

CHAPTER 312

CORRECTIONS

SENATE BILL 10-193

BY SENATOR(S) Hudak, Boyd, Foster, Gibbs, Heath, Hodge, King K., Mitchell, Morse, Newell, Sandoval, Schwartz, Shaffer B., Steadman, Tochtrop, Williams;
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AN ACT**CONCERNING THE SAFE TREATMENT OF PREGNANT PERSONS IN CUSTODY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 1 of article 1 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-1-113.7. Prohibition against the use of restraints on pregnant inmates in the custody of correctional facilities and private contract prisons. (1) THE STAFF OF A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON, WHEN RESTRAINING A FEMALE INMATE, SHALL USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY IF THE STAFF OF THE CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON HAVE ACTUAL KNOWLEDGE OR A REASONABLE BELIEF THAT THE INMATE IS PREGNANT. THE REQUIREMENT THAT STAFF USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY SHALL CONTINUE DURING POSTPARTUM RECOVERY AND TRANSPORT TO OR FROM A CORRECTIONAL FACILITY AND PRIVATE CONTRACT PRISON.

(2) (a) (I) STAFF OF A CORRECTIONAL FACILITY, PRIVATE CONTRACT PRISON, OR MEDICAL FACILITY SHALL NOT USE RESTRAINTS OF ANY KIND ON A PREGNANT INMATE DURING LABOR AND DELIVERY OF THE CHILD; EXCEPT THAT STAFF MAY USE RESTRAINTS IF:

(A) THE MEDICAL STAFF DETERMINE THAT RESTRAINTS ARE MEDICALLY NECESSARY FOR SAFE CHILDBIRTH;

(B) THE PRISON STAFF OR MEDICAL STAFF DETERMINE THAT THE INMATE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PRESENTS AN IMMEDIATE AND SERIOUS RISK OF HARM TO HERSELF, TO OTHER PATIENTS, OR TO MEDICAL STAFF; OR

(C) THE WARDEN OR HIS OR HER DESIGNEE DETERMINES THAT THE INMATE POSES A SUBSTANTIAL RISK OF ESCAPE THAT CANNOT REASONABLY BE REDUCED BY THE USE OF OTHER EXISTING MEANS.

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STAFF USE LEG SHACKLES OR WAIST RESTRAINTS ON AN INMATE DURING LABOR AND DELIVERY OF THE CHILD, POSTPARTUM RECOVERY WHILE IN A MEDICAL FACILITY, OR TRANSPORT TO OR FROM A MEDICAL FACILITY FOR CHILDBIRTH.

(b) THE CORRECTIONAL FACILITY, PRIVATE CONTRACT PRISON, OR MEDICAL FACILITY STAFF AUTHORIZING THE USE OF RESTRAINTS ON A PREGNANT INMATE DURING LABOR OR DELIVERY OF THE CHILD SHALL MAKE A WRITTEN RECORD OF THE USE OF THE RESTRAINTS, WHICH RECORD SHALL INCLUDE, AT A MINIMUM, THE TYPE OF RESTRAINT USED, THE CIRCUMSTANCES THAT NECESSITATED THE USE OF THE RESTRAINT, AND THE LENGTH OF TIME THE RESTRAINT WAS USED. THE STAFF OF THE CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL RETAIN THE RECORD FOR A MINIMUM OF FIVE YEARS AND SHALL MAKE THE RECORD AVAILABLE FOR PUBLIC INSPECTION WITH INDIVIDUALLY IDENTIFYING INFORMATION REDACTED FROM THE RECORD UNLESS THE INMATE WHO IS THE SUBJECT OF THE RECORD GIVES PRIOR WRITTEN CONSENT FOR THE PUBLIC RELEASE OF THE RECORD. THE WRITTEN RECORD OF THE USE OF RESTRAINT SHALL NOT CONSTITUTE A MEDICAL RECORD UNDER STATE OR FEDERAL LAW.

