
Government of the District of Columbia



Department of Corrections

Testimony

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Director**

D.C. Department of Corrections

Hearing on Bill 20-468

Anti-Shackling of Incarcerated Pregnant Women Act of 2013

Committee on the Judiciary and Public Safety

Tommy Wells, Chair

Council of the District of Columbia

John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004
Room 412

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GOOD MORNING CHAIRMAN WELLS AND MEMBERS OF THE COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY. I AM TOM FAUST, DIRECTOR OF THE DEPARTMENT OF CORRECTIONS. JOINING ME AT THE TABLE THIS MORNING IS THE DEPARTMENT'S DEPUTY DIRECTOR FOR OPERATIONS, CAROLYN CROSS AND MARIA AMATO, AGENCY GENERAL COUNSEL. TODAY I WILL PRESENT TESTIMONY ON BILL 20-468, THE ANTI-SHACKLING OF INCARCERATED PREGNANT WOMEN ACT OF 2013.

THE EXECUTIVE AGREES THAT SAFEGUARDING THE HEALTH AND WELFARE OF A PREGNANT WOMAN – OR ANYONE – IN THE CUSTODY OF THE DISTRICT IS A HIGH PRIORITY. INDEED, AGENCY POLICIES ARE ALREADY IN ALIGNMENT WITH PARTS OF THE PROPOSED BILL.

HOWEVER, IT IS ALSO OUR RESPONSIBILITY TO ENSURE THE SAFETY OF DISTRICT EMPLOYEES, MEDICAL STAFF, AND THE GENERAL PUBLIC, SO WE MUST CAREFULLY BALANCE

THESE OBJECTIVES. WE RECOMMEND THAT THE COUNCIL AND EXECUTIVE WORK TOGETHER TO STRIKE THE APPROPRIATE BALANCE IN THE PROPOSED LEGISLATION.

AS AN INITIAL MATTER, IT IS IMPORTANT TO RECOGNIZE THAT THERE ARE CRITICAL DISTINCTIONS BETWEEN THE POPULATIONS OF ARRESTEES TEMPORARILY IN THE CUSTODY OF THE METROPOLITAN POLICE DEPARTMENT (MPD) AND INDIVIDUALS THAT HAVE ALREADY BEEN COMMITTED TO DOC OR THE DEPARTMENT OF YOUTH REHABILITATION SERVICES (DYRS). AS A RESULT, THE SITUATIONS MAY REQUIRE DIFFERENT POLICIES AND PRACTICES. FOR EXAMPLE, WHEN MPD INITIALLY TAKES AN INDIVIDUAL INTO CUSTODY, THE ARRESTEE IS SUBJECT TO A FIELD SEARCH. THIS IS MORE THOROUGH THAN A SIMPLE FRISK, BUT THE ARRESTEE IS STILL CLOTHED. A FULL CUSTODY SEARCH – WHICH IS MORE THOROUGH – IS NOT CONDUCTED UNTIL THE INDIVIDUAL IS INSIDE A HOLDING

FACILITY. GIVEN THE ABBREVIATED NATURE OF THE FIELD SEARCH, IT WOULD BE UNSAFE FOR MPD TO TRANSPORT AN ARRESTEE WITHOUT RESTRAINTS. THAT SAID, MPD POLICY DOES STIPULATE THAT OFFICERS SHOULD USE THE LEAST RESTRICTIVE MEANS POSSIBLE. FURTHER, IT NOTES THAT IN CERTAIN SCENARIOS, INCLUDING WITH A PREGNANT ARRESTEE, OFFICERS MAY HANDCUFF THE ARRESTEE WITH THE HANDS IN FRONT INSTEAD OF BEHIND THE BACK, AS IS THE STANDARD PRACTICE.

PLEASE NOTE THAT THE DEPARTMENT OF YOUTH REHABILITATION SERVICES' CONCERNS WITH THE PROPOSED LEGISLATION ARE OUTLINED IN A SEPARATE STATEMENT BEING SUBMITTED FOR THE RECORD.

FOR THE DEPARTMENT OF CORRECTIONS, ALL FEMALE INMATES ARE NOW HOUSED AT THE CORRECTIONAL TREATMENT FACILITY WITH THE EXCEPTION OF THOSE RESIDING AT FAIRVIEW; A COMMUNITY CORRECTIONS

FACILITY UNDER CONTRACT WITH DCDOC FOR THE HOUSING OF 25 FEMALE PRE-TRIAL COURT ORDERED DEFENDANTS AND SENTENCED MISDEMEANANTS.

