

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 2747

61st Legislature
2010 Regular Session

Passed by the House March 6, 2010
Yeas 93 Nays 1

Speaker of the House of Representatives

Passed by the Senate March 2, 2010
Yeas 46 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 2747** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 2747

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

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, 72.05.020, and 13.40.020; reenacting and
3 amending RCW 70.48.020; adding new sections to chapter 72.09 RCW;
4 adding new sections to chapter 70.48 RCW; adding new sections to
5 chapter 72.05 RCW; adding new sections to chapter 13.40 RCW; and
6 creating a new section.

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

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

10 The definitions in this section apply throughout this chapter.

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

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

1 (3) "Community custody" has the same meaning as that provided in
2 RCW 9.94A.030 and also includes community placement and community
3 supervision as defined in RCW 9.94B.020.

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

8 (5) "Correctional facility" means a facility or institution
9 operated directly or by contract by the secretary for the purposes of
10 incarcerating adults in total or partial confinement, as defined in RCW
11 9.94A.030.

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

13 ((+6)) (7) "Department" means the department of corrections.

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

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

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

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

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

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

36 ((+13)) (14) "Indigent inmate," "indigent," and "indigency" mean
37 an inmate who has less than a ten-dollar balance of disposable income

1 in his or her institutional account on the day a request is made to
2 utilize funds and during the thirty days previous to the request.

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

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

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

25 (18) "Physical restraint" means the use of any bodily force or
26 physical intervention to control an offender or limit an offender's
27 freedom of movement in a way that does not involve a mechanical
28 restraint. Physical restraint does not include momentary periods of
29 minimal physical restriction by direct person-to-person contact,
30 without the aid of mechanical restraint, accomplished with limited
31 force and designed to:

32 (a) Prevent an offender from completing an act that would result in
33 potential bodily harm to self or others or damage property;

34 (b) Remove a disruptive offender who is unwilling to leave the area
35 voluntarily; or

36 (c) Guide an offender from one location to another.

37 (19) "Postpartum recovery" means (a) the entire period a woman or
38 youth is in the hospital, birthing center, or clinic after giving birth

1 and (b) an additional time period, if any, a treating physician
2 determines is necessary for healing after the woman or youth leaves the
3 hospital, birthing center, or clinic.

4 (20) "Privilege" means any goods or services, education or work
5 programs, or earned early release days, the receipt of which are
6 directly linked to an inmate's (a) good conduct; and (b) good
7 performance. Privileges do not include any goods or services the
8 department is required to provide under the state or federal
9 Constitution or under state or federal law.

10 ((+17+)) (21) "Promising practice" means a practice that presents,
11 based on preliminary information, potential for becoming a
12 research-based or consensus-based practice.

13 ((+18+)) (22) "Research-based" means a program or practice that has
14 some research demonstrating effectiveness, but that does not yet meet
15 the standard of evidence-based practices.

16 ((+19+)) (23) "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 device including but not limited to: Metal
20 handcuffs, plastic ties, ankle restraints, leather cuffs, other
21 hospital-type restraints, tasers, or batons.

22 (24) "Secretary" means the secretary of corrections or his or her
23 designee.

24 ((+20+)) (25) "Significant expansion" includes any expansion into
25 a new product line or service to the class I business that results from
26 an increase in benefits provided by the department, including a
27 decrease in labor costs, rent, or utility rates (for water, sewer,
28 electricity, and disposal), an increase in work program space, tax
29 advantages, or other overhead costs.

30 ((+21+)) (26) "Superintendent" means the superintendent of a
31 correctional facility under the jurisdiction of the Washington state
32 department of corrections, or his or her designee.

33 ((+22+)) (27) "Transportation" means the conveying, by any means,
34 of an incarcerated pregnant woman or youth from the correctional
35 facility to another location from the moment she leaves the
36 correctional facility to the time of arrival at the other location, and
37 includes the escorting of the pregnant incarcerated woman or youth from

1 the correctional facility to a transport vehicle and from the vehicle
2 to the other location.

