

BILL ANALYSIS

Senate Research Center

H.B. 1651
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Criminal Justice
5/6/2019
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1651 amends the Government Code to require the Texas Commission on Jail Standards (TCJS) to adopt reasonable rules and procedures regarding the use of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks unless a health care professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the health and safety of the prisoner or supervisory personnel determines the use of restraints is necessary to prevent an immediate and credible risk that the prisoner will attempt to escape or determines the prisoner poses an immediate and serious threat to the health and safety of the prisoner, staff, or any member of the public.

This bill requires the rules and procedures to require jail staff who use restraints as permitted under its provisions to use the least restrictive restraints necessary to prevent escape or to ensure health and safety. The bill requires the rules and procedures, notwithstanding such permitted uses of restraints, to require jail staff to refrain from using restraints on the prisoner or to remove the restraints at the request of a health care professional responsible for the health and safety of the prisoner.

H.B. 1651 requires each county jail, not later than February 1 of each year, to submit to TCJS a report regarding the jail's use, during the preceding calendar year, of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks. The bill requires the report to include the circumstances of each use of restraints, including certain specified information. The bill requires TCJS to prescribe a form for the report not later than December 1, 2019.

H.B. 1651 amends current law relating to the care of pregnant women confined in county jail.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Jail Standards (TCJS) in SECTION 2 (Section 511.0104, Government Code) of this bill.

Rulemaking authority previously granted to TCJS is modified in SECTION 1 (Section 511.009, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 511.009(a), Government Code, as follows:

(a) Requires the Texas Commission on Jail Standards (TCJS) to:

(1)–(17) makes no changes to these subdivisions;

(18) adopt reasonable rules and procedures establishing minimum requirements for a county jail, rather than for jails, to:

(A) makes a nonsubstantive change to this paragraph;

(B) ensure that the jail's health services plan addresses medical care, including obstetrical and gynecological care, mental health care, nutritional requirements, and any special housing or work assignment needs for prisoners who are known or determined to be pregnant, rather than ensure that the jail's health services plan addresses medical and mental health care, including nutritional requirements, and any special housing or work assignment needs for prisoners persons who are confined in the jail and are known or determined to be pregnant; and

(C) identify when a pregnant prisoner is in labor and provide appropriate care to the prisoner, including promptly transporting the prisoner to a local hospital; and

(19)–(23) makes no changes to these subdivisions.

SECTION 2. Amends Chapter 511, Government Code, by adding Sections 511.0104 and 511.0105, as follows:

Sec. 511.0104. RULES REGARDING RESTRAINT OF PREGNANT PRISONER. (a) Requires TCJS to adopt reasonable rules and procedures regarding the use of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks.

(b) Requires the rules and procedures to:

(1) prohibit the use of restraints on a prisoner described by Subsection (a) for the duration of the pregnancy and for a period of not less than 12 weeks after the prisoner gives birth unless:

(A) supervisory personnel determines:

(i) the use of restraints is necessary to prevent an immediate and credible risk that the prisoner will attempt to escape; or

(ii) the prisoner poses an immediate and serious threat to the health and safety of the prisoner, staff, or any member of the public; or

(B) a health care professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the health and safety of the prisoner and/or her unborn child;

(2) require jail staff that uses restraints as permitted under Subdivision (1) to use the least restrictive restraints necessary to prevent escape or to ensure health and safety; and

(3) notwithstanding Subdivision (1), require jail staff to, at the request of a health care professional responsible for the health and safety of the prisoner, refrain from using restraints on the prisoner or to remove the restraints.

Sec. 511.0105. REPORT REGARDING RESTRAINT OF PREGNANT PRISONER. (a) Requires each county jail, not later than February 1 of each year, to submit to TCJS a report regarding the jail's use, during the preceding calendar year, of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks.

(b) Requires the report to include the circumstances of each use of restraints, including:

- (1) the specific type of restraints used;
- (2) what activity the prisoner was engaged in immediately before being restrained;
- (3) whether the prisoner was restrained during or after delivery;
- (4) whether the prisoner was restrained while being transported to a local hospital; and
- (5) the reasons supporting the determination to use the restraints, a description of the process by which the determination was made, and the name and title of the person or persons making the determination.

(c) Requires TCJS to prescribe a form for the report required for this section.

SECTION 3. Requires TJCS, not later than December 1, 2019, to:

- (1) adopt the rules and procedures required by Section 511.009(a)(18), Government Code, as amended by this Act, and Section 511.0104, Government Code, as added by this Act; and
- (2) prescribe the form required by Section 511.0105, Government Code, as added by this Act.

SECTION 4. Effective date: September 1, 2019.