TEXAS COMMISSION ON JAIL STANDARDS

Report on the Restraint of Pregnant Inmates May 2022

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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. H.B. 1651(86R) 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

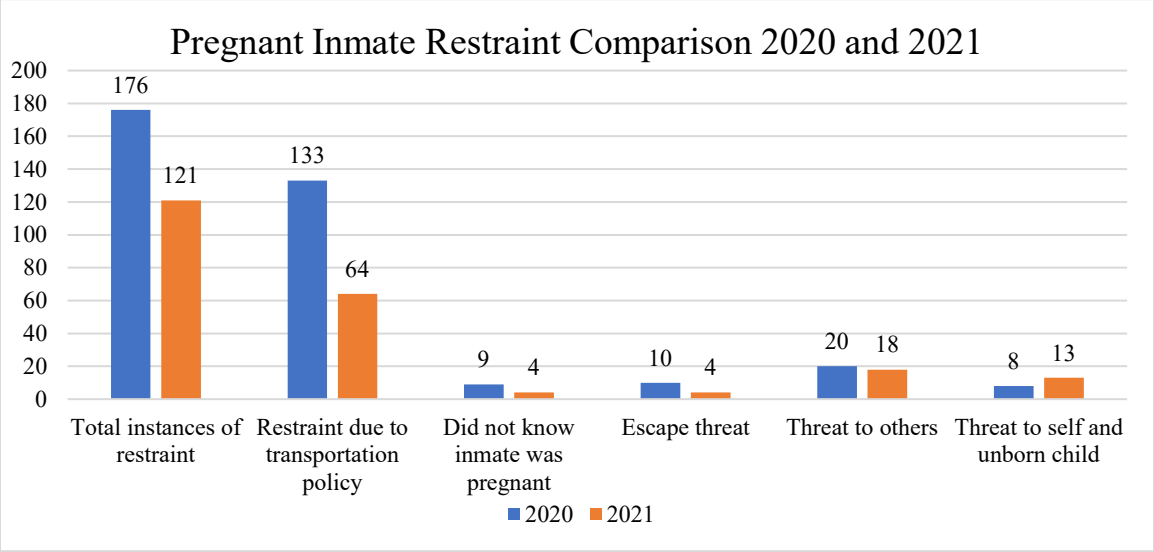
Per section 511.0105, the Texas Commission on Jail Standards created and distributed a form to each county jail to fill-out each time a pregnant inmate was restrained. The form can be found in Appendix A. Instructions on how to complete the form were distributed to each county via a technical assistance 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

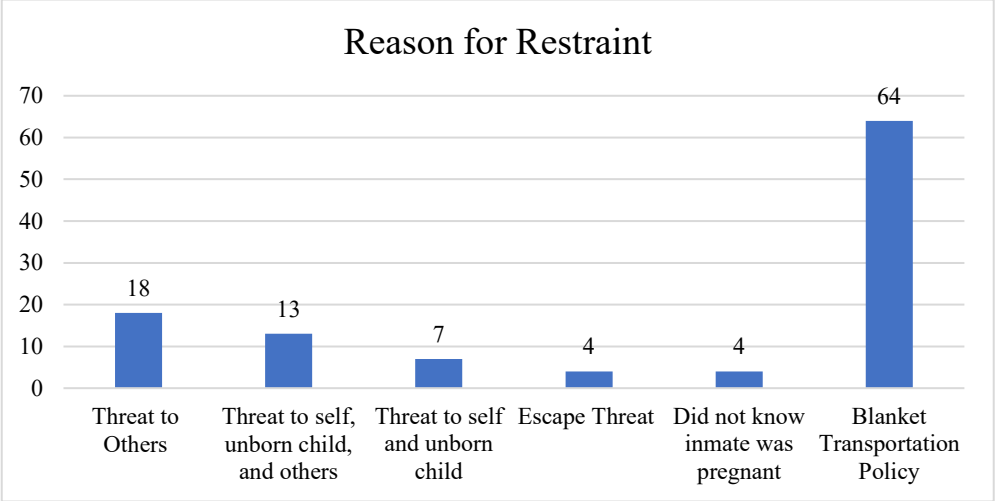
Throughout 2021, there were 4,352 pregnant inmates held in Texas's county jails and one hundred twenty-one instances reviewed in which restraints were utilized. These incidents occurred amongst twenty-seven counties and sixty-one different inmates; thus, only 1.4% of pregnant inmates were restrained. This is a significant decrease from the one hundred seventy-six instances of restraints in 2020. Similarly to 2020, most incidents of restraint in 2021 occurred while the inmate was pregnant, and only nine cases of restraint occurred twelve weeks after the inmate gave birth.



