
SUBSTITUTE HOUSE BILL 2747

State of Washington 61st Legislature 2010 Regular Session

By House Human Services (originally sponsored by Representatives Darneille, Cody, Williams, Kagi, Pedersen, Nelson, Dickerson, Hasegawa, and Chase)

READ FIRST TIME 02/02/10.

1 AN ACT Relating to the use of restraints on pregnant women or
2 youth; amending RCW 72.09.015 and 13.40.020; reenacting and amending
3 RCW 70.48.020; adding a new section to chapter 72.09 RCW; adding a new
4 section to chapter 70.48 RCW; and adding a new section to chapter 13.40
5 RCW.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **Sec. 1.** RCW 72.09.015 and 2009 c 521 s 165 are each amended to
8 read as follows:

9 The definitions in this section apply throughout this chapter.

10 (1) "Adult basic education" means education or instruction designed
11 to achieve general competence of skills in reading, writing, and oral
12 communication, including English as a second language and preparation
13 and testing services for obtaining a high school diploma or a general
14 equivalency diploma.

15 (2) "Base level of correctional services" means the minimum level
16 of field services the department of corrections is required by statute
17 to provide for the supervision and monitoring of offenders.

18 (3) "Community custody" has the same meaning as that provided in

1 RCW 9.94A.030 and also includes community placement and community
2 supervision as defined in RCW 9.94B.020.

3 (4) "Contraband" means any object or communication the secretary
4 determines shall not be allowed to be: (a) Brought into; (b) possessed
5 while on the grounds of; or (c) sent from any institution under the
6 control of the secretary.

7 (5) "Correctional facility" means a facility or institution
8 operated directly or by contract by the secretary for the purposes of
9 incarcerating adults in total or partial confinement as defined in RCW
10 9.94A.030.

11 (6) "County" means a county or combination of counties.

12 ((+6+)) (7) "Department" means the department of corrections.

13 ((+7+)) (8) "Earned early release" means earned release as
14 authorized by RCW 9.94A.728.

15 ((+8+)) (9) "Evidence-based" means a program or practice that has
16 had multiple-site random controlled trials across heterogeneous
17 populations demonstrating that the program or practice is effective in
18 reducing recidivism for the population.

19 ((+9+)) (10) "Extended family visit" means an authorized visit
20 between an inmate and a member of his or her immediate family that
21 occurs in a private visiting unit located at the correctional facility
22 where the inmate is confined.

23 ((+10+)) (11) "Good conduct" means compliance with department rules
24 and policies.

25 ((+11+)) (12) "Good performance" means successful completion of a
26 program required by the department, including an education, work, or
27 other program.

28 ((+12+)) (13) "Immediate family" means the inmate's children,
29 stepchildren, grandchildren, great grandchildren, parents, stepparents,
30 grandparents, great grandparents, siblings, and a person legally
31 married to or in a state registered domestic partnership with an
32 inmate. "Immediate family" does not include an inmate adopted by
33 another inmate or the immediate family of the adopted or adopting
34 inmate.

35 ((+13+)) (14) "Indigent inmate," "indigent," and "indigency" mean
36 an inmate who has less than a ten-dollar balance of disposable income
37 in his or her institutional account on the day a request is made to
38 utilize funds and during the thirty days previous to the request.

1 ~~((14))~~ (15) "Individual reentry plan" means the plan to prepare
2 an offender for release into the community. It should be developed
3 collaboratively between the department and the offender and based on an
4 assessment of the offender using a standardized and comprehensive tool
5 to identify the offender's risks and needs. The individual reentry
6 plan describes actions that should occur to prepare individual
7 offenders for release from prison or jail, specifies the supervision
8 and services they will experience in the community, and describes an
9 offender's eventual discharge to aftercare upon successful completion
10 of supervision. An individual reentry plan is updated throughout the
11 period of an offender's incarceration and supervision to be relevant to
12 the offender's current needs and risks.

13 ~~((15))~~ (16) "Inmate" means a person committed to the custody of
14 the department, including but not limited to persons residing in a
15 correctional institution or facility and persons released from such
16 facility on furlough, work release, or community custody, and persons
17 received from another state, state agency, county, or federal
18 jurisdiction.

