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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Antonio and Lehner

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Summary

- Generally prohibits a law enforcement, court, or corrections official (hereafter designated official) from negligently restraining or confining a pregnant charged or adjudicated child or pregnant criminal offender during the child's or woman's third pregnancy trimester, hospital transport, labor, delivery, or postpartum recovery.
- Provides that a violation of the above prohibition is the offense of "interfering with civil rights," and permits the pregnant child or woman to file a civil action for damages against the designated official who committed the violation, the official's employing agency, or court.
- Allows a designated official to restrain or confine a pregnant child or woman who presents a serious threat of physical harm to herself, the official, or any person if the official notifies a health care professional treating the child or woman of the type and duration of the restraint or confinement and the professional does not object to such restraint or confinement.
- Precludes a contacted health care professional from objecting to the use and duration of such restraint or confinement under the preceding dot point unless the type of restraint or confinement or its use for the expected duration poses a risk of physical harm to the pregnant child or woman or the unborn child of either.
- Prohibits a designated official from restraining or confining a pregnant child or woman during the time specified in the first dot point if prior to the use of the restraint or confinement the health care professional notifies the official, employing agency, or court that the restraint or confinement poses a risk of physical harm to the child, woman, or either's unborn child.
- Prohibits a designated official who restrains a pregnant delinquent child or woman offender under the authority specified in the third dot point above from using any leg, ankle, or waist restraint.

- If the child or woman is so restrained under the preceding dot point, or confined, requires the designated official to remove the restraint or cease confinement upon a health care professional's notice that the restraint or confinement poses a risk of physical harm to the child, woman, or either's unborn child.
- Requires the Attorney General to provide training materials to law enforcement, court, and corrections officials to train employees on the proper implementation of the requirements regarding restraining or confining a pregnant child or woman.

Detailed Analysis

Prohibition against restraints on pregnant delinquent child or pregnant woman offender

With certain exceptions, the bill prohibits any "law enforcement, court, or corrections official" (hereafter designated official) from negligently "restraining" or "confining" a female child who is a "charged or adjudicated delinquent child" or a woman who is a "charged or convicted criminal offender" during any of the following time periods (see "**Definitions**" of terms in quotation marks):¹

1. If the child or woman is pregnant, at any time during her third trimester of pregnancy;
2. If the child or woman is pregnant, during transport to a hospital or during labor or delivery;
3. If the child or woman was pregnant, during any period of postpartum recovery after the child's or offender's pregnancy.

Note that this analysis hereafter uses the terms pregnant delinquent child or pregnant woman offender to designate the appropriate child or woman covered by the bill.

Penalty

The bill provides that a violation of the prohibition described in the preceding paragraphs is the offense of "interfering with civil rights." It expands the types of violations that constitute the offense of "interfering with civil rights" under current law, which prohibits any public servant, under color of the servant's office, employment, or authority, from knowingly depriving, or conspiring or attempting to deprive any person of a constitutional or statutory right. The offense of "interfering with civil rights" under current law and the bill is a misdemeanor of the first degree.²

Civil remedy

The bill permits a female child or woman who is restrained or confined in violation of any of the above prohibitions in (1), (2), or (3) to commence a civil action under R.C. 2307.60 (civil action for damages for criminal act) against the designated official who committed the violation, the official's employing agency or court, or both the official and the official's

¹ R.C. 2152.75(B) and 2901.10(B).

² R.C. 2152.75(F)(1), 2901.10(F)(1), and 2921.45.

employing agency or court. In addition to the full damages specified in that section, the child or woman may recover punitive damages, the costs of maintaining the action and reasonable attorney's fees, or both punitive damages and the costs of maintaining the action and reasonable attorney's fees.³ The penalty for the new criminal offense of "interfering with civil rights" and the civil remedy above do not limit a person's right to obtain injunctive relief or recover damages in a civil action under any other statutory or common law of Ohio or the United States.⁴

Exceptions to prohibition

The bill generally permits a designated official to restrain or confine a pregnant delinquent child or pregnant woman offender during a period of time specified in (1), (2), or (3) above if all of the following apply:⁵

- The official determines that the pregnant delinquent child or pregnant woman offender presents a serious threat of physical harm to herself, the official, other law enforcement or court personnel, or any other person.
- Prior to restraining or confining the child or woman, the official contacts a "health care professional" (see "**Definitions**") who is treating the child or woman and notifies the professional that the official wishes to restrain or confine the child or woman, and identifies the type of restraint and the expected duration of its use or communicates the expected duration of confinement.
- Upon being contacted by the official, the health care professional does not object to the use of the specified type of restraint for the expected duration of its use or does not object to the expected duration of confinement.