(3) UPON RETURN TO A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON AFTER CHILDBIRTH, THE INMATE SHALL BE ENTITLED TO HAVE A MEMBER OF THE CORRECTIONAL FACILITY'S OR PRIVATE CONTRACT PRISON'S MEDICAL STAFF PRESENT DURING ANY STRIP SEARCH.

(4) WHEN AN INMATE'S PREGNANCY IS DETERMINED, THE STAFF OF A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL INFORM A PREGNANT INMATE IN WRITING IN A LANGUAGE AND IN A MANNER UNDERSTANDABLE TO THE INMATE OF THE PROVISIONS OF THIS SECTION CONCERNING THE USE OF RESTRAINTS AND THE PRESENCE OF MEDICAL STAFF DURING A STRIP SEARCH.

(5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS SHALL ENSURE THAT THE STAFF OF THE DEPARTMENT OF CORRECTIONS AND OF PRIVATE CONTRACT PRISONS RECEIVE ADEQUATE TRAINING CONCERNING THE PROVISIONS OF THIS SECTION.

SECTION 2. Part 1 of article 26 of title 17, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

17-26-104.7. Prohibition against the use of restraints on pregnant women in custody. (1) THE STAFF OF A COUNTY JAIL, IN RESTRAINING A WOMAN WHO IS COMMITTED, DETAINED, OR CONFINED TO THE COUNTY JAIL, SHALL USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY IF THE STAFF OF THE COUNTY JAIL HAVE ACTUAL KNOWLEDGE OR A REASONABLE BELIEF THAT THE

WOMAN IS PREGNANT. THE REQUIREMENT THAT STAFF USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY SHALL CONTINUE DURING POSTPARTUM RECOVERY AND TRANSPORT TO OR FROM THE COUNTY JAIL.

(2) (a) (I) THE COUNTY JAIL STAFF OR MEDICAL FACILITY STAFF SHALL NOT USE RESTRAINTS OF ANY KIND ON THE WOMAN DURING LABOR AND DELIVERY OF THE CHILD; EXCEPT THAT STAFF MAY USE RESTRAINTS IF:

(A) THE MEDICAL STAFF DETERMINE THAT RESTRAINTS ARE MEDICALLY NECESSARY FOR SAFE CHILDBIRTH;

(B) THE COUNTY JAIL STAFF OR MEDICAL STAFF DETERMINE THAT THE WOMAN PRESENTS AN IMMEDIATE AND SERIOUS RISK OF HARM TO HERSELF, TO OTHER PATIENTS, OR TO MEDICAL STAFF; OR

(C) THE SHERIFF OR HIS OR HER DESIGNEE DETERMINES THAT THE WOMAN POSES A SUBSTANTIAL RISK OF ESCAPE THAT CANNOT REASONABLY BE REDUCED BY THE USE OF OTHER EXISTING MEANS.

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STAFF USE LEG SHACKLES OR WAIST RESTRAINTS ON A WOMAN DURING LABOR AND DELIVERY OF THE CHILD, POSTPARTUM RECOVERY WHILE IN A MEDICAL FACILITY, OR TRANSPORT TO OR FROM A MEDICAL FACILITY FOR CHILDBIRTH.

(b) THE COUNTY JAIL OR MEDICAL FACILITY STAFF AUTHORIZING THE USE OF RESTRAINTS ON A PREGNANT WOMAN DURING LABOR OR DELIVERY OF THE CHILD SHALL MAKE A WRITTEN RECORD OF THE USE OF THE RESTRAINTS, WHICH RECORD SHALL INCLUDE, AT A MINIMUM, THE TYPE OF RESTRAINT USED, THE CIRCUMSTANCES THAT NECESSITATED THE USE OF THE RESTRAINT, AND THE LENGTH OF TIME THE RESTRAINT WAS USED. THE SHERIFF SHALL RETAIN THE RECORD FOR A MINIMUM OF FIVE YEARS AND SHALL MAKE THE RECORD AVAILABLE FOR PUBLIC INSPECTION WITH INDIVIDUALLY IDENTIFYING INFORMATION REDACTED FROM THE RECORD UNLESS THE WOMAN WHO IS THE SUBJECT OF THE RECORD GIVES PRIOR WRITTEN CONSENT FOR THE PUBLIC RELEASE OF THE RECORD. THE WRITTEN RECORD OF THE USE OF RESTRAINT SHALL NOT CONSTITUTE A MEDICAL RECORD UNDER STATE OR FEDERAL LAW.