19 ~~((16))~~ (17) "Labor" means the period of time before a birth
20 during which contractions are of sufficient frequency, intensity, and
21 duration to bring about effacement and progressive dilation of the
22 cervix.

23 (18) "Postpartum recovery" means (a) the entire period a woman or
24 youth is in the hospital, birthing center, or clinic after giving birth
25 and (b) an additional time period, if any, a treating physician
26 determines is necessary for healing after the woman or youth leaves the
27 hospital, birthing center, or clinic.

28 (19) "Privilege" means any goods or services, education or work
29 programs, or earned early release days, the receipt of which are
30 directly linked to an inmate's (a) good conduct; and (b) good
31 performance. Privileges do not include any goods or services the
32 department is required to provide under the state or federal
33 Constitution or under state or federal law.

34 ~~((17))~~ (20) "Promising practice" means a practice that presents,
35 based on preliminary information, potential for becoming a
36 research-based or consensus-based practice.

37 ~~((18))~~ (21) "Research-based" means a program or practice that has

1 some research demonstrating effectiveness, but that does not yet meet
2 the standard of evidence-based practices.

3 ~~((+19+))~~ (22) "Restraints" means anything used to control the
4 movement of a person's body or limbs and includes:

5 (a) Physical restraint; or

6 (b) Mechanical restraint including, but not limited to, metal
7 handcuffs, plastic ties, ankle restraints, leather cuffs, other
8 hospital-type restraints, tasers, or batons.

9 (23) "Secretary" means the secretary of corrections or his or her
10 designee.

11 ~~((+20+))~~ (24) "Significant expansion" includes any expansion into
12 a new product line or service to the class I business that results from
13 an increase in benefits provided by the department, including a
14 decrease in labor costs, rent, or utility rates (for water, sewer,
15 electricity, and disposal), an increase in work program space, tax
16 advantages, or other overhead costs.

17 ~~((+21+))~~ (25) "Superintendent" means the superintendent of a
18 correctional facility under the jurisdiction of the Washington state
19 department of corrections, or his or her designee.

20 ~~((+22+))~~ (26) "Unfair competition" means any net competitive
21 advantage that a business may acquire as a result of a correctional
22 industries contract, including labor costs, rent, tax advantages,
23 utility rates (water, sewer, electricity, and disposal), and other
24 overhead costs. To determine net competitive advantage, the
25 correctional industries board shall review and quantify any expenses
26 unique to operating a for-profit business inside a prison.

27 ~~((+23+))~~ (27) "Vocational training" or "vocational education" means
28 "vocational education" as defined in RCW 72.62.020.

29 ~~((+24+))~~ (28) "Washington business" means an in-state manufacturer
30 or service provider subject to chapter 82.04 RCW existing on June 10,
31 2004.

32 ~~((+25+))~~ (29) "Work programs" means all classes of correctional
33 industries jobs authorized under RCW 72.09.100.

34 NEW SECTION. Sec. 2. A new section is added to chapter 72.09 RCW
35 to read as follows:

36 (1) Under no circumstances may restraints of any kind be used on
37 any pregnant woman or youth incarcerated in a correctional facility:

1 (a) During transportation to and from visits to medical providers
2 and court proceedings during the third trimester of her pregnancy; or

3 (b) While she is in labor, in the process of delivering her baby,
4 or in postpartum recovery.

5 (2) The secretary shall provide notice of the requirements of this
6 act to the appropriate staff at correctional facilities. Appropriate
7 staff shall include all medical staff and staff who are involved in the
8 transport of women and youth who are or may become pregnant, as well as
9 such other staff as the secretary deems appropriate.

10 (3) The secretary shall cause the requirements of this act to be
11 provided to all women or youth who are or may become pregnant, at the
12 time the department assumes custody of the person in a correctional
13 facility. In addition, the secretary shall cause a notice containing
14 the requirements of this act to be posted in locations in which medical
15 care is provided within the facilities.

16 **Sec. 3.** RCW 70.48.020 and 2009 c 411 s 3 are each reenacted and
17 amended to read as follows:

18 As used in this chapter the words and phrases in this section shall
19 have the meanings indicated unless the context clearly requires
20 otherwise.

21 (1) "Administration" means the direct application of a drug whether
22 by ingestion or inhalation, to the body of an inmate by a practitioner
23 or nonpractitioner jail personnel.