FEMALE OFFENDERS COMPRISE APPROXIMATELY 7% OF OUR TOTAL POPULATION AND HAVE AN AVERAGE AGE OF 37 YEARS. IN 2014 TO DATE, THE AVERAGE DAILY POPULATION OF 151 FEMALES COMPARES TO 1,884 FOR THE MALE INMATE POPULATION. OVER THE PRIOR TWELVE MONTH PERIOD, NEARLY 40% OF WOMEN IN OUR CUSTODY HAVE BEEN RELEASED WITHIN A SEVEN DAY PERIOD. THE AVERAGE LENGTH OF STAY FOR FEMALE INMATES IS 46 DAYS AND FOR THOSE WITH FELONY CONVICTIONS RELEASED TO THE CUSTODY OF THE U.S. MARSHALS SERVICE, 136 DAYS—THIS LATTER GROUP OF WOMEN ARE FOR THE MOST PART TRANSITIONED TO FEDERAL BUREAU OF PRISONS' FACILITIES.

SINCE CALENDAR YEAR 2011 TO THE PRESENT, THERE HAVE BEEN A TOTAL OF 6,723 FEMALE JAIL ADMISSIONS. OF THAT TOTAL, 245 FEMALES HAVE BEEN PREGNANT DURING INCARCERATION, WHICH REPRESENTS 3.6% DURING THIS PERIOD. ELEVEN OF THE 245 INCARCERATED PREGNANT FEMALES HAVE GONE INTO LABOR AND GIVEN BIRTH.

OUR DAY TO DAY OPERATIONS REQUIRE THAT WE BALANCE THE MANDATE TO MAINTAIN SAFETY AND SECURITY--FOR INMATES, STAFF AND THE COMMUNITY, WHILE BEING COMPASSIONATE AND HUMANE IN THE TREATMENT AND CARE OF THOSE ENTRUSTED TO OUR CUSTODY.

DCDOC SUPPORTS RESTRICTING THE USE OF RESTRAINTS ON PREGNANT FEMALE INMATES AS REFLECTED IN OUR EXISTING OPERATIONAL PROTOCOLS. BILL 20-468, THE ANTI-SHACKLING OF INCARCERATED PREGNANT WOMEN ACT OF 2013, SEEKS TO ESTABLISH AN OVERLY BROAD

RESTRICTION THAT NO WOMEN WHO ARE PREGNANT WHILE IN THE CUSTODY OF THE DISTRICT OF COLUMBIA CENTRAL DETENTION FACILITY (DC JAIL), THE CORRECTIONAL TREATMENT FACILITY, HALFWAY HOUSES, OR LOCK-UPS CAN BE RESTRAINED AT ANY TIME WHILE THEY ARE PREGNANT, DURING LABOR, TRANSPORT TO A MEDICAL FACILITY FOR TREATMENT RELATED TO BIRTH, DURING DELIVERY, OR DURING POST-PARTUM RECOVERY UP TO SIX WEEKS.

THE PRIMARY DIFFERENCE IN THE PROPOSED LEGISLATION AND OUR PRACTICES IS THAT DOC POLICIES NOT ONLY REFLECT A FOCUS ON RESPONSIBLE MEDICAL MANAGEMENT OF PREGNANT INMATES, BUT ALSO ON INSTITUTIONAL AND COMMUNITY SAFETY AND SECURITY CONCERNS. OUR POLICIES DO PERMIT THE USE OF RESTRAINTS DURING THE FIRST TWO TRIMESTERS OF PREGNANCY PRIMARILY BECAUSE OF RISKS ASSOCIATED

WITH MOVING INMATES FROM A LOCKED AND HEAVILY SECURED FACILITY TO A MEDICAL OUTPOST-- TO UNDERGO SPECIALIZED MEDICAL TREATMENT OR OTHER SERVICES DEEMED NECESSARY BY FACILITY HEALTH CARE STAFF.

THERE IS DEFINITELY INCREASED RISK FOR ATTEMPTED ESCAPE OR OTHER EXTRAORDINARY OCCURRENCES DURING SUCH MOVEMENT THUS THE NEED FOR HEIGHTENED SECURITY WITH INMATES LEAVING THE FACILITY IN THIS CAPACITY.

IT IS IMPORTANT TO NOTE THAT PREGNANCY IS NOT AN ILLNESS OR A DISABILITY, AND DURING TRANSPORT A PREGNANT FEMALE IN EARLY PREGNANCY SUCH AS THE FIRST TRIMESTER, CAN STILL BE ASSAULTIVE, RESISTANT, COMBATIVE OR FLEE QUICKLY, PRESENTING A SAFETY AND SECURITY RISK TO THE DOC AND COMMUNITY AT LARGE.