(3) UPON RETURN TO A COUNTY JAIL AFTER CHILDBIRTH, THE WOMAN SHALL BE ENTITLED TO HAVE A MEMBER OF THE COUNTY JAIL'S OR COUNTY'S MEDICAL STAFF PRESENT DURING ANY STRIP SEARCH.

(4) WHEN A WOMAN'S PREGNANCY IS DETERMINED, THE STAFF OF A COUNTY JAIL SHALL INFORM A PREGNANT WOMAN COMMITTED, DETAINED, OR CONFINED IN A COUNTY JAIL IN WRITING IN A LANGUAGE AND IN A MANNER UNDERSTANDABLE TO THE WOMAN OF THE PROVISIONS OF THIS SECTION CONCERNING THE USE OF RESTRAINTS AND THE PRESENCE OF MEDICAL STAFF DURING A STRIP SEARCH.

(5) EACH SHERIFF SHALL ENSURE THAT STAFF OF THE COUNTY JAIL RECEIVE ADEQUATE TRAINING CONCERNING THE PROVISIONS OF THIS SECTION.

SECTION 3. Part 9 of article 2 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

19-2-924.7. Juveniles committed to the department of human services - prohibition against the use of restraints on pregnant juveniles. (1) THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES, IN RESTRAINING A FEMALE JUVENILE COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES OR DETAINED IN A JUVENILE FACILITY, SHALL USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY IF THE STAFF HAVE ACTUAL KNOWLEDGE OR A REASONABLE BELIEF THAT THE JUVENILE IS PREGNANT. THE REQUIREMENT THAT STAFF USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY SHALL CONTINUE DURING POSTPARTUM RECOVERY AND TRANSPORT TO OR FROM A JUVENILE FACILITY.

(2)(a)(I) STAFF OF THE DEPARTMENT OF HUMAN SERVICES OR MEDICAL FACILITY STAFF SHALL NOT USE RESTRAINTS OF ANY KIND ON A PREGNANT JUVENILE DURING LABOR AND DELIVERY OF THE CHILD; EXCEPT THAT STAFF MAY USE RESTRAINTS IF:

(A) THE MEDICAL STAFF DETERMINE THAT RESTRAINTS ARE MEDICALLY NECESSARY FOR SAFE CHILDBIRTH;

(B) THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES OR MEDICAL STAFF DETERMINE THAT THE JUVENILE PRESENTS AN IMMEDIATE AND SERIOUS RISK OF HARM TO HERSELF, TO OTHER PATIENTS, OR TO MEDICAL STAFF; OR

(C) THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES DETERMINE THAT THE JUVENILE POSES A SUBSTANTIAL RISK OF ESCAPE THAT CANNOT REASONABLY BE REDUCED BY THE USE OF OTHER EXISTING MEANS.

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STAFF USE LEGSHACKLES OR WAIST RESTRAINTS ON A JUVENILE DURING LABOR AND DELIVERY OF THE CHILD, POSTPARTUM RECOVERY WHILE IN A MEDICAL FACILITY, OR TRANSPORT TO OR FROM A MEDICAL FACILITY FOR CHILDBIRTH.