24 (2) "Correctional facility" means a facility operated by a
25 governing unit primarily designed, staffed, and used for the housing of
26 adult persons serving terms not exceeding one year for the purposes of
27 punishment, correction, and rehabilitation following conviction of a
28 criminal offense.

29 (3) "Deliver" or "delivery" means the actual, constructive, or
30 attempted transfer from one person to another of medication whether or
31 not there is an agency relationship.

32 (4) "Detention facility" means a facility operated by a governing
33 unit primarily designed, staffed, and used for the temporary housing of
34 adult persons charged with a criminal offense prior to trial or
35 sentencing and for the housing of adult persons for purposes of
36 punishment and correction after sentencing or persons serving terms not
37 to exceed ninety days.

1 (5) "Drug" and "legend drug" have the same meanings as provided in
2 RCW 69.41.010.

3 (6) "Governing unit" means the city and/or county or any
4 combinations of cities and/or counties responsible for the operation,
5 supervision, and maintenance of a jail.

6 (7) "Health care" means preventive, diagnostic, and rehabilitative
7 services provided by licensed health care professionals and/or
8 facilities; such care to include providing prescription drugs where
9 indicated.

10 (8) "Holding facility" means a facility operated by a governing
11 unit primarily designed, staffed, and used for the temporary housing of
12 adult persons charged with a criminal offense prior to trial or
13 sentencing and for the temporary housing of such persons during or
14 after trial and/or sentencing, but in no instance shall the housing
15 exceed thirty days.

16 (9) "Jail" means any holding, detention, special detention, or
17 correctional facility as defined in this section.

18 (10) "Labor" means the period of time before a birth during which
19 contractions are of sufficient frequency, intensity, and duration to
20 bring about effacement and progressive dilation of the cervix.

21 (11) "Major urban" means a county or combination of counties which
22 has a city having a population greater than twenty-six thousand based
23 on the 1978 projections of the office of financial management.

24 ~~((+11))~~ (12) "Medication" means a drug, legend drug, or controlled
25 substance requiring a prescription or an over-the-counter or
26 nonprescription drug.

27 ~~((+12))~~ (13) "Medication assistance" means assistance rendered by
28 nonpractitioner jail personnel to an inmate residing in a jail to
29 facilitate the individual's self-administration of a legend drug or
30 controlled substance or nonprescription medication. "Medication
31 assistance" includes reminding or coaching the individual, handing the
32 medication container to the individual, opening the individual's
33 medication container, using an enabler, or placing the medication in
34 the individual's hand.

35 ~~((+13))~~ (14) "Medium urban" means a county or combination of
36 counties which has a city having a population equal to or greater than
37 ten thousand but less than twenty-six thousand based on the 1978
38 projections of the office of financial management.

1 ~~((14))~~ (15) "Nonpractitioner jail personnel" means appropriately
2 trained staff who are authorized to manage, deliver, or administer
3 prescription and nonprescription medication under RCW 70.48.490.

4 ~~((15))~~ (16) "Office" means the office of financial management.

5 ~~((16))~~ (17) "Postpartum recovery" means (a) the entire period a
6 woman or youth is in the hospital, birthing center, or clinic after
7 giving birth and (b) an additional time period, if any, a treating
8 physician determines is necessary for healing after the woman or youth
9 leaves the hospital, birthing center, or clinic.

10 (18) "Practitioner" has the same meaning as provided in RCW
11 69.41.010.

12 ~~((17))~~ (19) "Restraints" means anything used to control the
13 movement of a person's body or limbs and includes:

14 (a) Physical restraint; or

15 (b) Mechanical restraint including, but not limited to, metal
16 handcuffs, plastic ties, ankle restraints, leather cuffs, other
17 hospital-type restraints, tasers, or batons.

18 (20) "Rural" means a county or combination of counties which has a
19 city having a population less than ten thousand based on the 1978
20 projections of the office of financial management.

21 ~~((18))~~ (21) "Special detention facility" means a minimum security
22 facility operated by a governing unit primarily designed, staffed, and
23 used for the housing of special populations of sentenced persons who do
24 not require the level of security normally provided in detention and
25 correctional facilities including, but not necessarily limited to,
26 persons convicted of offenses under RCW 46.61.502 or 46.61.504.

