

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Marquez, Olivo, King of Taylor, Madden,  
Ortiz, Jr., et al.

H.B. No. 3653

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

8 Sec. 501.066. RESTRAINT OF PREGNANT INMATE OR DEFENDANT.

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

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

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

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

24 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.

# ADOPTED

MAY 25 2009

*Atay Law*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Zaffirini*

1 Amend H.B. No. 3653 (senate committee printing) by adding  
2 the following appropriately numbered SECTION to the bill and  
3 renumbering subsequent SECTIONS of the bill accordingly:

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

6 SUBCHAPTER E. USE OF RESTRAINTS IN STATE SCHOOLS

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

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

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

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

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

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

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

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

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

29 Sec. 592.103. PRO RE NATA RESTRAINTS PROHIBITED. (a) A  
30 person may not order or administer a mechanical or physical

1 restraint for a resident of a state school on a pro re nata  
2 basis.

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

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

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

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

16 Sec. 592.106. CONFLICT WITH OTHER LAW. To the extent of a  
17 conflict between this subchapter and Chapter 322, this  
18 subchapter controls.

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

21 Sec. 161.0315. ANNUAL REPORT ON USE OF RESTRAINTS.

22 (a) The commissioner shall submit annually to the Senate  
23 Committee on Health and Human Services a report that summarizes  
24 the use of restraints by each state school.

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

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

31 Sec. 161.058. RESTRAINT TRAINING AND CERTIFICATION.

32 (a) The department shall implement a training and certification

1 program for staff members of a state school who may administer  
2 restraints in the performance of official duties.

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

5 (1) is competency based; and

6 (2) provides for routine quality assurance reviews.

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

9 (1) the needs of residents of state schools;

10 (2) typical behaviors of residents of state schools;

11 (3) relationship building between staff members and  
12 residents;

13 (4) alternatives to the use of restraints;

14 (5) methods for managing a situation to eliminate the  
15 need for restraints;

16 (6) avoiding power struggles between a staff member  
17 and a resident;

18 (7) the potential for causing negative physiological  
19 and psychological consequences by the use of restraints;

20 (8) monitoring physical signs of distress and  
21 obtaining medical assistance;

22 (9) legal issues involved in the use of restraints;

23 (10) position asphyxia;

24 (11) escape and evasion techniques;

25 (12) proper time limits on the duration of  
26 application of restraints;

27 (13) procedures to address problematic restraints;

28 (14) documentation of each use of restraints;

29 (15) administration of restraints on children;

30 (16) debriefings of staff members who administer  
31 restraints; and

1           (17) investigation of injuries and complaints  
2 relating to the use of restraints.

3           (d) Subchapter D, Chapter 161, Human Resources Code, is  
4 amended by adding Sections 161.090, 161.091, 161.092, and  
5 161.093 to read as follows:

6           Sec. 161.090. COLLECTION OF TREATMENT HISTORY AT  
7 ADMISSION. (a) The department shall develop a format for  
8 collecting information at the time a person is admitted to a  
9 state school. The department shall collect the information from  
10 the person or the person's legally authorized representative.

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

13                   (1) the person's treatment history; and

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

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

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

25           (c) The department shall develop debriefing procedures for  
26 staff and residents of a state school to be performed after each  
27 use of a restraint. The department shall use the information  
28 obtained in a debriefing to determine which restraint practices  
29 are workable and which practices should be avoided. In making a  
30 determination, the department shall consider the potential  
31 traumatic effect a restraint has on a staff member, a resident,

1 or a witness and determine what course of action may have  
2 mitigated any traumatic effect.

3 (d) The department shall collect data from each state  
4 school that relates to the use of restraints by facility, by  
5 shift, and by staff member to identify trends and patterns in  
6 the use of restraints by a state school and to set goals to  
7 implement the restraint reduction plan at a state school.

8 (e) A state school:

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

13 (2) shall train and educate staff members about:

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

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

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

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

28 Sec. 161.093. DISEASE MANAGEMENT PROGRAM, (a) The  
29 department shall develop a disease management program for  
30 residents of a state school who have a dual diagnosis of mental  
31 retardation and mental illness.



