

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09

Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on H+B 3653 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Wendy Davis
Wendy Davis

John Carona
John Carona

Kel Seliger
Kel Seliger

John Whitmire
John Whitmire

On the part of the Senate
Judith Zaffirini

Marese Marquez
Rep. Marquez

Kel Guillera
Rep. Guillera

Susan King
Rep. King, Susan

Rep. Olivo
Rep. Olivo

On the part of the House
Rep. Strama

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3653

A BILL TO BE ENTITLED

AN ACT

relating to the use of restraints to control the movement of pregnant women and female children confined in certain correctional facilities in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 501, Government Code, is amended by adding Section 501.066 to read as follows:

Sec. 501.066. RESTRAINT OF PREGNANT INMATE OR DEFENDANT.

(a) The department may not use restraints to control the movement of a pregnant woman in the custody of the department at any time during which the woman is in labor or delivery or recovering from delivery, unless the director or director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the woman or her infant, department or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the woman will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

SECTION 2. Subchapter E, Chapter 61, Human Resources Code,

1 is amended by adding Section 61.07611 to read as follows:

2 Sec. 61.07611. RESTRAINT OF PREGNANT JUVENILE. (a) The
3 commission may not use restraints to control the movement of a
4 pregnant child who is committed to the commission at any time during
5 which the child is in labor or delivery or recovering from delivery,
6 unless the executive director or executive director's designee
7 determines that the use of restraints is necessary to:

8 (1) ensure the safety and security of the child or her
9 infant, commission or medical personnel, or any member of the
10 public; or

11 (2) prevent a substantial risk that the child will
12 attempt escape.

13 (b) If a determination to use restraints is made under
14 Subsection (a), the type of restraint used and the manner in which
15 the restraint is used must be the least restrictive available under
16 the circumstances to ensure safety and security or to prevent
17 escape.

18 SECTION 3. Subchapter F, Chapter 361, Local Government
19 Code, is amended by adding Section 361.082 to read as follows:

20 Sec. 361.082. RESTRAINT OF PREGNANT INMATE OR DEFENDANT.

21 (a) A municipal or county jail may not use restraints to control
22 the movement of a pregnant woman in the custody of the jail at any
23 time during which the woman is in labor or delivery or recovering
24 from delivery, unless the sheriff or another person with
25 supervisory authority over the jail determines that the use of
26 restraints is necessary to:

27 (1) ensure the safety and security of the woman or her

1 infant, jail or medical personnel, or any member of the public; or
2 (2) prevent a substantial risk that the woman will
3 attempt escape.

4 (b) If a determination to use restraints is made under
5 Subsection (a), the type of restraint used and the manner in which
6 the restraint is used must be the least restrictive available under
7 the circumstances to ensure safety and security or to prevent
8 escape.

9 SECTION 4. This Act takes effect September 1, 2009.

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

SECTION 1. Subchapter B, Chapter 501, Government Code, is amended by adding Section 501.066 to read as follows:

Sec. 501.066. RESTRAINT OF PREGNANT INMATE OR DEFENDANT. (a) The department may not use restraints to control the movement of a pregnant woman in the custody of the department at any time during which the woman is in labor or delivery or recovering from delivery, unless the director or director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the woman or her infant, department or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the woman will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

Same as House version.

SECTION 1. Same as House version.

SECTION 2. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.07611 to read as follows:

Sec. 61.07611. RESTRAINT OF PREGNANT JUVENILE. (a) The commission may not use restraints to control the movement of a pregnant child who is committed to the commission at any time during which

Same as House version.

SECTION 2. Same as House version.

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

the child is in labor or delivery or recovering from delivery, unless the executive director or executive director's designee determines that the use of restraints is necessary to:

(1) ensure the safety and security of the child or her infant, commission or medical personnel, or any member of the public; or

(2) prevent a substantial risk that the child will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

SECTION 3. Subchapter F, Chapter 361, Local Government Code, is amended by adding Section 361.082 to read as follows:

Sec. 361.082. RESTRAINT OF PREGNANT INMATE OR DEFENDANT. (a) A municipal or county jail may not use restraints to control the movement of a pregnant woman in the custody of the jail at any time during which the woman is in labor or delivery or recovering from delivery, unless the sheriff or another person with supervisory authority over the jail determines that the use of restraints is necessary to:

(1) ensure the safety and security of the woman or her infant, jail or medical personnel, or any member of the

Same as House version.