27 NEW SECTION. Sec. 4. A new section is added to chapter 70.48 RCW
28 to read as follows:

29 (1) Under no circumstances may restraints of any kind be used on
30 any pregnant woman or youth in a correctional or detention facility:

31 (a) During transportation to and from visits to medical providers
32 and court proceedings during the third trimester of her pregnancy; or

33 (b) While she is in labor, in the process of delivering her baby,
34 or in postpartum recovery.

35 (2) The sheriff or police chief shall provide notice of the
36 requirements of this act to the appropriate staff at correctional or
37 detention facilities. Appropriate staff shall include all medical

1 staff and staff who are involved in the transport of women and youth
2 who are or may become pregnant, as well as such other staff as the
3 sheriff or police chief deems appropriate.

4 (3) The sheriff, police chief, or county administrative authority
5 shall cause the requirements of this act to be provided to all women or
6 youth who are or may become pregnant, at the time the county or city
7 assumes custody of the person in a correctional or detention facility.
8 In addition, the sheriff, police chief, or county administrative
9 authority shall cause a notice containing the requirements of this act
10 to be posted in locations in which medical care is provided within the
11 facilities.

12 **Sec. 5.** RCW 13.40.020 and 2009 c 454 s 2 are each amended to read
13 as follows:

14 For the purposes of this chapter:

15 (1) "Community-based rehabilitation" means one or more of the
16 following: Employment; attendance of information classes; literacy
17 classes; counseling, outpatient substance abuse treatment programs,
18 outpatient mental health programs, anger management classes, education
19 or outpatient treatment programs to prevent animal cruelty, or other
20 services; or attendance at school or other educational programs
21 appropriate for the juvenile as determined by the school district.
22 Placement in community-based rehabilitation programs is subject to
23 available funds;

24 (2) "Community-based sanctions" may include one or more of the
25 following:

26 (a) A fine, not to exceed five hundred dollars;

27 (b) Community restitution not to exceed one hundred fifty hours of
28 community restitution;

29 (3) "Community restitution" means compulsory service, without
30 compensation, performed for the benefit of the community by the
31 offender as punishment for committing an offense. Community
32 restitution may be performed through public or private organizations or
33 through work crews;

34 (4) "Community supervision" means an order of disposition by the
35 court of an adjudicated youth not committed to the department or an
36 order granting a deferred disposition. A community supervision order
37 for a single offense may be for a period of up to two years for a sex

1 offense as defined by RCW 9.94A.030 and up to one year for other
2 offenses. As a mandatory condition of any term of community
3 supervision, the court shall order the juvenile to refrain from
4 committing new offenses. As a mandatory condition of community
5 supervision, the court shall order the juvenile to comply with the
6 mandatory school attendance provisions of chapter 28A.225 RCW and to
7 inform the school of the existence of this requirement. Community
8 supervision is an individualized program comprised of one or more of
9 the following:

10 (a) Community-based sanctions;

11 (b) Community-based rehabilitation;

12 (c) Monitoring and reporting requirements;

13 (d) Posting of a probation bond;

14 (5) "Confinement" means physical custody by the department of
15 social and health services in a facility operated by or pursuant to a
16 contract with the state, or physical custody in a detention facility
17 operated by or pursuant to a contract with any county. The county may
18 operate or contract with vendors to operate county detention
19 facilities. The department may operate or contract to operate
20 detention facilities for juveniles committed to the department.
21 Pretrial confinement or confinement of less than thirty-one days
22 imposed as part of a disposition or modification order may be served
23 consecutively or intermittently, in the discretion of the court;

24 (6) "Court," when used without further qualification, means the
25 juvenile court judge(s) or commissioner(s);

26 (7) "Criminal history" includes all criminal complaints against the
27 respondent for which, prior to the commission of a current offense:

28 (a) The allegations were found correct by a court. If a respondent
29 is convicted of two or more charges arising out of the same course of
30 conduct, only the highest charge from among these shall count as an
31 offense for the purposes of this chapter; or