(b) THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES OR MEDICAL FACILITY AUTHORIZING THE USE OF RESTRAINTS ON A PREGNANT JUVENILE DURING LABOR OR DELIVERY OF THE CHILD SHALL MAKE A WRITTEN RECORD OF THE USE OF RESTRAINTS, WHICH RECORD SHALL INCLUDE, AT A MINIMUM, THE TYPE OF RESTRAINT USED, THE CIRCUMSTANCES THAT NECESSITATED THE USE OF THE RESTRAINT, AND THE LENGTH OF TIME THE RESTRAINT WAS USED. THE DEPARTMENT OF HUMAN SERVICES STAFF SHALL RETAIN THE RECORD FOR A MINIMUM OF FIVE YEARS AND SHALL MAKE THE RECORD AVAILABLE FOR PUBLIC INSPECTION WITH INDIVIDUALLY IDENTIFYING INFORMATION REDACTED FROM THE RECORD UNLESS THE JUVENILE WHO IS THE SUBJECT OF THE RECORD GIVES PRIOR WRITTEN CONSENT FOR THE PUBLIC RELEASE OF THE RECORD. THE WRITTEN RECORD OF THE USE OF RESTRAINT SHALL NOT CONSTITUTE A MEDICAL RECORD UNDER STATE OR FEDERAL LAW.

(3) UPON RETURN TO A DEPARTMENT OF HUMAN SERVICES FACILITY AFTER CHILDBIRTH, THE JUVENILE SHALL BE ENTITLED TO HAVE A MEMBER OF THE DEPARTMENT OF HUMAN SERVICES' MEDICAL STAFF PRESENT DURING ANY STRIP

SEARCH.

(4) WHEN A JUVENILE'S PREGNANCY IS DETERMINED, THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES SHALL INFORM A PREGNANT JUVENILE COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES IN WRITING IN A LANGUAGE AND IN A MANNER UNDERSTANDABLE TO THE JUVENILE OF THE PROVISIONS OF THIS SECTION CONCERNING THE USE OF RESTRAINTS AND THE PRESENCE OF MEDICAL STAFF DURING A STRIP SEARCH.

(5) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL ENSURE THAT THE STAFF OF THE DEPARTMENT OF HUMAN SERVICES RECEIVE ADEQUATE TRAINING CONCERNING THE PROVISIONS OF THIS SECTION.

SECTION 4. Part 1 of article 1 of title 26, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

26-1-137. Persons committed to or placed in a department of human services facility - prohibition against the use of restraints on pregnant women. (1) AS USED IN THIS SECTION, "FACILITY STAFF" MEANS THE STAFF OF A STATE DEPARTMENT FACILITY OR FACILITY SUPERVISED BY THE EXECUTIVE DIRECTOR.

(2) FACILITY STAFF, IN RESTRAINING A WOMAN WHO IS COMMITTED TO OR PLACED PURSUANT TO THIS TITLE OR TITLE 27, C.R.S., IN A STATE DEPARTMENT FACILITY OR A FACILITY SUPERVISED BY THE EXECUTIVE DIRECTOR, SHALL USE THE LEAST RESTRICTIVE RESTRAINT NECESSARY TO ENSURE SAFETY IF THE FACILITY STAFF HAVE ACTUAL KNOWLEDGE OR A REASONABLE BELIEF THAT THE WOMAN IS PREGNANT. THE REQUIREMENT THAT STAFF USE THE LEAST RESTRICTIVE RESTRAINTS NECESSARY TO ENSURE SAFETY SHALL CONTINUE DURING POSTPARTUM RECOVERY AND TRANSPORT TO OR FROM A FACILITY.

(3)(a)(I) FACILITY STAFF OR MEDICAL STAFF SHALL NOT USE RESTRAINTS OF ANY KIND ON A PREGNANT WOMAN DURING LABOR AND DELIVERY OF THE CHILD; EXCEPT THAT STAFF MAY USE RESTRAINTS IF:

(A) THE MEDICAL STAFF DETERMINE THAT RESTRAINTS ARE MEDICALLY NECESSARY FOR SAFE CHILDBIRTH;

(B) THE FACILITY STAFF OR MEDICAL STAFF DETERMINE THAT THE WOMAN PRESENTS AN IMMEDIATE AND SERIOUS RISK OF HARM TO HERSELF, TO OTHER PATIENTS, OR TO MEDICAL STAFF; OR

(C) THE FACILITY STAFF DETERMINE THAT THE WOMAN POSES A SUBSTANTIAL RISK OF ESCAPE THAT CANNOT REASONABLY BE REDUCED BY THE USE OF OTHER EXISTING MEANS.