3 (28) "Unfair competition" means any net competitive advantage that
4 a business may acquire as a result of a correctional industries
5 contract, including labor costs, rent, tax advantages, utility rates
6 (water, sewer, electricity, and disposal), and other overhead costs.
7 To determine net competitive advantage, the correctional industries
8 board shall review and quantify any expenses unique to operating a for-
9 profit business inside a prison.

10 ~~((+23+))~~ (29) "Vocational training" or "vocational education" means
11 "vocational education" as defined in RCW 72.62.020.

12 ~~((+24+))~~ (30) "Washington business" means an in-state manufacturer
13 or service provider subject to chapter 82.04 RCW existing on June 10,
14 2004.

15 ~~((+25+))~~ (31) "Work programs" means all classes of correctional
16 industries jobs authorized under RCW 72.09.100.

17 NEW SECTION. Sec. 2. (1) Except in extraordinary circumstances,
18 no restraints of any kind may be used on any pregnant woman or youth
19 incarcerated in a correctional facility during transportation to and
20 from visits to medical providers and court proceedings during the third
21 trimester of her pregnancy, or during postpartum recovery. For
22 purposes of this section, "extraordinary circumstances" exist where a
23 corrections officer makes an individualized determination that
24 restraints are necessary to prevent an incarcerated pregnant woman or
25 youth from escaping, or from injuring herself, medical or correctional
26 personnel, or others. In the event the corrections officer determines
27 that extraordinary circumstances exist and restraints are used, the
28 corrections officer must fully document in writing the reasons that he
29 or she determined such extraordinary circumstances existed such that
30 restraints were used. As part of this documentation, the corrections
31 officer must also include the kind of restraints used and the reasons
32 those restraints were considered the least restrictive available and
33 the most reasonable under the circumstances.

34 (2) While the pregnant woman or youth is in labor or in childbirth
35 no restraints of any kind may be used. Nothing in this section affects
36 the use of hospital restraints requested for the medical safety of a
37 patient by treating physicians licensed under Title 18 RCW.

1 (3) Anytime restraints are permitted to be used on a pregnant woman
2 or youth, the restraints must be the least restrictive available and
3 the most reasonable under the circumstances, but in no case shall leg
4 irons or waist chains be used on any woman or youth known to be
5 pregnant.

6 (4) No correctional personnel shall be present in the room during
7 the pregnant woman's or youth's labor or childbirth, unless
8 specifically requested by medical personnel. If the employee's
9 presence is requested by medical personnel, the employee should be
10 female, if practicable.

11 (5) If the doctor, nurse, or other health professional treating the
12 pregnant woman or youth requests that restraints not be used, the
13 corrections officer accompanying the pregnant woman or youth shall
14 immediately remove all restraints.

15 NEW SECTION. **Sec. 3.** (1) The secretary shall provide an
16 informational packet about the requirements of this act to all medical
17 staff and nonmedical staff who are involved in the transportation of
18 women and youth who are pregnant, as well as such other staff as the
19 secretary deems appropriate. The informational packet provided to
20 staff under this section shall be developed as provided in section 13
21 of this act.

22 (2) The secretary shall cause the requirements of this act to be
23 provided to all women or youth who are pregnant, at the time the
24 department assumes custody of the person. In addition, the secretary
25 shall cause a notice containing the requirements of this act to be
26 posted in conspicuous locations in the correctional facilities,
27 including but not limited to the locations in which medical care is
28 provided within the facilities.

29 **Sec. 4.** RCW 70.48.020 and 2009 c 411 s 3 are each reenacted and
30 amended to read as follows:

31 As used in this chapter the words and phrases in this section shall
32 have the meanings indicated unless the context clearly requires
33 otherwise.

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

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

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

9 (4) "Detention facility" means a facility operated by a governing
10 unit primarily designed, staffed, and used for the temporary housing of
11 adult persons charged with a criminal offense prior to trial or
12 sentencing and for the housing of adult persons for purposes of
13 punishment and correction after sentencing or persons serving terms not
14 to exceed ninety days.