32 (b) The criminal complaint was diverted by a prosecutor pursuant to
33 the provisions of this chapter on agreement of the respondent and after
34 an advisement to the respondent that the criminal complaint would be
35 considered as part of the respondent's criminal history. A
36 successfully completed deferred adjudication that was entered before
37 July 1, 1998, or a deferred disposition shall not be considered part of
38 the respondent's criminal history;

1 (8) "Department" means the department of social and health
2 services;

3 (9) "Detention facility" means a county facility, paid for by the
4 county, for the physical confinement of a juvenile alleged to have
5 committed an offense or an adjudicated offender subject to a
6 disposition or modification order. "Detention facility" includes
7 county group homes, inpatient substance abuse programs, juvenile basic
8 training camps, and electronic monitoring;

9 (10) "Diversion unit" means any probation counselor who enters into
10 a diversion agreement with an alleged youthful offender, or any other
11 person, community accountability board, youth court under the
12 supervision of the juvenile court, or other entity except a law
13 enforcement official or entity, with whom the juvenile court
14 administrator has contracted to arrange and supervise such agreements
15 pursuant to RCW 13.40.080, or any person, community accountability
16 board, or other entity specially funded by the legislature to arrange
17 and supervise diversion agreements in accordance with the requirements
18 of this chapter. For purposes of this subsection, "community
19 accountability board" means a board comprised of members of the local
20 community in which the juvenile offender resides. The superior court
21 shall appoint the members. The boards shall consist of at least three
22 and not more than seven members. If possible, the board should include
23 a variety of representatives from the community, such as a law
24 enforcement officer, teacher or school administrator, high school
25 student, parent, and business owner, and should represent the cultural
26 diversity of the local community;

27 (11) "Foster care" means temporary physical care in a foster family
28 home or group care facility as defined in RCW 74.15.020 and licensed by
29 the department, or other legally authorized care;

30 (12) "Institution" means a juvenile facility established pursuant
31 to chapters 72.05 and 72.16 through 72.20 RCW;

32 (13) "Intensive supervision program" means a parole program that
33 requires intensive supervision and monitoring, offers an array of
34 individualized treatment and transitional services, and emphasizes
35 community involvement and support in order to reduce the likelihood a
36 juvenile offender will commit further offenses;

37 (14) "Juvenile," "youth," and "child" mean any individual who is
38 under the chronological age of eighteen years and who has not been

1 previously transferred to adult court pursuant to RCW 13.40.110, unless
2 the individual was convicted of a lesser charge or acquitted of the
3 charge for which he or she was previously transferred pursuant to RCW
4 13.40.110 or who is not otherwise under adult court jurisdiction;

5 (15) "Juvenile offender" means any juvenile who has been found by
6 the juvenile court to have committed an offense, including a person
7 eighteen years of age or older over whom jurisdiction has been extended
8 under RCW 13.40.300;

9 (16) "Labor" means the period of time before a birth during which
10 contractions are of sufficient frequency, intensity, and duration to
11 bring about effacement and progressive dilation of the cervix;

12 (17) "Local sanctions" means one or more of the following: (a) 0-
13 30 days of confinement; (b) 0-12 months of community supervision; (c)
14 0-150 hours of community restitution; or (d) \$0-\$500 fine;

15 ((+17)) (18) "Manifest injustice" means a disposition that would
16 either impose an excessive penalty on the juvenile or would impose a
17 serious, and clear danger to society in light of the purposes of this
18 chapter;

19 ((+18)) (19) "Monitoring and reporting requirements" means one or
20 more of the following: Curfews; requirements to remain at home,
21 school, work, or court-ordered treatment programs during specified
22 hours; restrictions from leaving or entering specified geographical
23 areas; requirements to report to the probation officer as directed and
24 to remain under the probation officer's supervision; and other
25 conditions or limitations as the court may require which may not
26 include confinement;

27 ((+19)) (20) "Offense" means an act designated a violation or a
28 crime if committed by an adult under the law of this state, under any
29 ordinance of any city or county of this state, under any federal law,
30 or under the law of another state if the act occurred in that state;

31 ((+20)) (21) "Postpartum recovery" means (a) the entire period a
32 woman or youth is in the hospital, birthing center, or clinic after
33 giving birth and (b) an additional time period, if any, a treating
34 physician determines is necessary for healing after the woman or youth
35 leaves the hospital, birthing center, or clinic;