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

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

10           (1) adopt rules required under Sections 592.102 and  
11 592.105, Health and Safety Code, as added by this Section;

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

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

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

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

23           (2) develop the format for collecting information at  
24 the admission of a person to a state school required by Section  
25 161.090, Human Resources Code, as added by this Section;

26           (3) develop the restraint reduction plan required  
27 under Section 161.091, Human Resources Code, as added by this  
28 Section;

29           (4) develop the positive behavior support plan  
30 required by Section 161.092, Human Resources Code, as added by  
31 this Section; and

1           (5) develop the disease management program required  
2 by Section 161.093, Human Resources Code, as added by this  
3 Section.

4           (g) Not later than September 1, 2010, the commissioner of  
5 the Department of Aging and Disability Services shall submit to  
6 the Senate Committee on Health and Human Services the first  
7 annual report on the use of restraints required by Section  
8 161.0315, Human Resources Code, as added by this Section.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

**TO:** 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. ), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Government Code, the Human Resources Code, and the Local Government Code to prevent the use of certain restraints upon pregnant inmates in the custody of the Texas Department of Criminal Justice (TDCJ), pregnant juveniles committed to the Texas Youth Commission (TYC), and pregnant defendants in the custody of a municipal or county jail.

The bill would also require the Executive Commissioner of the Health and Human Services Commission (HHSC) to adopt rules limiting the use of restraints in state schools and prohibit use of prone and supine holds. The bill would prohibit issuance of an order or administration of a mechanical or physical restraint or injection of a psychoactive medication for a resident of a state school on a pro re nata basis. The bill would require that an injection of a psychoactive medication be administered only under a court order or an order issued by a physician pursuant to a psychiatric emergency. The bill would prohibit use of a straitjacket to restrain a resident of a state school. The bill would require a state school to report to the Executive Commissioner each incident in which a physical or mechanical restraint is administered.

The bill would require the DADS Commissioner to submit an annual report to the Senate Health and Human Services Committee that summarizes the use of restraints by each state school. DADS would be required to implement a training and certification program for state school staff who may administer restraints. The bill would require DADS to collect information at the time a person is admitted to a state school on the person's treatment history and any advance directives issued.

DADS would be required to establish a restraint reduction plan and a performance improvement plan. DADS would be required to develop debriefing procedures for staff and residents to be performed after each use of a restraint. DADS would be required to collect data from each state school on the use of restraints.

A state school would be required to incorporate the restraint reduction plan, train and educate staff, and implement innovative clinical approaches to further the philosophy of the restraint reduction plan. DADS would be required to develop a behavior support plan for state school residents.

DADS would be required to develop a disease management program for state school residents with a dual diagnosis of mental retardation and mental illness.

This analysis assumes the rulemaking at HHSC can be accomplished within existing resources. The Department of Aging and Disability Services indicates the bill would result in changes in policy and procedures, training and certification, annual reporting, and data collection which would not have a significant fiscal impact to the agency.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, ESi, CL, JI, LL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**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.), **As Engrossed**

**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

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 24, 2009**

**TO:** Honorable Jim McReynolds, Chair, House Committee on Corrections

**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. ),  
**Committee Report 1st House, Substituted**

**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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 13, 2009**

**TO:** Honorable Jim McReynolds, Chair, House Committee on Corrections

**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 confined in certain correctional facilities in this state.), **As Introduced**

**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

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**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.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes, or to juveniles who have been adjudicated for misdemeanor or felony conduct.

**Source Agencies:**

**LBB Staff:** JOB, LM, TMP



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

April 24, 2009

**TO:** Honorable Jim McReynolds, Chair, House Committee on Corrections

**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. ),  
**Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TMP

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**April 9, 2009**

**TO:** Honorable Jim McReynolds, Chair, House Committee on Corrections

**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 confined in certain correctional facilities in this state.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG, LM