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ENGROSSED SUBSTITUTE HOUSE BILL 2747

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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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