

TEXAS COMMISSION ON JAIL STANDARDS

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April 9, 2021

The Honorable Mary González
Representative, Texas House of Representatives
Texas State Capitol, Rm E1.504
Austin, Texas 78701

Dear Representative González,

Please find attached the report on the Restraint of Pregnant Inmates in County Jails, relating to 86(R) HB 1651 regarding the care of pregnant inmates within Texas county jails.

Respectfully,

A handwritten signature in blue ink that reads "Brandon S. Wood".

Brandon S. Wood
Executive Director

Judge Bill Stoudt, Longview, Chair
Dr. Esmail Porss, M.D., Houston, Vice-Chair
Melinda E. Taylor, Austin

Sheriff Bryan Weatherford, Woodville
Sheriff Kelly Rowe, Lubbock
Patricia M. Anthony, Garland

Commissioner Ben Perry, Waco
Duane Lock, Southlake
Monica McBride, Alpine

"The Commission on Jail Standards welcomes all suggestions and will promptly respond to all complaints directed against the agency or any facilities under its purview".

To empower local government to provide safe, secure and suitable local jail facilities through proper rules and procedures while promoting innovative programs and ideas

Texas Commission on Jail Standards



**Report on the Restraint of Pregnant
Inmates in County Jails
April 2021**

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Introduction

In 2019, the 86th Texas Legislature passed HB 1651 relating to the care of pregnant women in county jails which was subsequently signed into law. The act amended Chapter 511 of the Government Code to include sections 511.0104 and 511.0105.

The change to section 511.0104 required that the Texas Commission on Jail Standards, or TCJS, to

"adopt reasonable rules and procedures regarding the use of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks."

The amendment to the statute required that the rules and procedures must include the prohibition of restraints through the duration of the pregnancy and for not less than 12 weeks after the prisoner give birth unless;

- a) the inmate poses a credible escape threat;
- b) the inmate is a threat to herself, her unborn child, staff, or the public;
- c) the medical professional responsible for the healthcare and safety of the inmate determines restraints are necessary and or appropriate.

In addition, the act required that the rules and procedures must require that the least restrictive means of restraints be used, as well as require jail staff to, at the request of a health care professional responsible for the health and safety of the prisoner, refrain from using restraints on the prisoner or remove the restraints.

The change to section 511.0105 required that:

"each county jail shall submit to the commission a report regarding the jail's use, during the preceding calendar year, of any type of restraints to control or restrict the movement of a prisoner, including a limb or other part of the prisoner, who is confirmed to be pregnant or who gave birth in the preceding 12 weeks."

The reports submitted to the commission must document each instance of restraint and the specific type of restraints used; what the inmate was doing immediately before being restrained; if the restraints were applied before or after delivery; whether restraints were applied for transportation; why the restraints were used; and the name and title of the person or persons making the determination.

The Texas Commission on Jail amended administrative rule §273.6, as mandated by HB1651, which became effective November 28, 2019.

Background

According to the American College of Obstetricians and Gynecologists, the shackling or restraint of pregnant inmates 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; it 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 and 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) As a result, H.B. 1651 was enacted to address these issues by requiring that the Texas Commission on Jail Standards submit this report regarding the restraint of a pregnant prisoner.

