Assembly Bill No. 568

Passed the Assembly August 25, 2011

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Chief Clerk of the Assembly

Passed the Senate August 22, 2011

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2011, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Section 5007.7 of, and to amend and repeal Section 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, Skinner. Pregnant inmates and wards: least restrictive restraints.

Existing law requires the Corrections Standards Authority, and commencing July 1, 2012, the Board of State and Community Corrections, 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 not be shackled by the wrists, ankles, around the abdomen, or to another person, including during time spent outside a 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, and later the board, 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, 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California has the third largest population of incarcerated women in the country. Tens of thousands of women go through county jails every year and an average of 4 to 7 percent are pregnant.

(b) The health and safety of pregnant inmates shall be a primary concern of all adult and juvenile state and local correctional and detention facilities.

(c) Using restraints that significantly limit a pregnant inmate's mobility can cause serious and undue health risks to the woman and her pregnancy.

(d) Potentially harmful methods of restraint include, but are not limited to, shackling by the ankles, by the wrists in front or behind the body, across the abdomen, or to another person.

(e) To avoid threatening the health of pregnant women and potential legal challenges, it is critical that policies are adopted ensuring that restraints are properly used with this vulnerable population.

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

(g) These policies must meet the minimum standards established by the Corrections Standards Authority for the proper use of

restraints on pregnant inmates during transport, as established pursuant to Section 6030 of the Penal Code.

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

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

5007.7. An inmate known to be pregnant shall not be shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for the safety and security of the inmate, the staff, or the public. In cases where restraints are deemed necessary, the least restrictive means shall be used, which may include cuffing an inmate's wrists in front, consistent with the legitimate security needs of each inmate. The restraints shall remain in place only as long as the threat exists. These provisions apply to, but are not limited to, movement within the correctional facility, transport to and from the facility, and time spent outside of the facility to receive medical or dental care, to attend court, or any other appointment.

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

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

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

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

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

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

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

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

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

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

(f) The standards shall provide that a woman known to be pregnant shall not be shackled by the wrists, ankles, around the abdomen, or to another person, except as provided in Section 5007.7. This includes, but is not limited to, time spent outside a correctional facility, during transport to or from a correctional facility, during labor, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7. The authority shall develop standards regarding the shackling of pregnant women pursuant to the amendments made to this subdivision as part of its biennial review of the standards established pursuant to this section.

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

(1) For health and sanitary conditions:

The State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

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

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

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

(4) For personnel training:

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

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

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

(h) This section shall remain in effect only until July 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2012, deletes or extends that date.

SEC. 4. Section 6030 of the Penal Code, as amended by Section 34 of Chapter 36 of the Statutes of 2011, is amended to read:

6030. (a) The Board of State and Community Corrections shall establish minimum standards for local correctional facilities. The board shall review those standards biennially and make any appropriate revisions.

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

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

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

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

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

(2) Prenatal and post partum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.

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

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

(f) The standards shall provide that a woman known to be pregnant shall not be shackled by the wrists, ankles, around the abdomen, or to another person, except as provided in Section 5007.7. This includes, but is not limited to, time spent outside a correctional facility, during transport to or from a correctional facility, during labor, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7. The board shall develop standards regarding the shackling of pregnant women pursuant to the amendments made to this subdivision as part of its biennial review of the standards established pursuant to this section.

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

(1) For health and sanitary conditions:

The State Department of Public Health, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

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

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

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

(4) For personnel training:

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

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

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

(h) This section shall become operative on July 1, 2012.

SEC. 5. Section 222 of the Welfare and Institutions Code is amended to read:

222. (a) Any female in the custody of a local juvenile facility shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.

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

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

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

SEC. 6. Section 1774 of the Welfare and Institutions Code is amended to read:

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

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

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

(1) Prenatal care.

(2) Access to prenatal vitamins.

(3) Childbirth education.

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

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

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

Approved _____, 2011

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Governor