

TEXAS COMMISSION ON JAIL STANDARDS



Report on the Restraint of Pregnant Inmates

April 2023

Background

According to the American College of Obstetricians and Gynecologists, the shackling or restraint of pregnant inmates can be harmful to both the mother and the child for several reasons. Restraints make it more difficult for medical personnel to assess the condition of their patient; nearly impossible to conduct diagnostic tests to determine a source of abdominal pain resulting from pregnancy; difficult or impossible to perform necessary procedures, such as a cesarean-section, or address serious complications during delivery such as preeclampsia; during labor restraints make it more difficult for a woman to move and change positions as needed, research shows that movement during labor can decrease both duration and pain; and during the second and third trimester of pregnancy, restraining one's hands behind their back increases the risk of falling and makes it nearly impossible for the falling woman to catch herself due to her handcuffs. For any pregnancy, and especially for one designated high-risk, a fall can cause serious health complications or miscarriage. (Jensen; 2021) In order to address this issue, H.B. 1651(86R) was enacted. HB 1651 amended Government Code 511, creating 511.0104 and 511.0105, which in turn required TCJS to adopt administrative code 269.50. Texas Administrative Code 269.50 prohibits the use of restraints on pregnant inmates, and inmates who have given birth 12 weeks prior, unless:

1. the use of restraints is necessary to prevent an immediate and credible risk that the prisoner will attempt to escape; or
2. the prisoner poses an immediate and serious threat to the health and safety of the prisoner, staff, or any member of the public; or
3. 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, if applicable, the unborn child of the prisoner.

H.B. 1651(86R) also requires that all instances of restraint be reported to the Commission on Jail Standards (TCJS).

Methodology

Per section 511.0105, the Texas Commission on Jail Standards created and distributed a form to each county jail to fill-out each time a pregnant inmate was restrained. Instructions on how to complete the form were distributed to each county via a technical assistance memorandum and posted on the Commission's website. On February 1st, the counties returned their forms to the commission, and the data was entered into an excel spreadsheet by agency staff. Incidents were categorized by threat to others, threat to self and unborn child, and escape threat. Examples of inmates presenting a threat to others were inmates attempting to assault jail staff, medical staff, and other inmates. An example of an inmate being a threat to themselves, their unborn child, and others, is assaulting staff members after staff tried to prevent the inmate from committing self-harm. Examples of threat to self and unborn child include self-harm and inmates placed on detoxification protocols. Examples of instances in which an inmate posed an escape threat are prior escape attempts or the inmate actively attempting escape.

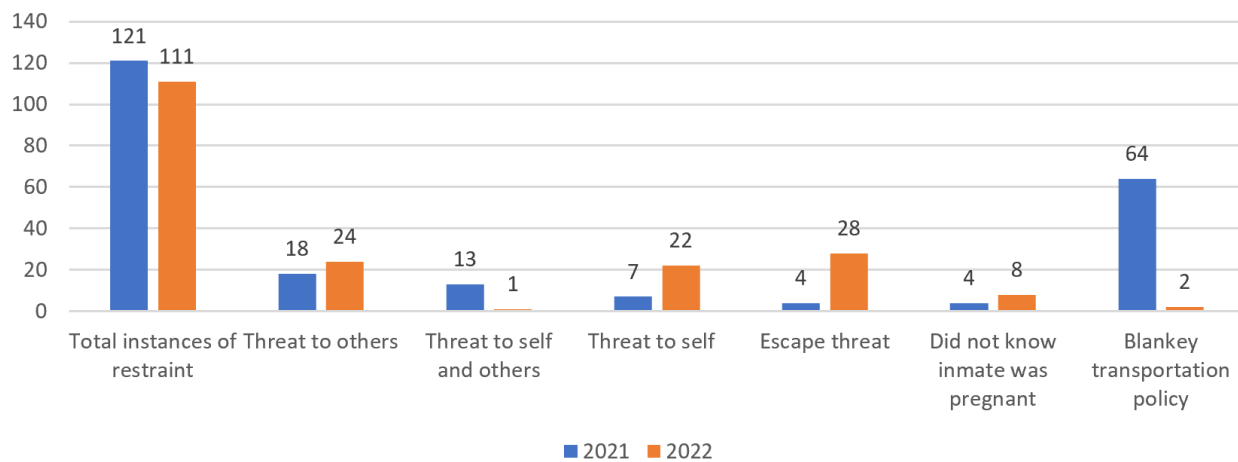
Once the reports were entered, staff reviewed the forms to ensure each form was complete and filled out correctly. If a form was incomplete, filled out incorrectly, or there was a possible violation,

TCJS staff contacted the county to request clarification and further documentation such as incident reports, criminal history, verification of pregnancy, and or the county's policy regarding pregnant inmates. The data was then evaluated and analyzed for trends and violations.