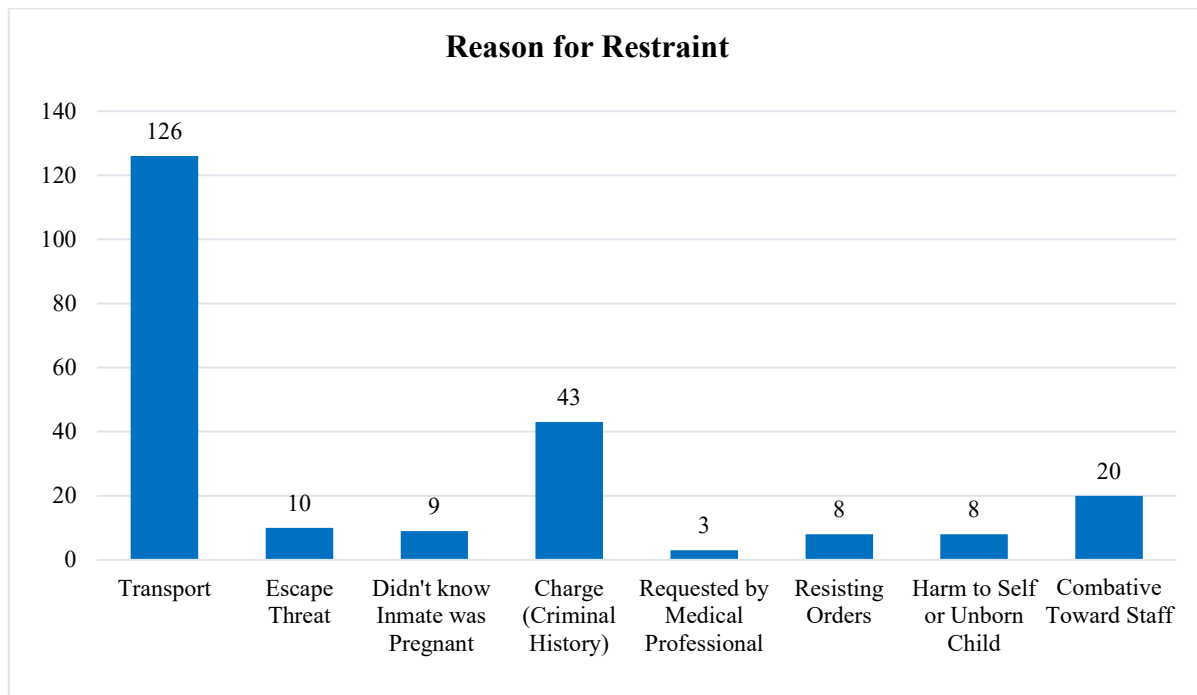
Methodology

Per section 511.0105, the Texas Commission on Jail Standards created and distributed a form, included as Appendix A, to each county jail to utilize for reporting each incident a pregnant inmate was restrained. Details for how to utilize, maintain and submit these forms annually was included within a technical assistance memo, distributed along with the form. On February 1st, the counties returned their forms to the commission, and the data was entered into an excel form by agency staff. Once the reports were entered, staff reviewed the forms to ensure each form was filled out correctly and completely. If a form was filled out incorrectly, incompletely, or there was a possible violation, TCJS staff contacted the county to request clarification and further documentation such as incident reports, verification of pregnancy, or the county's policy regarding pregnant inmates. The data was then evaluated and analyzed for trends and violations.