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

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

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

24 (8) "Holding facility" means a facility operated by a governing
25 unit primarily designed, staffed, and used for the temporary housing of
26 adult persons charged with a criminal offense prior to trial or
27 sentencing and for the temporary housing of such persons during or
28 after trial and/or sentencing, but in no instance shall the housing
29 exceed thirty days.

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

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

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

1 ~~((+11))~~ (12) "Medication" means a drug, legend drug, or controlled
2 substance requiring a prescription or an over-the-counter or
3 nonprescription drug.

4 ~~((+12))~~ (13) "Medication assistance" means assistance rendered by
5 nonpractitioner jail personnel to an inmate residing in a jail to
6 facilitate the individual's self-administration of a legend drug or
7 controlled substance or nonprescription medication. "Medication
8 assistance" includes reminding or coaching the individual, handing the
9 medication container to the individual, opening the individual's
10 medication container, using an enabler, or placing the medication in
11 the individual's hand.

12 ~~((+13))~~ (14) "Medium urban" means a county or combination of
13 counties which has a city having a population equal to or greater than
14 ten thousand but less than twenty-six thousand based on the 1978
15 projections of the office of financial management.

16 ~~((+14))~~ (15) "Nonpractitioner jail personnel" means appropriately
17 trained staff who are authorized to manage, deliver, or administer
18 prescription and nonprescription medication under RCW 70.48.490.

19 ~~((+15))~~ (16) "Office" means the office of financial management.

20 ~~((+16))~~ (17) "Physical restraint" means the use of any bodily
21 force or physical intervention to control an offender or limit an
22 offender's freedom of movement in a way that does not involve a
23 mechanical restraint. Physical restraint does not include momentary
24 periods of minimal physical restriction by direct person-to-person
25 contact, without the aid of mechanical restraint, accomplished with
26 limited force and designed to:

27 (a) Prevent an offender from completing an act that would result in
28 potential bodily harm to self or others or damage property;

29 (b) Remove a disruptive offender who is unwilling to leave the area
30 voluntarily; or

31 (c) Guide an offender from one location to another.

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

37 (19) "Practitioner" has the same meaning as provided in RCW
38 69.41.010.

1 ~~((17))~~ (20) "Restraints" means anything used to control the
2 movement of a person's body or limbs and includes:

3 (a) Physical restraint; or

4 (b) Mechanical device including but not limited to: Metal
5 handcuffs, plastic ties, ankle restraints, leather cuffs, other
6 hospital-type restraints, tasers, or batons.

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

10 ~~((18))~~ (22) "Special detention facility" means a minimum security
11 facility operated by a governing unit primarily designed, staffed, and
12 used for the housing of special populations of sentenced persons who do
13 not require the level of security normally provided in detention and
14 correctional facilities including, but not necessarily limited to,
15 persons convicted of offenses under RCW 46.61.502 or 46.61.504.

16 (23) "Transportation" means the conveying, by any means, of an
17 incarcerated pregnant woman or youth from the correctional facility or
18 any facility covered by this chapter to another location from the
19 moment she leaves the correctional facility or any facility covered by
20 this chapter to the time of arrival at the other location, and includes
21 the escorting of the pregnant incarcerated woman or youth from the
22 correctional facility or facility covered by this chapter to a
23 transport vehicle and from the vehicle to the other location.

24 NEW SECTION. Sec. 5. (1) Except in extraordinary circumstances no
25 restraints of any kind may be used on any pregnant woman or youth
26 incarcerated in a correctional facility or any facility covered by this
27 chapter during transportation to and from visits to medical providers
28 and court proceedings during the third trimester of her pregnancy, or
29 during postpartum recovery. For purposes of this section,
30 "extraordinary circumstances" exist where a corrections officer or
31 employee of the correctional facility or any facility covered by this
32 chapter makes an individualized determination that restraints are
33 necessary to prevent an incarcerated pregnant woman or youth from
34 escaping, or from injuring herself, medical or correctional personnel,
35 or others. In the event the corrections officer or employee of the
36 correctional facility or any facility covered by this chapter
37 determines that extraordinary circumstances exist and restraints are

1 used, the corrections officer or employee must fully document in
2 writing the reasons that he or she determined such extraordinary
3 circumstances existed such that restraints were used. As part of this
4 documentation, the corrections officer or employee must also include
5 the kind of restraints used and the reasons those restraints were
6 considered the least restrictive available and the most reasonable
7 under the circumstances.