PREGNANCY IN NO WAY LESSENS THE LEGITIMATE SECURITY CONCERNS THAT ARE PRESENTED AND

AMPLIFIED WHEN AN INMATE LEAVES A LOCKED, SECURED AND HEAVILY GUARDED FACILITY FOR TRANSPORT IN THE COMMUNITY TO MEDICAL OUTPOSTS. THE CURRENT DOC POLICY ASSUMES THAT A FEMALE INMATE IN HER FIRST OR SECOND TRIMESTER CAN BE SAFELY RESTRAINED AND CUFFED ONLY IN THE FRONT, ABSENT A MEDICAL FINDING OR RECOMMENDATION TO THE CONTRARY. THIS POLICY DIFFERS FROM THE PROPOSED LEGISLATION ONLY IN SO FAR AS THE DOC POLICY IS LIMITED TO PROHIBITING RESTRAINTS IN THE THIRD TRIMESTER OF PREGNANCY.

IT IS RESPECTFULLY SUGGESTED THAT THE CURRENT LEGISLATION AS PROPOSED IS TOO BROAD TO BALANCE THE INMATE'S MEDICAL CONCERNS AGAINST SERIOUS, LEGITIMATE PENOLOGICAL INTERESTS IN SAFETY, SECURITY AND ORDER IN THE TRANSPORT AND OUTPOSTING OF INMATES. A MORE BALANCED PROPOSAL WOULD BE TO PROHIBIT RESTRAINTS OUTRIGHT IN THE

THIRD TRIMESTER AND DURING LABOR AND DELIVERY, ABSENT EXTRAORDINARY CIRCUMSTANCES SUCH AS ASSAULTIVE BEHAVIOR, OR HISTORY OF ESCAPE OR ATTEMPTED ESCAPE, AND ALLOW AS AN EXCEPTION NO RESTRAINTS IN THE FIRST AND SECOND TRIMESTER WHERE SPECIFICALLY RECOMMENDED BY A MEDICAL CLINICIAN.

THIS FOLLOWS THE POSITION OF THE AMERICAN MEDICAL ASSOCIATION'S (AMA) ADOPTED RESOLUTION SUPPORTING RESTRICTIONS ON THE USE OF RESTRAINTS OF ANY KIND ON A WOMAN IN LABOR, DELIVERING HER BABY OR RECUPERATING FROM DELIVERY UNLESS THE WOMAN IS AN IMMEDIATE AND SERIOUS THREAT TO HERSELF OR OTHERS OR A SUBSTANTIAL FLIGHT RISK.

THE AMERICAN PUBLIC HEALTH ASSOCIATION (APHA) ALSO RECOMMENDS THAT WOMEN MUST NEVER BE RESTRAINED DURING LABOR AND DELIVERY.

IN ADDITION, THE AMERICAN CORRECTIONAL ASSOCIATION'S (ACA) NATIONAL STANDARDS FOR ACCREDITATION STATE THAT WRITTEN POLICY, PROCEDURE AND PRACTICE PROHIBIT THE USE OF RESTRAINTS ON FEMALE OFFENDERS DURING ACTIVE LABOR AND DELIVERY OF A CHILD.

THE APPROPRIATE MEDICAL MANAGEMENT OF PREGNANT WOMEN IS A PRIORITY FOR THE DEPARTMENT OF CORRECTIONS. WOMEN COMMITTED TO OUR FACILITIES UNDERGO A FULL MEDICAL EVALUATION, INCLUDING A MENTAL HEALTH ASSESSMENT AND PREGNANCY TESTING. IF FOUND TO BE PREGNANT, FOLLOWING ASSIGNMENT TO A HOUSING UNIT AT THE CORRECTIONAL TREATMENT FACILITY, THEY RECEIVE ROUTINE PRE-NATAL CARE AND NUTRITIONAL SUPPLEMENTS.

WHILE WE ALSO RECOGNIZE THAT PREGNANCY PRESENTS WOMEN WITH UNIQUE MEDICAL CHALLENGES, THE CARE

THEY ARE GIVEN WHILE IN OUR CUSTODY IS IN NO WAY DIMINISHED BY THE PROTOCOLS IMPLEMENTED FOR SECURITY PURPOSES. FURTHER AS STATED IN OUR POLICIES, EVEN WHEN HIGH SECURITY RISKS ARE EVIDENT, ONLY FRONT HANDCUFFS ARE TO BE APPLIED AS A SECURITY PRECAUTION.