Analysis

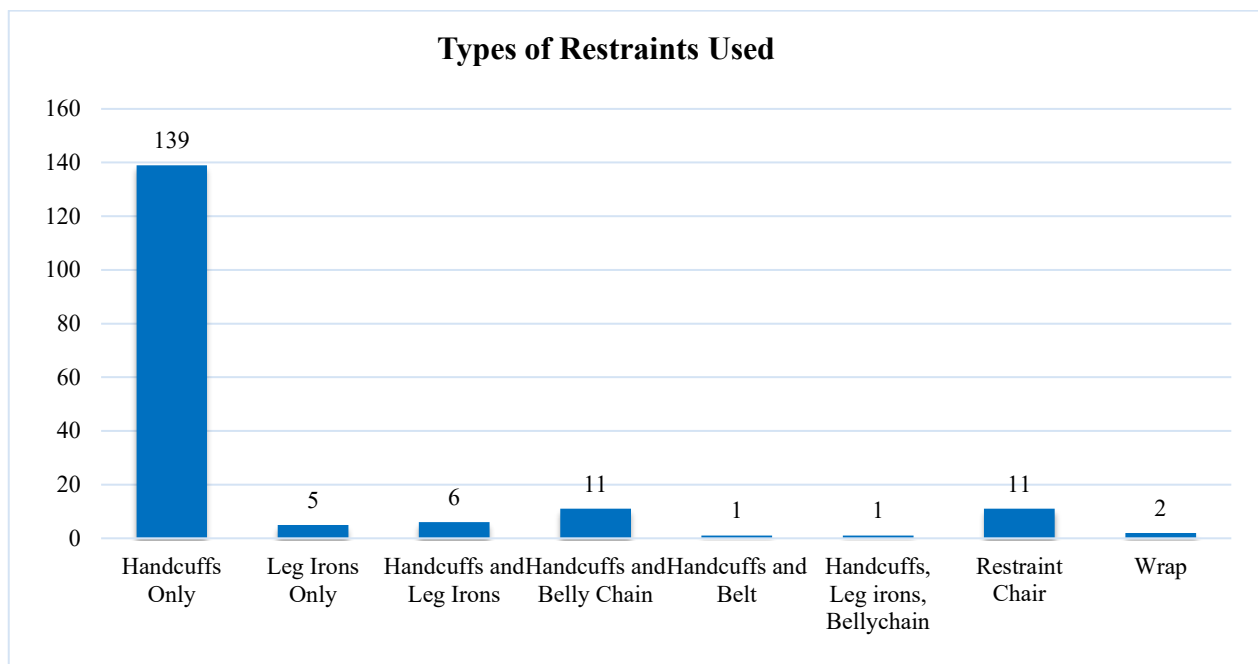
All Incidents

In 2020, there were one hundred seventy-six incidents in which a pregnant inmate was restrained in thirty-six different counties. One hundred twenty-six inmates were restrained during transportation, eighteen at the hospital, thirty-one within the jail, and one within the courthouse. The most common form of restraints used were handcuffs, in one hundred fifty-eight incidents. Restraints were used because the inmate was a threat to herself and/or her unborn child in eight separate incidences; a threat to staff in twenty; resisting orders in seven; an escape threat in ten; at the request of a medical professional in three instances; and as the result of a county's transportation policy in fifty-one incidents.



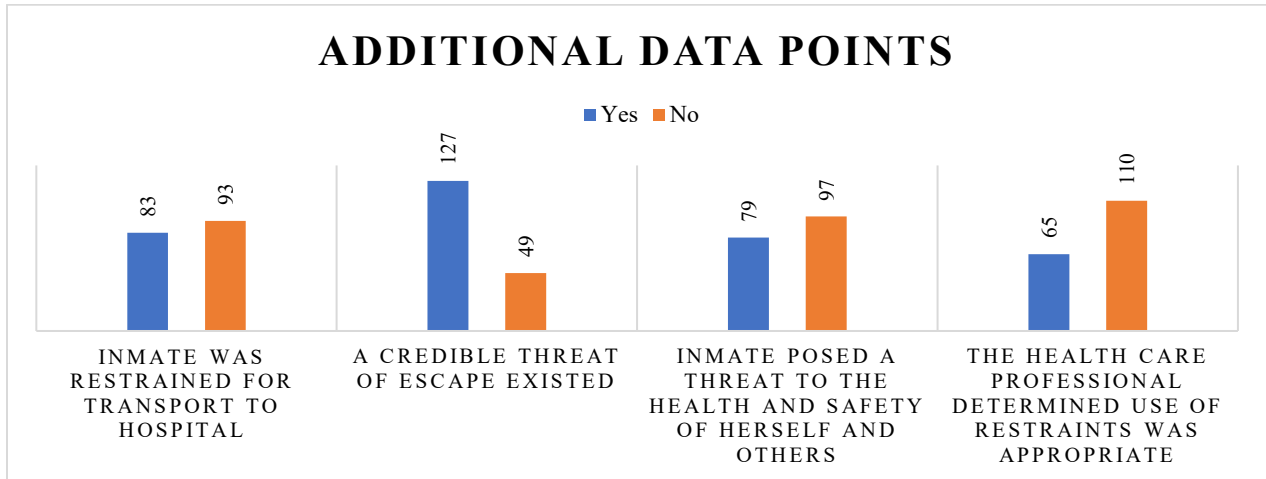
Types of Restraints Used

In 2020, the most common form of restraint used in each incident were handcuffs. One hundred thirty-nine incidents used only handcuffs; six used both handcuffs and leg irons; eleven used both handcuffs and belly chains; one used handcuffs and a restraint belt; one incident used handcuffs, leg irons and a belly chain; five used leg irons only; eleven used a restraint chair; and two used a device known as a wrap.