8 (2) While the pregnant woman or youth is in labor or in childbirth
9 no restraints of any kind may be used. Nothing in this section affects
10 the use of hospital restraints requested for the medical safety of a
11 patient by treating physicians licensed under Title 18 RCW.

12 (3) Anytime restraints are permitted to be used on a pregnant woman
13 or youth, the restraints must be the least restrictive available and
14 the most reasonable under the circumstances, but in no case shall leg
15 irons or waist chains be used on any woman or youth known to be
16 pregnant.

17 (4) No correctional personnel or employee of the correctional
18 facility or any facility covered by this chapter shall be present in
19 the room during the pregnant woman's or youth's labor or childbirth,
20 unless specifically requested by medical personnel. If the employee's
21 presence is requested by medical personnel, the employee should be
22 female, if practicable.

23 (5) If the doctor, nurse, or other health professional treating the
24 pregnant woman or youth requests that restraints not be used, the
25 corrections officer or employee accompanying the pregnant woman or
26 youth shall immediately remove all restraints.

27 NEW SECTION. **Sec. 6.** (1) The jail administrator or his or her
28 designee or chief law enforcement executive or his or her designee
29 shall provide notice of the requirements of this act to the appropriate
30 staff at a correctional facility or a facility covered by this chapter.
31 Appropriate staff shall include all medical staff and staff who are
32 involved in the transportation of pregnant women and youth as well as
33 such other staff deemed appropriate.

34 (2) The jail administrator or his or her designee or chief law
35 enforcement executive or his or her designee shall cause the
36 requirements of this act to be provided to all women and youth of child
37 bearing age at intake. In addition, the jail administrator or his or

1 her designee or chief law enforcement executive or his or her designee
2 shall cause a notice containing the requirements of this act to be
3 posted in locations in which medical care is provided within the
4 facilities.

5 **Sec. 7.** RCW 72.05.020 and 1998 c 269 s 2 are each amended to read
6 as follows:

7 As used in this chapter, unless the context requires otherwise:

8 (1) "Community facility" means a group care facility operated for
9 the care of juveniles committed to the department under RCW 13.40.185.
10 A county detention facility that houses juveniles committed to the
11 department under RCW 13.40.185 pursuant to a contract with the
12 department is not a community facility.

13 (2) "Department" means the department of social and health
14 services.

15 (3) "Juvenile" means a person under the age of twenty-one who has
16 been sentenced to a term of confinement under the supervision of the
17 department under RCW 13.40.185.

18 (4) "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 (5) "Physical restraint" means the use of any bodily force or
22 physical intervention to control an offender or limit a juvenile
23 offender's freedom of movement in a way that does not involve a
24 mechanical restraint. Physical restraint does not include momentary
25 periods of minimal physical restriction by direct person-to-person
26 contact, without the aid of mechanical restraint, accomplished with
27 limited force and designed to:

28 (a) Prevent a juvenile offender from completing an act that would
29 result in potential bodily harm to self or others or damage property;

30 (b) Remove a disruptive juvenile offender who is unwilling to leave
31 the area voluntarily; or

32 (c) Guide a juvenile offender from one location to another.

33 (6) "Postpartum recovery" means (a) the entire period a youth is in
34 the hospital, birthing center, or clinic after giving birth and (b) an
35 additional time period, if any, a treating physician determines is
36 necessary for healing after the youth leaves the hospital, birthing
37 center, or clinic.

1 (7) "Restraints" means anything used to control the movement of a
2 person's body or limbs and includes:

3 (a) Physical restraint; or

4 (b) Mechanical device including but not limited to: Metal
5 handcuffs, plastic ties, ankle restraints, leather cuffs, other
6 hospital-type restraints, tasers, or batons.