SECTION 3. Same as House version.

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

public; or

(2) prevent a substantial risk that the woman will attempt escape.

(b) If a determination to use restraints is made under Subsection (a), the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.

No equivalent provision.

SECTION __. (a) Chapter 592, Health and Safety Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.101. DEFINITION. In this subchapter, "executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 592.102. USE OF RESTRAINTS. (a) The executive commissioner shall adopt rules to ensure that:

(1) a restraint is not administered to a resident of a state school unless the restraint is:

(A) necessary to prevent imminent physical injury to the resident or another; and

(B) the least restrictive restraint effective to prevent imminent physical injury;

(2) the administration of a restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates;

Same as House version.

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

(3) a restraint is not administered to a resident of a state school as punishment; and

(4) a restraint is not administered as part of a behavior plan to change behavior but only to provide immediate protection from imminent harm.

(b) The executive commissioner shall adopt rules to prohibit the use of prone and supine holds on a resident of a state school except as transitional holds.

Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) A person may not order or administer a mechanical or physical restraint for a resident of a state school on a pro re nata basis.

(b) A person may not order or administer an injection of a psychoactive medication to a resident of a state school on a pro re nata basis.

(c) An injection of a psychoactive medication may be administered only under a court order or an order issued by a physician pursuant to a psychiatric emergency.

Sec. 592.104. STRAITJACKETS PROHIBITED. A person may not use a straitjacket to restrain a resident of a state school.

Sec. 592.105. DUTY TO REPORT. A state school shall report to the executive commissioner each incident in which a restraint is administered to a resident of a state school. The report must contain information and be in the form required by rules of the executive commissioner.

Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a conflict between this subchapter and

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Chapter 322, this subchapter controls.

(b) Subchapter B, Chapter 161, Human Resources Code, is amended by adding Section 161.0315 to read as follows:

Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS. (a) The commissioner shall submit annually to the Senate Committee on Health and Human Services a report that summarizes the use of restraints by each state school.

(b) The report must contain a self-evaluation performed by each state school related to the use of restraints and must include an analysis of the data that identifies any trends or patterns in the use of restraints.

(c) Subchapter C, Chapter 161, Human Resources Code, is amended by adding Section 161.058 to read as follows:

Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION. (a) The department shall implement a training and certification program for staff members of a state school who may administer restraints in the performance of official duties.

(b) The department shall ensure that training related to reducing the use of restraints:

(1) is competency based; and

(2) provides for routine quality assurance reviews.

(c) The training and certification program implemented under this section must include instruction concerning:

(1) the needs of residents of state schools;

(2) typical behaviors of residents of state schools;

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

- (3) relationship building between staff members and residents;
 - (4) alternatives to the use of restraints;
 - (5) methods for managing a situation to eliminate the need for restraints;
 - (6) avoiding power struggles between a staff member and a resident;
 - (7) the potential for causing negative physiological and psychological consequences by the use of restraints;
 - (8) monitoring physical signs of distress and obtaining medical assistance;
 - (9) legal issues involved in the use of restraints;
 - (10) position asphyxia;
 - (11) escape and evasion techniques;
 - (12) proper time limits on the duration of application of restraints;
 - (13) procedures to address problematic restraints;
 - (14) documentation of each use of restraints;
 - (15) administration of restraints on children;
 - (16) debriefings of staff members who administer restraints; and
 - (17) investigation of injuries and complaints relating to the use of restraints.
- (d) Subchapter D, Chapter 161, Human Resources Code, is amended by adding Sections 161.090, 161.091, 161.092, and 161.093 to read as follows:
- Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT ADMISSION. (a) The department shall develop a format for collecting information at the time a

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

person is admitted to a state school. The department shall collect the information from the person or the person's legally authorized representative.

(b) The format must provide for the collection of information relating to:

(1) the person's treatment history; and

(2) any advance directives issued for the person that provide information regarding restraint history and restraint preferences of the person.

Sec. 161.091. RESTRAINT REDUCTION PLAN. (a) The department shall establish a restraint reduction plan that ensures that the department's policies and procedures incorporate a vision, values, and a philosophy that the use of restraints should be reduced.

(b) The department shall, with stakeholder input, develop a performance improvement plan and make further recommendations for implementation of the restraint reduction plan.