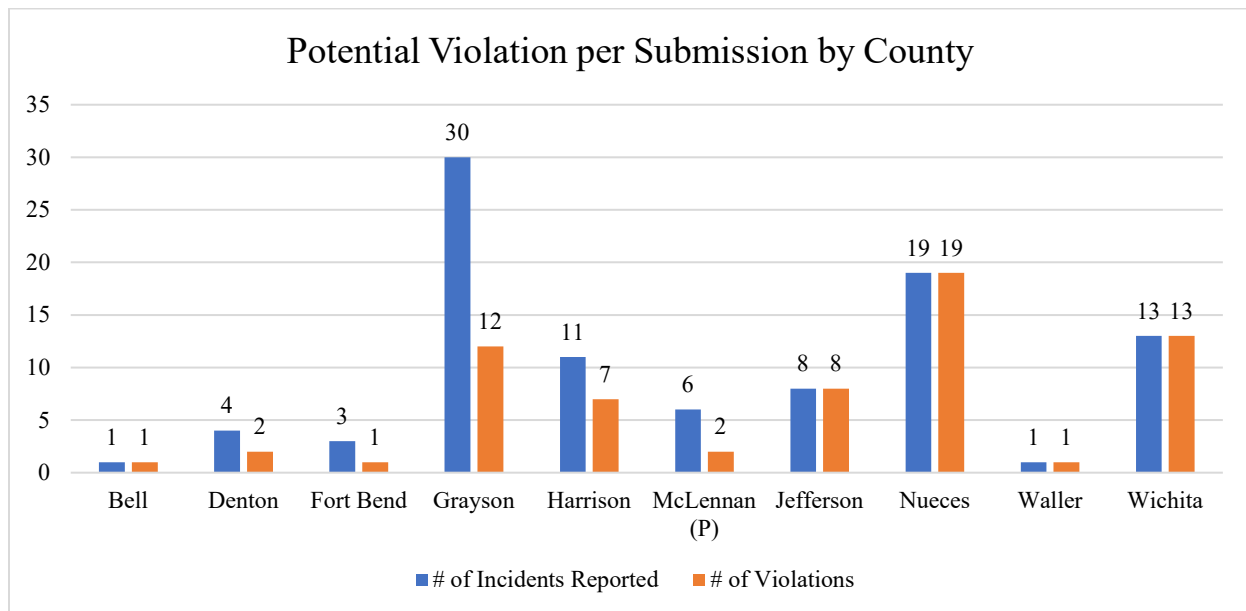
Additional Data Points

Of the one hundred seventy-six reported incidents, one hundred sixty-three of them indicated the inmate was restrained before delivery, while thirteen took place after the inmate had already given birth. The agency collected additional data for each incident using the Pregnant Inmate Restraint form, in appendix A. The separate data points are indicted in the chart below.



Potential Violations

It was determined that there was a total of sixty-six potential violations, approximately thirty-eight percent of the total incidents. A majority of these sixty-six potential violations occurred in the same five counties. The leading cause of potential violations, identified in sixty incidents, was blanket transportation policies requiring all inmates' to be restrained during transport, pregnant or not. The remaining potential violations were the result of inmates being restrained by jail staff who were unaware the inmate was pregnant at the time restraints were applied, or the jail did not know the inmate was pregnant. For example, in instances where the jailer did not know the inmate was pregnant, the inmate was not following directions and was resistant towards staff, so they were handcuffed and moved to a cell or other area where the situation could be deescalated; only afterwards was the jailer informed by another staff member that the inmate was pregnant. In other instances where the jail did not know the inmate was pregnant it was because the inmate did not disclose that she was pregnant or declined a pregnancy test.



Points Worth Noting

Upon review of the data collected, TCJS encountered several points and concerns worth noting. The most significant problem encountered was that six counties had blanket restraint policies for transports. Of the six counties with blanket restraint policies, two had provisions in which the sheriff's office handled inmate transports, and the sheriff's deputies would restrain the inmates. The remaining counties with blanket policies considered all inmates, including pregnant females, to be escape threats, so their policy was to restrain all inmates during transport. Other issues TCJS identified were that many pregnant inmates were restrained prior to the jailer being aware of the pregnancy, or because the inmate did not disclose she was pregnant. Another issue identified was that several hospitals required all inmates, including pregnant inmates, to be restrained to enter the facility. During the review of these forms, it also brought to the attention of TCJS staff that a potential conflict exists between Government Code 511.0104 and 361.082. Government Code 361.082 only restricts the use of restraints on an inmate which is in labor, delivery or recovering from a delivery. Government Code 511.0104 goes further to restrict the use of restraints on an inmate which has been "confirmed" to be pregnant. Those counties which used Sheriff's Deputies for inmate transports defaulted to Government Code 361.

In terms of the administrative process of collecting and reviewing forms, TCJS encountered several obstacles. When TCJS staff contacted the counties to provide clarification and request further documentation such as incident reports, verification of pregnancy, or their policy regarding pregnant inmates because a form was filled out incorrectly, incompletely, or there was a possible violation, many counties did not have supporting documentation readily available. Supporting documentation was not always available or the county had some, but not all documentation, because they were unaware it needed to be retained; or the county did not know where to locate the documentation because the incident occurred months prior and the staff involved in the incident was no longer at the facility.

APPENDIX A

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>