(II) NOTWITHSTANDING ANY PROVISION OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL STAFF USE LEG SHACKLES OR WAIST RESTRAINTS ON A PREGNANT WOMAN DURING LABOR AND DELIVERY OF THE CHILD, POSTPARTUM RECOVERY WHILE IN A MEDICAL FACILITY, OR TRANSPORT TO OR FROM A MEDICAL FACILITY FOR CHILDBIRTH.

(b) THE FACILITY OR MEDICAL STAFF AUTHORIZING THE USE OF RESTRAINTS ON A PREGNANT WOMAN DURING LABOR OR DELIVERY OF THE CHILD SHALL MAKE A WRITTEN RECORD OF THE USE OF RESTRAINTS, WHICH RECORD SHALL INCLUDE, AT A MINIMUM, THE TYPE OF RESTRAINT USED, THE CIRCUMSTANCES THAT NECESSITATED THE USE OF THE RESTRAINT, AND THE LENGTH OF TIME THE RESTRAINT WAS USED. THE STATE DEPARTMENT SHALL RETAIN THE RECORD FOR A MINIMUM OF FIVE YEARS AND SHALL MAKE THE RECORD AVAILABLE FOR PUBLIC INSPECTION WITH INDIVIDUALLY IDENTIFYING INFORMATION REDACTED FROM THE RECORD UNLESS THE WOMAN WHO IS THE SUBJECT OF THE RECORD GIVES PRIOR WRITTEN CONSENT FOR THE PUBLIC RELEASE OF THE RECORD. THE WRITTEN RECORD OF THE USE OF RESTRAINT SHALL NOT CONSTITUTE A MEDICAL RECORD UNDER STATE OR FEDERAL LAW.

(4) AFTER CHILDBIRTH AND UPON RETURN TO A STATE DEPARTMENT FACILITY OR A FACILITY SUPERVISED BY THE EXECUTIVE DIRECTOR, THE WOMAN SHALL BE ENTITLED TO HAVE A MEMBER OF THE STATE DEPARTMENT'S MEDICAL STAFF PRESENT DURING ANY STRIP SEARCH.

(5) WHEN A WOMAN'S PREGNANCY IS DETERMINED, THE FACILITY STAFF SHALL INFORM A PREGNANT WOMAN COMMITTED TO OR PLACED IN A STATE DEPARTMENT FACILITY OR A FACILITY SUPERVISED BY THE EXECUTIVE DIRECTOR IN WRITING IN A LANGUAGE AND IN A MANNER UNDERSTANDABLE TO THE WOMAN OF THE PROVISIONS OF THIS SECTION CONCERNING THE USE OF RESTRAINTS AND THE PRESENCE OF MEDICAL STAFF DURING A STRIP SEARCH.

(6) THE EXECUTIVE DIRECTOR SHALL ENSURE THAT FACILITY STAFF RECEIVE ADEQUATE TRAINING CONCERNING THE PROVISIONS OF THIS SECTION.

SECTION 5. Part 4 of article 15 of title 31, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

31-15-403. Prohibition against the use of restraints on pregnant women in custody. A MUNICIPALITY THAT CHOOSES TO ESTABLISH AND OPERATE A JAIL, AS AUTHORIZED IN SECTION 31-15-401 (1) (j), SHALL COMPLY WITH THE PROVISIONS OF SECTION 17-26-104.7, C.R.S., CONCERNING THE USE OF RESTRAINTS ON PREGNANT WOMEN IN CUSTODY.

SECTION 6. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 7. Act subject to petition - specified effective date. This act shall take effect January 1, 2011; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on January 1, 2011, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: May 27, 2010