(c) The department shall develop debriefing procedures for staff and residents of a state school to be performed after each use of a restraint. The department shall use the information obtained in a debriefing to determine which restraint practices are workable and which practices should be avoided. In making a determination, the department shall consider the potential traumatic effect a restraint has on a staff member, a resident, or a witness and determine what course of action may have mitigated any traumatic effect.

(d) The department shall collect data from each state

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

school that relates to the use of restraints by facility, by shift, and by staff member to identify trends and patterns in the use of restraints by a state school and to set goals to implement the restraint reduction plan at a state school.

(e) A state school:

(1) shall incorporate the restraint reduction plan and emphasize the importance of the plan in the hiring, orientation, training, continuing education, and performance evaluation of staff members of the state school;

(2) shall train and educate staff members about:

(A) the use of nonphysical intervention options to avoid the use of restraints; and

(B) the rights of residents regarding the use of restraints; and

(3) may seek and implement innovative clinical approaches to employ at the admission of a person and during the treatment of a person that further the philosophy of the restraint reduction plan.

Sec. 161.092. POSITIVE BEHAVIOR SUPPORT PLAN. The department shall develop a positive behavior support plan for residents of a state school. The plan must describe a protocol for reducing the frequency and duration of behaviors that require restraints for immediate protection from imminent harm by substituting positive behaviors.

Sec. 161.093. DISEASE MANAGEMENT PROGRAM.

(a) The department shall develop a disease management

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

program for residents of a state school who have a dual diagnosis of mental retardation and mental illness.

(b) The program established under this section must employ disease management practices to ensure that persons with a dual diagnosis of mental retardation and mental illness receive treatment services for the mental illness that are appropriate to a diagnosis of that illness and are consistent with clinical approaches to the treatment of that illness by other agencies and private providers of treatment services.

(e) Not later than January 1, 2010, the executive commissioner of the Health and Human Services Commission shall:

(1) adopt rules required under Sections 592.102 and 592.105, Health and Safety Code, as added by this Section;

(2) by rule define the term "restraint" in a manner consistent with the definition of that term provided by 42 U.S.C. Section 290ii(d)(1); and

(3) adopt rules necessary to regulate the use of protective and supportive devices, including those used in medical and dental procedures.

(f) Not later than January 1, 2010, the commissioner of the Department of Aging and Disability Services shall:

(1) implement a restraint training and certification program required by Section 161.058, Human Resources Code, as added by this Section;

(2) develop the format for collecting information at the admission of a person to a state school required by

House Bill 3653
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

Section 161.090, Human Resources Code, as added by this Section;
(3) develop the restraint reduction plan required under Section 161.091, Human Resources Code, as added by this Section;
(4) develop the positive behavior support plan required by Section 161.092, Human Resources Code, as added by this Section; and
(5) develop the disease management program required by Section 161.093, Human Resources Code, as added by this Section.
(g) Not later than September 1, 2010, the commissioner of the Department of Aging and Disability Services shall submit to the Senate Committee on Health and Human Services the first annual report on the use of restraints required by Section 161.0315, Human Resources Code, as added by this Section.

SECTION 4. This Act takes effect September 1, 2009.

Same as House version.

SECTION 4. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3653 by Marquez (Relating to the use of restraints to control the movement of pregnant women and female children confined in certain correctional facilities in this state.),
Conference Committee Report

No fiscal implication to the State is anticipated.

Local Government Impact

No fiscal implication to units of local government is anticipated.

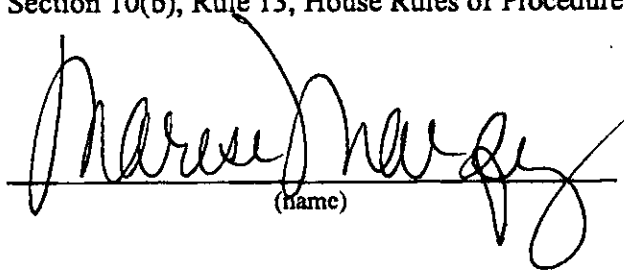
Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, DB

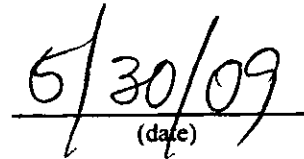
Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 3653 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.



(name)



(date)