Analysis

Throughout 2022, there were 4,758 pregnant inmates held in Texas's county jails and 111 instances reviewed in which restraints were utilized. These incidents occurred amongst 30 counties and 62 different inmates; thus, only 1.3% of pregnant inmates were restrained. Most incidents of restraint in 2022 occurred while the inmate was pregnant, and only 4 cases occurred twelve weeks after the inmate gave birth.

Pregnant Inmate Restraint Comparison 2021 and 2022



Restraints were used within the jail in 53 cases, followed by "during transportation" 27 times, at the hospital in 30 instances, and once in Court. The most common form of restraints used were "handcuffs only" in 75 incidents, the restraint chair in 19 instances, handcuffs and leg irons in 8 instances, "leg irons only" in 3 instances, handcuffs, leg irons, and belly chain in 3 instances, handcuffs and belly chains in 2 instances, and the wrap in 1 instance.

Reason for Restraint

Restraints were applied in 24 instances because the inmate was a threat to others; in 1 instance because they were a threat to themselves, their unborn child, and others; in 22 instances because the inmate was strictly a threat to herself or her unborn child; in 28 instances because the inmate was an escape threat; 8 instances because jail staff did not know the inmate was pregnant or had given birth twelve weeks prior; 13 instances because of hospital policy; 6 instances because the officer didn't know the restraint policy; 2 instances because of the transport policy; 3 instances because the inmate was refusing orders; 2 instances because the inmate was refusing orders, was an escape threat, and was a threat to themselves, their unborn child, and others; 1 instance of an unconfirmed pregnancy, and one unknown reason.

Potential Violations

Transportation Policies

In 2022, there was 1 county with a blanket transportation policy, versus 3 counties in 2021 with blanket transportation policies that posed potential violations. The county with the blanket transportation policy hired a new Jail Administrator after their two potential violations, who changed their policy, and had no further potential violations. In 2021, 64 cases of restraint were due to blanket transportation policies, and 57 were due to other reasons. In 2022, 2 cases of restraint were due to blanket transportation policies, and 17 cases were due to other reasons. Thus, the significant decrease in the restraint of pregnant inmates is attributed to counties modifying their transportation policies.

Other Potential Violations

In 2022, other than transportation policies, there were 29 other potential violations. In 13 instances, it was the hospital's policy that all inmates be restrained upon entry; the county would restrain the pregnant inmates once they arrived at the hospital and then remove restraints once they exited the hospital. The county advised that the hospital has since changed its policy to allow pregnant inmates to be unrestrained.

In 2 instances, the inmate was refusing orders. For example, one inmate exited her cell after being told not to and was restrained. Another inmate was told to walk in the hall with her hands behind her back and was restrained due to not following orders.

Eight instances, the officer didn't know the inmate was pregnant. Common reasons given as to why the jailer did not know the inmate was pregnant were:

- The inmate did not disclose that they were pregnant.
- The inmate did not know if they were pregnant.
- The jail did not have a consistent policy or procedure for distinguishing pregnant inmates.

In 6 instances, the officer didn't know pregnant inmates could not be restrained per H.B. 1651(86R)

In 3 instances, the county had provisions in which the sheriff's office handled inmate transports, and sheriff's deputies restrained pregnant inmates.

- The inmate did not disclose they are pregnant.
- The inmate did not know if they were pregnant.
- The jail did not have a consistent policy or procedure for distinguishing pregnant inmates.

Conclusion

In order to remedy the potential violations and barriers to accurate reporting, TCJS has taken several different corrective actions, such as:

1. Encouraging counties to keep all records, reports, and documentation regarding the restraint of pregnant inmates.
2. Reviewing counties who reported potential violations regarding pregnant inmate restraint procedures and policies during on-site inspections.
3. Providing training on H.B. 1651(86R) at conferences.
4. Following up with all counties who reported potential violations after six months.

References

HB 1651, 86(R) Texas Legislature. (2019) (enacted).

<https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=86R&Bill=HB1651>

Jensen, R. (2021). Pregnancy During Incarceration: A "Serious" Medical Need. *Brigham Young University Law Review*, 2021(2), 542-543. Retrieved from:

<http://web.b.ebscohost.com.proxyau.wrlc.org/ehost/detail/detail?vid=5&sid=78884ec5-9319-42b4-8feb-272a4e889f30%40pdc-v-sessmgr01&bdata=JnNpdGU9ZWwhvc3QtbGl2ZSZzY29wZT1zaXRl#db=aph&AN=149326344>