7 (8) "Service provider" means the entity that operates a community
8 facility.

9 (9) "Transportation" means the conveying, by any means, of an
10 incarcerated pregnant woman or youth from the institution or community
11 facility to another location from the moment she leaves the institution
12 or community facility to the time of arrival at the other location, and
13 includes the escorting of the pregnant incarcerated woman or youth from
14 the institution or community facility to a transport vehicle and from
15 the vehicle to the other location.

16 NEW SECTION. Sec. 8. (1) Except in extraordinary circumstances no
17 restraints of any kind may be used on any pregnant youth in an
18 institution or a community facility covered by this chapter during
19 transportation to and from visits to medical providers and court
20 proceedings during the third trimester of her pregnancy, or during
21 postpartum recovery. For purposes of this section, "extraordinary
22 circumstances" exist where an employee of an institution or community
23 facility covered by this chapter makes an individualized determination
24 that restraints are necessary to prevent an incarcerated pregnant youth
25 from escaping, or from injuring herself, medical or correctional
26 personnel, or others. In the event an employee of an institution or
27 community facility covered by this chapter determines that
28 extraordinary circumstances exist and restraints are used, the
29 corrections officer or employee must fully document in writing the
30 reasons that he or she determined such extraordinary circumstances
31 existed such that restraints were used. As part of this documentation,
32 the employee of an institution or community facility covered by this
33 chapter must also include the kind of restraints used and the reasons
34 those restraints were considered the least restrictive available and
35 the most reasonable under the circumstances.

36 (2) While the pregnant youth is in labor or in childbirth no

1 restraints of any kind may be used. Nothing in this section affects
2 the use of hospital restraints requested for the medical safety of a
3 patient by treating physicians licensed under Title 18 RCW.

4 (3) Anytime restraints are permitted to be used on a pregnant
5 youth, the restraints must be the least restrictive available and the
6 most reasonable under the circumstances, but in no case shall leg irons
7 or waist chains be used on any youth known to be pregnant.

8 (4) No employee of the institution or community facility shall be
9 present in the room during the pregnant youth's labor or childbirth,
10 unless specifically requested by medical personnel. If the employee's
11 presence is requested by medical personnel, the employee should be
12 female, if practicable.

13 (5) If the doctor, nurse, or other health professional treating the
14 pregnant youth requests that restraints not be used, the employee
15 accompanying the pregnant youth shall immediately remove all
16 restraints.

17 NEW SECTION. **Sec. 9.** (1) The secretary shall provide an
18 informational packet about the requirements of this act to all medical
19 staff and nonmedical staff of the institution or community facility who
20 are involved in the transportation of youth who are pregnant, as well
21 as such other staff as the secretary deems appropriate. The
22 informational packet provided to staff under this section shall be
23 developed as provided in section 13 of this act.

24 (2) The secretary shall cause the requirements of this act to be
25 provided to all youth who are pregnant, at the time the secretary
26 assumes custody of the person. In addition, the secretary shall cause
27 a notice containing the requirements of this act to be posted in
28 conspicuous locations in the institutions or community facilities,
29 including but not limited to the locations in which medical care is
30 provided within the facilities.

31 **Sec. 10.** RCW 13.40.020 and 2009 c 454 s 2 are each amended to read
32 as follows:

33 For the purposes of this chapter:
34 (1) "Community-based rehabilitation" means one or more of the
35 following: Employment; attendance of information classes; literacy
36 classes; counseling, outpatient substance abuse treatment programs,

1 outpatient mental health programs, anger management classes, education
2 or outpatient treatment programs to prevent animal cruelty, or other
3 services; or attendance at school or other educational programs
4 appropriate for the juvenile as determined by the school district.
5 Placement in community-based rehabilitation programs is subject to
6 available funds;

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

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

10 (b) Community restitution not to exceed one hundred fifty hours of
11 community restitution;

12 (3) "Community restitution" means compulsory service, without
13 compensation, performed for the benefit of the community by the
14 offender as punishment for committing an offense. Community
15 restitution may be performed through public or private organizations or
16 through work crews;