36 (22) "Probation bond" means a bond, posted with sufficient security
37 by a surety justified and approved by the court, to secure the
38 offender's appearance at required court proceedings and compliance with

1 court-ordered community supervision or conditions of release ordered
2 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
3 cash or posting of other collateral in lieu of a bond if approved by
4 the court;

5 ~~((+21+))~~ (23) "Respondent" means a juvenile who is alleged or
6 proven to have committed an offense;

7 ~~((+22+))~~ (24) "Restitution" means financial reimbursement by the
8 offender to the victim, and shall be limited to easily ascertainable
9 damages for injury to or loss of property, actual expenses incurred for
10 medical treatment for physical injury to persons, lost wages resulting
11 from physical injury, and costs of the victim's counseling reasonably
12 related to the offense. Restitution shall not include reimbursement
13 for damages for mental anguish, pain and suffering, or other intangible
14 losses. Nothing in this chapter shall limit or replace civil remedies
15 or defenses available to the victim or offender;

16 ~~((+23+))~~ (25) "Restraints" means anything used to control the
17 movement of a person's body or limbs and includes:

- 18 (a) Physical restraint; or
- 19 (b) Mechanical restraint including, but not limited to, metal
20 handcuffs, plastic ties, ankle restraints, leather cuffs, other
21 hospital-type restraints, tasers, or batons;

22 (26) "Secretary" means the secretary of the department of social
23 and health services. "Assistant secretary" means the assistant
24 secretary for juvenile rehabilitation for the department;

25 ~~((+24+))~~ (27) "Services" means services which provide alternatives
26 to incarceration for those juveniles who have pleaded or been
27 adjudicated guilty of an offense or have signed a diversion agreement
28 pursuant to this chapter;

29 ~~((+25+))~~ (28) "Sex offense" means an offense defined as a sex
30 offense in RCW 9.94A.030;

31 ~~((+26+))~~ (29) "Sexual motivation" means that one of the purposes
32 for which the respondent committed the offense was for the purpose of
33 his or her sexual gratification;

34 ~~((+27+))~~ (30) "Surety" means an entity licensed under state
35 insurance laws or by the state department of licensing, to write
36 corporate, property, or probation bonds within the state, and justified
37 and approved by the superior court of the county having jurisdiction of
38 the case;

1 (~~(+28+)~~) (31) "Violation" means an act or omission, which if
2 committed by an adult, must be proven beyond a reasonable doubt, and is
3 punishable by sanctions which do not include incarceration;

4 (~~(+29+)~~) (32) "Violent offense" means a violent offense as defined
5 in RCW 9.94A.030;

6 (~~(+30+)~~) (33) "Youth court" means a diversion unit under the
7 supervision of the juvenile court.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 13.40 RCW
9 to read as follows:

10 (1) Under no circumstances may restraints of any kind be used on
11 any youth who is in the custody of an institution or detention
12 facility:

13 (a) During transportation to and from visits to medical providers
14 and court proceedings during the third trimester of her pregnancy; or

15 (b) While she is in labor, in the process of delivering her baby,
16 or who is in postpartum recovery.

17 (2) The secretary shall:

18 (a) Provide notice of the requirements of this act to the
19 appropriate staff at institutions. Appropriate staff shall include all
20 medical staff and staff who are involved in the transport of youth who
21 are or may become pregnant, as well as such other staff as appropriate;
22 and

23 (b) Cause the requirements of this act to be provided to all youth
24 who are or may become pregnant at the time the department assumes
25 custody of the person in the institution. In addition, the secretary
26 shall cause a notice containing the requirements of this act to be
27 posted in locations in which medical care is provided within the
28 institutions.

29 (3) The legislative authority shall:

30 (a) Provide notice of the requirements of this act to the
31 appropriate staff at detention facilities. Appropriate staff shall
32 include all medical staff and staff who are involved in the transport
33 of youth who are or may become pregnant, as well as such other staff as
34 appropriate; and

35 (b) Cause the requirements of this act to be provided to all youth
36 who are or may become pregnant, at the time the detention facility
37 assumes custody of the person. In addition, the legislative authority

1 shall cause a notice containing the requirements of this act to be
2 posted in locations in which medical care is provided within the
3 facilities.

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