Restraints were predominantly used during transportation (seventy-six instances), followed by within the jail in thirty-two cases, and at the hospital in thirteen instances. The most common form of restraints used were handcuffs in ninety-eight incidents, the restraint chair in seven instances, and leg irons in eight instances. While the trends regarding handcuffs and leg irons in 2021 are similar to those in 2020, the number of instances in which inmates were placed in the restraint chair decreased by four.

Reason for Restraint

Restraints were applied in eighteen instances because the inmate was a threat to others; in thirteen instances because they were a threat to themselves, their unborn child, and others; in seven incidents because the inmate was strictly a threat to herself or her unborn child; in four instances because the inmate was an escape threat; and four instances because jail staff did not know the inmate was pregnant or had given birth twelve weeks prior. The most common reason restraints were applied were counties' blanket transportation policies that all inmates must be restrained during transport, regardless of if they are pregnant; this occurred in sixty-four incidents within three separate counties.

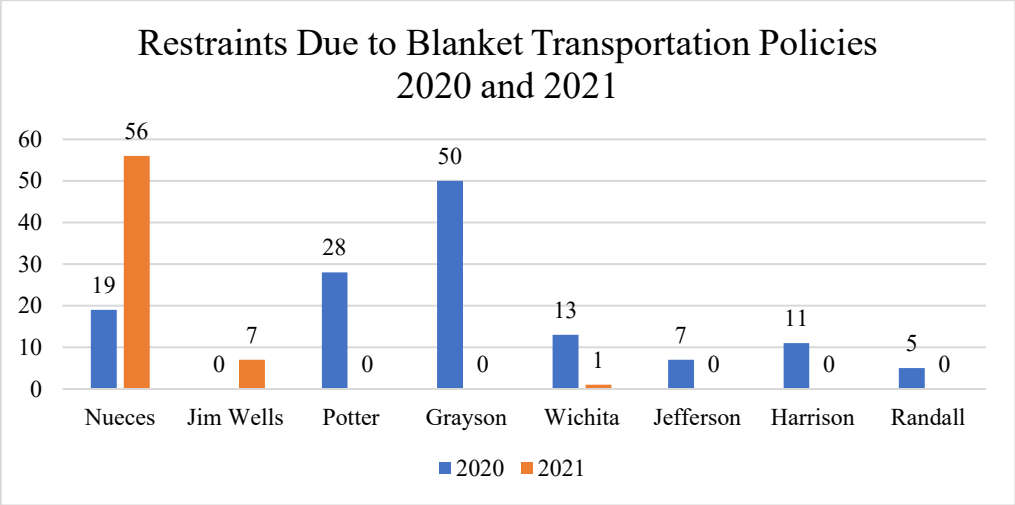


Potential Violations

Transportation Policies

In 2020, seven counties had blanket transportation policies that posed potential violations. In 2021 only three counties had blanket transportation policies, two of which were counties that failed to change their policy. In 2020, one-hundred thirty-three instances of restraint, or 75%, were due to blanket transportation policies, and only approximately forty-three were due to other reasons. In 2021, sixty-four cases of restraint or 52%, were due to blanket transportation policies, and only fifty-seven instances were due to other reasons. Thus, the significant decrease in the restraint of pregnant inmates is attributed to counties modifying their transportation policies.

Therefore, it is estimated that eliminating blanket transportation policies, would cause the number of pregnant inmates restrained in 2022 to fall well below one hundred. To achieve this outcome, TCJS has notified counties having blanket transportation policies, requesting they revise their transportation policy to follow H. B. 1651(86R). Failure to do so within 30 days of receipt will result in the issuance of a notice of non-compliance.