17 (4) "Community supervision" means an order of disposition by the
18 court of an adjudicated youth not committed to the department or an
19 order granting a deferred disposition. A community supervision order
20 for a single offense may be for a period of up to two years for a sex
21 offense as defined by RCW 9.94A.030 and up to one year for other
22 offenses. As a mandatory condition of any term of community
23 supervision, the court shall order the juvenile to refrain from
24 committing new offenses. As a mandatory condition of community
25 supervision, the court shall order the juvenile to comply with the
26 mandatory school attendance provisions of chapter 28A.225 RCW and to
27 inform the school of the existence of this requirement. Community
28 supervision is an individualized program comprised of one or more of
29 the following:

30 (a) Community-based sanctions;

31 (b) Community-based rehabilitation;

32 (c) Monitoring and reporting requirements;

33 (d) Posting of a probation bond;

34 (5) "Confinement" means physical custody by the department of
35 social and health services in a facility operated by or pursuant to a
36 contract with the state, or physical custody in a detention facility
37 operated by or pursuant to a contract with any county. The county may
38 operate or contract with vendors to operate county detention

1 facilities. The department may operate or contract to operate
2 detention facilities for juveniles committed to the department.
3 Pretrial confinement or confinement of less than thirty-one days
4 imposed as part of a disposition or modification order may be served
5 consecutively or intermittently, in the discretion of the court;

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

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

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

14 (b) The criminal complaint was diverted by a prosecutor pursuant to
15 the provisions of this chapter on agreement of the respondent and after
16 an advisement to the respondent that the criminal complaint would be
17 considered as part of the respondent's criminal history. A
18 successfully completed deferred adjudication that was entered before
19 July 1, 1998, or a deferred disposition shall not be considered part of
20 the respondent's criminal history;

21 (8) "Department" means the department of social and health
22 services;

23 (9) "Detention facility" means a county facility, paid for by the
24 county, for the physical confinement of a juvenile alleged to have
25 committed an offense or an adjudicated offender subject to a
26 disposition or modification order. "Detention facility" includes
27 county group homes, inpatient substance abuse programs, juvenile basic
28 training camps, and electronic monitoring;

29 (10) "Diversion unit" means any probation counselor who enters into
30 a diversion agreement with an alleged youthful offender, or any other
31 person, community accountability board, youth court under the
32 supervision of the juvenile court, or other entity except a law
33 enforcement official or entity, with whom the juvenile court
34 administrator has contracted to arrange and supervise such agreements
35 pursuant to RCW 13.40.080, or any person, community accountability
36 board, or other entity specially funded by the legislature to arrange
37 and supervise diversion agreements in accordance with the requirements
38 of this chapter. For purposes of this subsection, "community

1 accountability board" means a board comprised of members of the local
2 community in which the juvenile offender resides. The superior court
3 shall appoint the members. The boards shall consist of at least three
4 and not more than seven members. If possible, the board should include
5 a variety of representatives from the community, such as a law
6 enforcement officer, teacher or school administrator, high school
7 student, parent, and business owner, and should represent the cultural
8 diversity of the local community;

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

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

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

19 (14) "Juvenile," "youth," and "child" mean any individual who is
20 under the chronological age of eighteen years and who has not been
21 previously transferred to adult court pursuant to RCW 13.40.110, unless
22 the individual was convicted of a lesser charge or acquitted of the
23 charge for which he or she was previously transferred pursuant to RCW
24 13.40.110 or who is not otherwise under adult court jurisdiction;

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

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

32 (17) "Local sanctions" means one or more of the following: (a) 0-
33 30 days of confinement; (b) 0-12 months of community supervision; (c)
34 0-150 hours of community restitution; or (d) \$0-\$500 fine;

35 ((+17)) (18) "Manifest injustice" means a disposition that would
36 either impose an excessive penalty on the juvenile or would impose a
37 serious, and clear danger to society in light of the purposes of this
38 chapter;