The bill precludes a health care professional who is contacted by a designated official as specified above from objecting to the use of the specified type of restraint for the expected duration of its use, or the expected duration of confinement, unless the professional determines that that type of restraint, its use for the expected duration, or the expected duration of the confinement poses a risk of physical harm to the child or woman, as applicable, or the "unborn child" (see "**Definitions**") of either.⁶

Prohibition against restraints upon notice by a health care professional

The bill also prohibits a designated official from restraining or confining a pregnant delinquent child or pregnant woman offender during a period of time specified in (1), (2), or (3) above in "**Prohibition against restraints on pregnant delinquent child or pregnant woman offender**" if, prior to the use of the restraint or confinement, a health care professional who is treating the child or woman provides a notice to the official, the

³ R.C. 2152.75(F)(2) and 2901.10(F)(2).

⁴ R.C. 2152.75(F)(3) and 2901.10(F)(3).

⁵ R.C. 2152.75(C)(1) and 2901.10(C)(1).

⁶ R.C. 2152.75(C)(2) and 2901.10(C)(2).

official's employing agency, or court stating that any restraint or confinement of the child or woman during any such period of time poses a risk of physical harm to the child or woman or to the unborn child of either. Such notice applies throughout all such specified periods of time that occur after the provision of the notice.⁷

Restrictions on restraints

The bill prohibits a designated official who restrains a pregnant delinquent child or pregnant woman offender during a period of time described above in **"Prohibition against restraints on pregnant delinquent child or pregnant woman offender"** under the authority described above in **"Exceptions to prohibition"** from using any leg, ankle, or waist restraint to restrain the child or woman. If a designated official restrains or confines a pregnant delinquent child or pregnant woman offender during such period of time under such authority, the official must remove the restraint or cease confinement if, at any time while the restraint is in use or the child or woman is confined, a health care professional who is treating the child or woman provides a notice to the official, the official's employing agency, or court stating that the restraint or confinement poses a risk of physical harm to the child or woman or to either's unborn child.⁸

Training materials for law enforcement, court, and corrections officials

The bill requires the Attorney General to provide training materials to law enforcement, court, and corrections officials on restraining or confining a pregnant child or woman to train employees on the proper implementation of the requirements regarding restraining or confining a pregnant child or woman.⁹

Definitions

The bill defines the following terms:

"Charged or adjudicated delinquent child" means any female child to whom both of the following apply: (a) the child is charged with, is subject to juvenile court proceedings, has been adjudicated a delinquent child, is serving a disposition, or is under supervised release imposed as a condition of release from any disposition, and (b) the child is in custody of any law enforcement, court, or corrections official.¹⁰

"Charged or adjudicated criminal offender" means any woman to whom both of the following apply: (a) the woman is charged with or, with respect to a crime, is being tried for, has been convicted or pleaded guilty, is serving a sentence, or is under supervised release imposed as a condition of release from any sentence, and (b) the woman is in custody of any law

⁷ R.C. 2152.75(E)(2) and 2901.10(E)(2).

⁸ R.C. 2152.75(D) and (E)(1) and 2901.10(D) and (E)(1).

⁹ R.C. 109.749.

¹⁰ R.C. 2152.75(A)(1).

enforcement, court, or corrections official. Note that the term should be “charged or convicted criminal offender,” as that is how the term is used throughout the bill.¹¹

“**Health care professional**” means a physician authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery, a registered nurse, including a certified nurse-midwife, authorized to practice under R.C. Chapter 4723., or a physician assistant authorized to practice under R.C. Chapter 4130.¹²

“**Law enforcement, court, or corrections official**” means any officer or employee of Ohio or a political subdivision of Ohio who has custody or control of any child who is a charged or adjudicated delinquent child or of any woman who is a charged or convicted criminal offender, whichever is applicable.¹³

“**Restrain**” means to use any shackles, handcuffs, or other physical restraint.¹⁴

“**Confine**” means to place in solitary confinement in an enclosed space.¹⁵

“**Unborn child**” means a member of the species homo sapiens who is carried in the womb of a child who is a charged or adjudicated delinquent child or in the womb of a woman who is a charged or adjudicated (note that the term should be convicted) criminal offender, whichever is applicable, during a period that begins with fertilization and continues until live birth occurs.¹⁶

History

Action	Date
Introduced	02-12-19

S0018-I-133/ar

¹¹ R.C. 2901.10(A)(1).

¹² R.C. 2152.75(A)(2) and 2901.10(A)(2) by reference to R.C. 2108.61, not in the bill.

¹³ R.C. 2152.75(A)(3) and 2901.10(A)(3).

¹⁴ R.C. 2152.75(A)(4) and 2901.10(A)(4).

¹⁵ R.C. 2152.75(A)(5) and 2901.10(A)(5).

¹⁶ R.C. 2152.75(A)(6) and 2901.10(A)(6).