Other Potential Violations

Other than transportation policies, there were only five other potential violations. The first two potential violations originate from the same county. In both instances, the inmates *were placed in restraints to protect both the inmate, the baby, and to prevent escape due to detoxing. Suppose* the medical professional responsible for the inmate approves the use of restraints during detoxification and sufficient documentation is provided. In that case, TCJS does not consider the restraint of pregnant inmates undergoing detoxication a violation. However, the county failed to provide documentation that the medical professional responsible for the inmate authorized the use of restraints. In addition, TCJS does not see a correlation between detoxification symptoms and an inmate posing an escape threat.

The next potential violation occurred when an *escorting officer forgot the inmate was pregnant and remembered after 25 seconds.* Upon further review, it was determined that the county has a protocol and procedure for identifying pregnant inmates; thus, it is unclear how the officer forgot the inmate was pregnant. An additional potential violation occurred when an officer claimed an inmate *was in the early stages of pregnancy (6 weeks) and still possessed the physical ability to potentially escape, without the least restrictive restraint applied.* The final potential violation occurred when an officer restrained a pregnant inmate because the officer believed the inmate was *feigning complications in an attempt to be released from jail and stopped screaming in pain once she found out she would be transported to medical.* The officer also claimed that *during the inmate's assessment in medical, she was listing complications due to drug use during pregnancy, attempting to get a medical release.*

Barriers to Accurate Reporting

In 2020 and 2021, there were numerous incidents in which jailers restrained pregnant inmates because they did not 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 they are pregnant.
- The inmate did not know if they are pregnant.
- The jail did not have a consistent policy or procedure for distinguishing pregnant inmates.

Another problem TCJS encountered was that several hospitals required all inmates, including pregnant inmates, to be restrained to enter the facility. In terms of the reporting process and requirements, TCJS staff found it challenging to collect supporting documentation such as medical records, incident reports, and written policies regarding pregnant inmates due to inconsistent retention and collection policies amongst jails.

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. Notifying counties via technical assistance memorandums that the decision to restrain a pregnant inmate because they are *feigning complications* or a *threat to themselves during detoxification* should be made by the medical professional responsible for the care of the inmate.
3. Notifying counties with blanket transportation policies via technical assistance memorandums that non-compliances will be issued if they fail to change their policy within 30 days.
4. Reviewing counties who reported potential violations, pregnant inmate restraint procedures and policies during on-site inspections.
5. Providing training on H.B. 1651(86R) at conferences.

In addition, TCJS will also be incorporating pregnant inmate restraint reporting to the annual training and curriculum taught at statewide conferences; as well as following up with all counties who reported potential violations in six months.

APPENDIX A

REPORT ON THE USE OF RESTRAINTS ON PREGNANT INMATES

County Facility: _____

Inmate Last Name: _____ MI: _____ First: _____

Dates during which restraints were used on this inmate: _____

Location of event where restraints were used:

Type(s) of restraints used: _____

What was the inmate doing just prior to being restrained?

When the restraints were used, was the inmate pregnant, or had she given birth less than 12 weeks prior to the use of restraints?	
Was the inmate restrained before or after delivery?	
Was the inmate restrained while being transported to a local hospital?	

Name and title of jail supervisor who determined that the inmate must be restrained?

Was the use of restraints necessary to prevent an immediate and credible risk that the inmate would attempt to escape?	
Did the inmate pose an immediate and serious threat to the health and safety of herself, staff, or the public?	
Did the health care professional responsible for the health and safety of the inmate determine that the use of restraints was appropriate for the health and safety of the inmate and, if applicable, of the pregnant inmate's unborn child?	

What were the reasons for restraining the inmate?

Describe the process used in determining that the inmate must be restrained:

Could less-restrictive restraints have been used while still protecting the health and safety of the inmate and, if applicable, of the inmate's unborn child?	
Did the health care professional responsible for the health and safety of the inmate request jail staff to refrain from using restraints or to remove the restraints?	
If yes, did jail staff comply?	

Report completed by: _____ _____

Print Name	Signature

Report date: _____

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=JnNpdGU9ZWhvc3QtbGl2ZSZzY29wZT1zaXRl#db=aph&AN=149326344