1 ~~((18))~~ (19) "Monitoring and reporting requirements" means one or
2 more of the following: Curfews; requirements to remain at home,
3 school, work, or court-ordered treatment programs during specified
4 hours; restrictions from leaving or entering specified geographical
5 areas; requirements to report to the probation officer as directed and
6 to remain under the probation officer's supervision; and other
7 conditions or limitations as the court may require which may not
8 include confinement;

9 ~~((19))~~ (20) "Offense" means an act designated a violation or a
10 crime if committed by an adult under the law of this state, under any
11 ordinance of any city or county of this state, under any federal law,
12 or under the law of another state if the act occurred in that state;

13 ~~((20))~~ (21) "Physical restraint" means the use of any bodily
14 force or physical intervention to control a juvenile offender or limit
15 a juvenile offender's freedom of movement in a way that does not
16 involve a mechanical restraint. Physical restraint does not include
17 momentary periods of minimal physical restriction by direct person-to-
18 person contact, without the aid of mechanical restraint, accomplished
19 with limited force and designed to:

20 (a) Prevent a juvenile offender from completing an act that would
21 result in potential bodily harm to self or others or damage property;

22 (b) Remove a disruptive juvenile offender who is unwilling to leave
23 the area voluntarily; or

24 (c) Guide a juvenile offender from one location to another;

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

30 (23) "Probation bond" means a bond, posted with sufficient security
31 by a surety justified and approved by the court, to secure the
32 offender's appearance at required court proceedings and compliance with
33 court-ordered community supervision or conditions of release ordered
34 pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of
35 cash or posting of other collateral in lieu of a bond if approved by
36 the court;

37 ~~((21))~~ (24) "Respondent" means a juvenile who is alleged or
38 proven to have committed an offense;

1 ~~((+22+))~~ (25) "Restitution" means financial reimbursement by the
2 offender to the victim, and shall be limited to easily ascertainable
3 damages for injury to or loss of property, actual expenses incurred for
4 medical treatment for physical injury to persons, lost wages resulting
5 from physical injury, and costs of the victim's counseling reasonably
6 related to the offense. Restitution shall not include reimbursement
7 for damages for mental anguish, pain and suffering, or other intangible
8 losses. Nothing in this chapter shall limit or replace civil remedies
9 or defenses available to the victim or offender;

10 ~~((+23+))~~ (26) "Restraints" means anything used to control the
11 movement of a person's body or limbs and includes:

12 (a) Physical restraint; or

13 (b) Mechanical device including but not limited to: Metal
14 handcuffs, plastic ties, ankle restraints, leather cuffs, other
15 hospital-type restraints, tasers, or batons;

16 (27) "Secretary" means the secretary of the department of social
17 and health services. "Assistant secretary" means the assistant
18 secretary for juvenile rehabilitation for the department;

19 ~~((+24+))~~ (28) "Services" means services which provide alternatives
20 to incarceration for those juveniles who have pleaded or been
21 adjudicated guilty of an offense or have signed a diversion agreement
22 pursuant to this chapter;

23 ~~((+25+))~~ (29) "Sex offense" means an offense defined as a sex
24 offense in RCW 9.94A.030;

25 ~~((+26+))~~ (30) "Sexual motivation" means that one of the purposes
26 for which the respondent committed the offense was for the purpose of
27 his or her sexual gratification;

28 ~~((+27+))~~ (31) "Surety" means an entity licensed under state
29 insurance laws or by the state department of licensing, to write
30 corporate, property, or probation bonds within the state, and justified
31 and approved by the superior court of the county having jurisdiction of
32 the case;

33 ~~((+28+))~~ (32) "Transportation" means the conveying, by any means,
34 of an incarcerated pregnant youth from the institution or detention
35 facility to another location from the moment she leaves the institution
36 or detention facility to the time of arrival at the other location, and
37 includes the escorting of the pregnant incarcerated youth from the

1 institution or detention facility to a transport vehicle and from the
2 vehicle to the other location;

3 (33) "Violation" means an act or omission, which if committed by an
4 adult, must be proven beyond a reasonable doubt, and is punishable by
5 sanctions which do not include incarceration;

6 ~~((+29+))~~ (34) "Violent offense" means a violent offense as defined
7 in RCW 9.94A.030;

8 ~~((+30+))~~ (35) "Youth court" means a diversion unit under the
9 supervision of the juvenile court.