AGAIN IT IS OUR POSITION THAT THE COUNCIL SHOULD NOT MAKE SIGNIFICANT MODIFICATIONS TO EXISTING OPERATIONAL, REPORTING OR INMATE NOTIFICATION POLICIES WHICH TAKE INTO CONSIDERATION BOTH SAFETY AND MEDICAL MANAGEMENT OF THE POPULATION. UNLESS THERE IS A MEDICAL DETERMINATION TO THE CONTRARY, FRONT HANDCUFFS SHOULD BE ALLOWED DURING THE FIRST TWO TRIMESTERS OF PREGNANCY--AS REQUIRED TO MAINTAIN SECURITY AND CONTROL ONCE EXITING THE SECURED FACILITY. AGAIN, THIS IS NOT CONTRARY TO POSITIONS ADOPTED BY THE AMA, APHA, AND ACA.

ALSO NOTEWORTHY IS THE RISK INVOLVED WHEN INFORMING INMATES OF CHANGES IN SECURITY PROTOCOLS. SECTION 4, SUBSECTION (C) OF THE PROPOSED LEGISLATION REQUIRES THAT THE DOC SHALL CAUSE THE REQUIREMENTS OF THE ACT TO BE PROVIDED TO ALL “WOMEN OR YOUTH WHO ARE OR MAY BECOME PREGNANT AT THE TIME DOC ASSUMES CUSTODY OF THE PERSON.” DOC ADVISES AGAINST REVEALING SUCH SECURITY INFORMATION IN ADVANCE TO AN INMATE. IN GENERAL, NEITHER MALE NOR FEMALE INMATES ARE PROVIDED THE DATES OF THEIR APPOINTMENTS FOR MEDICAL CARE OUTSIDE THE FACILITY. THIS SECURITY PROCEDURE PROTECTS AGAINST ADVANCE PLANNING FOR SECURITY COMPROMISES SUCH AS ESCAPES AND PASSING OF CONTRABAND. IT ALSO PROTECTS THE INMATE, WHO MAY REVEAL THESE PLANNED DATES TO FAMILY OR FRIENDS, FROM BEING LOCATED OUTSIDE THE FACILITY BY ENEMIES AND OTHER INDIVIDUALS POSING THREATS. PREGNANT

INMATES GO TO MEDICAL APPOINTMENTS AND OUTPOSTS ON A FAIRLY PREDICTABLE SCHEDULE. THAT PREDICTABILITY AS TO TIMING AND LOCATION COMBINED WITH ADVANCE KNOWLEDGE THAT THEY WILL BE COMPLETELY UNRESTRAINED POSES UNREASONABLE SECURITY RISKS TO INMATES, STAFF AND THE COMMUNITY. MOREOVER, THE ADVANCE NOTICE MAY LEAD TO INMATE REFUSALS TO COMPLY WITH CUFFING WHEN JUSTIFIED DUE TO ESCAPE OR INJURY RISKS.

IN CONCLUSION, THE DOC SUPPORTS LEGISLATION IN GENERAL CODIFYING ITS LONGTIME PRACTICE OF NOT RESTRAINING PREGNANT INMATES IN THE THIRD TRIMESTER WHILE IN TRANSPORT TO MEDICAL APPOINTMENTS, WHILE IN LABOR OR IMMEDIATELY THEREAFTER WITH AN EXCEPTION FOR INMATES WHO PRESENT ESCAPE OR SERIOUS INJURY RISKS TO THEMSELVES OR OTHERS --AND EVEN THEN ONLY FRONT

HANDCUFFS ARE REQUIRED WITHOUT USE OF WAIST OR LEG AND ANKLE RESTRAINTS. HOWEVER, DOC URGES COUNCIL TO LIMIT THE TIME FRAME TO THE THIRD TRIMESTER ABSENT A CLINICAL DETERMINATION IN THE FIRST TWO TRIMESTERS THAT FRONT HANDCUFFS SHOULD NOT BE USED.

IN ADDITION, THE PROPOSED DOCUMENTATION PROCESS OF INSTANCES WHERE RESTRAINTS ARE USED IS OVERLY BURDENSOME. THE DEPARTMENT'S CURRENT RECORD KEEPING PRACTICES HAVE NOT BEEN DEMONSTRATED TO BE INSUFFICIENT. MOREOVER, IT IS NOT PRACTICAL FOR DOC TO BECOME THE COLLECTION POINT FOR RECORDS FROM OTHER AGENCIES SUCH AS MPD AND DYRS. LASTLY, BASIC SECURITY PRACTICES SHOULD NOT BE REVEALED IN ADVANCE TO REDUCE ANY POSSIBLE PLANNED ESCAPE AND ALTERCATION RISKS.

I APPRECIATE THE OPPORTUNITY TO PROVIDE COMMENTS
ON THIS IMPORTANT ISSUE AND WELCOME ANY QUESTIONS
YOU HAVE AT THIS TIME.