

NEIL ABERCROMBIE
GOVERNOR



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POST

TO: Wardens (OCCC, WCCC, MCCC, HCCC, KCCC)
All Health Care Administrators
All Sheriff Commanders

VIA: Jodie, Maesaka-Hirata, DEP-C *Jodie Maesaka-Hirata*
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Michael Hoffman, IDA *Michael Hoffman*
Wes Mun, HCDA *Wes Mun*
Shawn Tsuha, Sheriff *Shawn Tsuha*

FROM: TED SAKAI, DIRECTOR *Ted Sakai*

SUBJECT: NOTIFICATION OF USE OF RESTRAINTS ON
PREGNANT WOMEN OFFENDERS

Hawaii Revised Statutes [§] 353-123, Enforcement, the Department of Public Safety establishes specific requirements relating to the use of restraints on pregnant women offenders. This law pertains to all *medical and nonmedical staff, correctional personnel and others who are involved the transportation or supervision of female offenders who are pregnant or in postpartum recovery.*

The purpose of this memorandum is to inform you of the specific requirements of the law, and to provide specific directives for you to follow to ensure that the law is followed:

A. The law provides as follows:

[§353-121] Definitions. As used in this part:

"Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

"Postpartum recovery" means:

(1) The entire period a female is in a hospital, birthing center, or clinic after giving birth; and

(2) An additional time period, if any, a treating physician determines is necessary for healing after the female leaves the hospital, birthing center, or clinic.

"Restraints" means anything used to control the movement of a person's body or limbs and includes:

(1) Physical restraint; or

(2) A mechanical device, including metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

"Transport" means the conveyance, by any means, of a committed person from the correctional facility to another location, including travel to and from a transport vehicle. [L 2011, c 174, pt of §1]

[§353-122] Limitation on use of restraints. (a) While transporting, no restraints of any kind may be used on any committed female:

(1) During the third trimester of her pregnancy;

(2) During postpartum recovery; or

(3) During any portion of her pregnancy, if her physician so orders; except in extraordinary circumstances.

(b) While the pregnant female is in labor or in childbirth no restraints of any kind shall be used. Nothing in this section affects the use of hospital restraints requested for the medical safety of the patient by a treating physician.

(c) Any restraints used on a pregnant female shall be the least restrictive available and the most reasonable under the circumstances, but in no case shall leg irons or waist chains be used on any pregnant female.

(d) No correctional personnel shall be present in the room during the pregnant female's labor or childbirth, unless specifically requested by medical personnel. If the correctional personnel's presence is requested by medical personnel, the correctional personnel shall be female, if practicable.

(e) If the doctor, nurse, or other health professional treating the pregnant female requests that restraints not be used, the corrections officer accompanying the pregnant female shall immediately remove all restraints.

(f) For the purpose of this section, "extraordinary circumstances" exist where a corrections officer makes an individualized determination that restraints are necessary to prevent an incarcerated pregnant female from escaping or injuring herself, medical or correctional personnel, or others.

If a corrections officer determines that extraordinary circumstances exist and restraints are used, the corrections officer shall fully document in writing the facts upon which a finding of extraordinary circumstances was based. The corrections officer shall also include the kind of restraints used and the reasons those restraints were considered the most reasonable and least restrictive available under the circumstances. [L 2011, c 174, pt of §1]

[§353-123] Enforcement. (a) The director shall provide information relating to the requirements of this part to all medical and nonmedical staff and correctional personnel who are involved in the transportation or supervision of female offenders who are pregnant or in postpartum recovery and other staff as the director deems appropriate.

(b) The director shall provide notice of the requirements of this part to any female offender who is pregnant or in postpartum recovery at the time that the department assumes custody of the female offender. Additional notice shall be posted in conspicuous locations in any appropriate correctional facility, including the locations in which medical care is provided within the facility. Any treating physician, midwife, or nurse of a female offender who is pregnant or in postpartum recovery shall be informed of the requirements of this part. [L 2011, c 174, pt of §1]

- B. Specific Directives:
- a. All department staff shall comply with HRS 353-123
 - b. Wardens shall ensure that all ACO's receive a copy of this memo and are informed of its contents.
 - c. Health Care Administrators shall assure that all health care staff receive a copy of this memo and are informed of its contents.
 - d. Sheriff Commanders shall ensure that all deputy sheriffs who are involved in the detention and/or transport of female offenders receive a copy of this memo and are informed of its contents.
 - e. Wardens shall assure that the attached notice (i.e. "Are You Pregnant and Incarcerated") is posted in prominent places where female offenders are housed in intake/receiving areas.
 - f. Health Care administrators shall ensure that the attached memo ("Are You Pregnant and Incarcerated") is posted in prominent places in health care units in the facility.

CC: Warden David Shinn, Federal Detention Center



Are You Pregnant and Incarcerated?

Facts on : Hawaii Revised Statutes [§] 353-122:

Limitation on use of restraints

You may not be restrained if you are pregnant and incarcerated:

- While being transported (this includes all trips – to the courthouse, clinic, hospital, etc.)
 - During the third trimester of your pregnancy;
 - During postpartum recovery;
 - During any other time in your pregnancy, if your doctor orders;
- While you are in labor or childbirth, unless hospital restraints are orders by your doctor.
- During the recovery period after labor or childbirth, including during transport, for as long as your doctor orders;
- Except under extraordinary circumstances.

In addition, no correctional personnel may be in the room during your labor or childbirth (except in extraordinary circumstances, in which case a doctor may request that a female correctional officer if available).

“Restraint” includes anything used to control the movement of a person’s body or limbs, including physical restraint, or a mechanical device, including metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, Tasers, or batons. *Leg irons or waist chains may never be used on any pregnant female.* H.R.S. § 353-121-123.

For more information and/or to report that you have been illegally restrained, file a grievance (and appeal, if necessary) and contact:

- Your doctor, healthcare provider or other medical professional;
- Facility Case Manager, Health Care Unit and/or Warden
- Department of Public Safety Institutions Division Administrator
- Department of Public Safety Health Care Administrator
- Office of the Ombudsman: (808) 587-0770;
- American Civil Liberties Union of Hawaii, P.O. Box 3410, Honolulu, HI 96801.