10 NEW SECTION. Sec. 11. (1) Except in extraordinary circumstances,
11 no restraints of any kind may be used on any pregnant youth in an
12 institution or detention facility covered by this chapter during
13 transportation to and from visits to medical providers and court
14 proceedings during the third trimester of her pregnancy, or during
15 postpartum recovery. For purposes of this section, "extraordinary
16 circumstances" exist where an employee at an institution or detention
17 facility makes an individualized determination that restraints are
18 necessary to prevent an incarcerated pregnant youth from escaping, or
19 from injuring herself, medical or correctional personnel, or others.
20 In the event the employee of the institution or detention facility
21 determines that extraordinary circumstances exist and restraints are
22 used, the employee of the institution or detention facility must fully
23 document in writing the reasons that he or she determined such
24 extraordinary circumstances existed such that restraints were used. As
25 part of this documentation, the employee of the institution or
26 detention facility must also include the kind of restraints used and
27 the reasons those restraints were considered the least restrictive
28 available and the most reasonable under the circumstances.

29 (2) While the pregnant youth is in labor or in childbirth no
30 restraints of any kind may be used. Nothing in this section affects
31 the use of hospital restraints requested for the medical safety of a
32 patient by treating physicians licensed under Title 18 RCW.

33 (3) Anytime restraints are permitted to be used on a pregnant
34 youth, the restraints must be the least restrictive available and the
35 most reasonable under the circumstances, but in no case shall leg irons
36 or waist chains be used on any youth known to be pregnant.

1 (4) No employee of the institution or detention facility shall be
2 present in the room during the pregnant youth's labor or childbirth,
3 unless specifically requested by medical personnel. If the employee's
4 presence is requested by medical personnel, the employee should be
5 female, if practicable.

6 (5) If the doctor, nurse, or other health professional treating the
7 pregnant youth requests that restraints not be used, the employee of
8 the institution or detention facility accompanying the pregnant youth
9 shall immediately remove all restraints.

10 NEW SECTION. **Sec. 12.** (1) The director of the juvenile detention
11 facility shall provide an informational packet about the requirements
12 of this act to all medical staff and nonmedical staff who are involved
13 in the transportation of youth who are pregnant, as well as such other
14 staff as appropriate. The informational packet provided to staff under
15 this section shall be developed as provided in section 13 of this act.

16 (2) The director shall cause the requirements of this act to be
17 provided to all youth who are pregnant, at the time the facility
18 assumes custody of the person. In addition, the facility shall cause
19 a notice containing the requirements of this act to be posted in
20 conspicuous locations in the detention facilities, including but not
21 limited to the locations in which medical care is provided within the
22 facilities.

23 NEW SECTION. **Sec. 13.** The Washington association of sheriffs and
24 police chiefs, the department of corrections, the department of social
25 and health services, juvenile rehabilitation administration, and the
26 criminal justice training commission shall jointly develop an
27 informational packet on the requirements of this act. The packet shall
28 be ready for distribution no later than September 1, 2010.

29 NEW SECTION. **Sec. 14.** No civil liability may be imposed by any
30 court on the county or its jail officers or employees under sections 5
31 and 6 of this act except upon proof of gross negligence.

32 NEW SECTION. **Sec. 15.** Sections 2 and 3 of this act are each added
33 to chapter 72.09 RCW.

1 NEW SECTION. **Sec. 16.** Sections 5, 6, and 13 of this act are each
2 added to chapter 70.48 RCW.

3 NEW SECTION. **Sec. 17.** Sections 8 and 9 of this act are each added
4 to chapter 72.05 RCW.

5 NEW SECTION. **Sec. 18.** Sections 11 and 12 of this act are each
6 added to chapter 13.40 RCW.

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