For female inmates and pregnant inmates in local adult and
32 juvenile facilities:

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

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

37 222. (a) Any female in the custody of a local juvenile facility
38 shall have the right to summon and receive the services of any
39 physician and surgeon of her choice in order to determine whether
40 she is pregnant. If she is found to be pregnant, she is entitled to a

1 determination of the extent of the medical services needed by her
2 and to the receipt of those services from the physician and surgeon
3 of her choice. Any expenses occasioned by the services of a
4 physician and surgeon whose services are not provided by the
5 facility shall be borne by the female.

6 (b) *A ward known to be pregnant shall not be shackled by the*
7 *wrists, ankles, or both during labor, including during transport to*
8 *a hospital, during delivery, and while in recovery after giving birth,*
9 *subject to the security needs described in this section. Pregnant*
10 *wards temporarily taken to a hospital outside the facility for the*
11 *purposes of childbirth shall be transported in the least restrictive*
12 *way possible, consistent with the legitimate security needs of each*
13 *ward. Upon arrival at the hospital, once the ward has been declared*
14 *by the attending physician to be in active labor, the ward shall not*
15 *be shackled by the wrists, ankles, or both, unless deemed necessary*
16 *for the safety and security of the ward, the staff, and the public.*
17 *around the abdomen, or to another person, unless deemed*
18 *necessary for the safety and security of the ward, the staff, or the*
19 *public. In cases where restraints are deemed necessary, the least*
20 *restrictive means shall be used, consistent with the legitimate*
21 *security needs of each ward. These provisions apply to, but are*
22 *not limited to, movement within the correctional facility, transport*
23 *to and from the facility, and time spent outside of the facility to*
24 *receive medical or dental care, to attend court, or any other*
25 *appointment.*

26 (c) For purposes of this section, “local juvenile facility” means
27 any city, county, or regional facility used for the confinement of
28 juveniles for more than 24 hours.

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

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

34 1774. (a) Any female who has been committed to the authority
35 *Department of Corrections and Rehabilitation, Division of Juvenile*
36 *Facilities* shall have the right to summon and receive the services
37 of any physician and surgeon of her choice in order to determine
38 whether she is pregnant. The ~~director~~ *Chief Deputy Secretary for*
39 *Juvenile Justice* may adopt reasonable rules and regulations with

1 regard to the conduct of examinations to effectuate that
2 determination.

3 (b) If she is found to be pregnant, she is entitled to a
4 determination of the extent of the medical services needed by her
5 and to the receipt of those services from the physician and surgeon
6 of her choice. Any expenses occasioned by the services of a
7 physician and surgeon whose services are not provided by the
8 facility shall be borne by the female.

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

13 (1) Prenatal care.

14 (2) Access to prenatal vitamins.

15 (3) Childbirth education.

16 (d) A ward *known to be pregnant* shall not be shackled by the
17 wrists, ankles, or both during labor, including during transport to
18 a hospital, during delivery, and while in recovery after giving birth,
19 subject to the security needs described in this section. Pregnant
20 wards temporarily taken to a hospital outside the facility for the
21 purposes of childbirth shall be transported in the least restrictive
22 way possible, consistent with the legitimate security needs of each
23 ward. Upon arrival at the hospital, once the ward has been declared
24 by the attending physician to be in active labor, the ward shall not
25 be shackled by the wrists, ankles, or both, unless deemed necessary
26 for the safety and security of the around the abdomen, or to another
27 person, unless deemed necessary for the safety and security of the
28 ward, the staff, and the public. *In cases where restraints are*
29 *deemed necessary, the least restrictive means shall be used,*
30 *consistent with the legitimate security needs of each ward. These*
31 *provisions apply to, but are not limited to, movement within the*
32 *correctional facility, transport to and from the facility, and time*
33 *spent outside of the facility to receive medical or dental care, to*
34 *attend court, or any other appointment.*

35 (e) Any physician providing services pursuant to this section
36 shall possess a current, valid, and unrevoked certificate to engage
37 in the practice of medicine issued pursuant to Chapter 5
38 (commencing with Section 2000) of Division 2 of the Business
39 and Professions Code.

- 1 (f) The rights provided to females by this section shall be posted
- 2 in at least one conspicuous place to which all female wards have
- 3 access.