



ACLU REPRODUCTIVE FREEDOM PROJECT
ACLU NATIONAL PRISON PROJECT

ACLU BRIEFING PAPER: **The Shackling of Pregnant Women & Girls** **in U.S. Prisons, Jails & Youth Detention Centers**

Shackling pregnant women is dangerous and inhumane. Although widely regarded as an assault on human dignity as well as an unsafe medical practice, women prisoners are still routinely shackled during pregnancy and childbirth. Restraining pregnant prisoners at any time increases their potential for physical harm from an accidental trip or fall. This also poses a risk of serious harm to the woman's fetus, including the potential for miscarriage. During labor, delivery and postpartum recovery, shackling can interfere with appropriate medical care and be detrimental to the health of the mother and her newborn child.

Shackling pregnant prisoners endangers the health and safety of both the mother and the fetus, and is almost never justified by the need for safety and security for medical staff, the public or correctional officers. Despite the fact that shackling pregnant women is degrading, unnecessary and a violation of human rights, only ten states currently prohibit the practice by law. None of these jurisdictions have reported any escapes or threats to medical or correctional staff from pregnant prisoners since prohibiting shackling.

Shackling Pregnant Women Prisoners is a Common Degrading Practice in the United States.

- The number of women in prison—along with the number of women giving birth in prison—continues to rise each year.¹
- Eighteen states – AZ, CA, CO, DE, FL, HI, ID, IL, LA, PA, NM, NV, NY, RI, TX, VT, WA and WV – have laws prohibiting or restricting shackling pregnant prisoners.²

¹ Although just 7.2% of the entire population is in prison or jail, the percentage of women behind bars exploded 757% between 1977 and 2004, a number nearly twice as great as the increase in the incarcerated male population during the same period. NATASHA A. FROST ET AL., WOMEN'S PRISON ASS'N, HARD HIT: THE GROWTH IN THE IMPRISONMENT OF WOMEN 9 (2006).

² See CAL. PENAL CODE § 5007.7 (West 2008); CAL. PENAL CODE § 3423 (West 2008); 55 ILL. COMP. STAT. ANN. 5/3-15003.6 (West 2008); 730 ILL. COMP. STAT. ANN. 125/17.5 (West 2008); 28 V.S.A. § 801a (West 2008); N.M. STAT. ANN. § 33-1-4.2 (West 2009); TEX. GOV'T CODE ANN. § 501.066 (Vernon 2009); TEX. HUM. RES. CODE ANN. § 61.07611 (Vernon 2009); TEX. LOC. GOV'T CODE ANN. § 361.082 (Vernon 2009); N.Y. CORRECT. LAW § 611 (McKinney 2009); COLO. REV. STAT. ANN. § 17-1-113.7 (West 2010); 61 PA. CONST. STAT. ANN. § 1104 (West 2010)); WASH. REV. CODE ANN. § 72.09.651 (West 2010); W. VA. CODE ANN. § 25-1-16 (West 2010); S.B. 219, 2011 Reg. Sess. (Haw. 2011) (enacted); H.B. 0163, 2011 Reg. Sess. (Idaho 2011) (enacted); A.B. 408, 76th Leg., 2011 Reg. Sess. (Nev. 2011) (enacted); S 0165A, 2011 Gen. Assem., 2011 Jan. Sess. (R.I. 2011) (enacted); S.B.

There are more than 200,000 women in U.S. prisons or jails each year,³ and roughly 6%, or 12,000, of those women are pregnant at the time they are incarcerated.⁴ These women, including the thousands who will deliver their babies while still incarcerated, are routinely subjected to the risks of shackling.

National correctional and medical associations oppose the shackling of pregnant women because it is unnecessary and dangerous.

- The nation's leading experts in maternal, fetal and child health care, the American Congress of Obstetricians and Gynecologists (ACOG), have clearly stated their opposition to the practice of shackling. According to ACOG, shackling interferes with the ability of physicians to safely practice medicine and is "demeaning and unnecessary."⁵
- The American Medical Association (AMA) adopted a 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 AMA's resolution also supports restrictions on the shackling of pregnant prisoners in the 2nd and 3rd trimester of pregnancy.⁶
- The American Public Health Association recommends that "[w]omen must never be shackled during labor and delivery."⁷
- The Federal Bureau of Prisons,⁸ U.S. Immigration and Customs Enforcement,⁹ the U.S. Marshals

SHAWANNA'S STORY:

Shawanna Nelson entered the Arkansas prison system six months' pregnant, with a short sentence for a non-violent crime. When she went into labor, correctional officers shackled her legs to opposite sides of the bed.

Ms. Nelson remained with both legs shackled while she was in labor until she was finally taken to the delivery room. After the birth of her son, Shawanna was immediately re-shackled.

Being shackled caused Shawanna cramps and intense pain, as she could not adjust her position during contractions. After childbirth, the use of shackles caused her to soil

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1184, 50th Leg., 2nd Reg. Sess. (Ariz. 2012) (enacted); S.B. 190, 146th Gen. Assem., (De. 2012) (enacted); S.B. 524, 2012 Reg. Sess. (Fla. 2012) (enacted); S.B. 256, 2012 Reg. Sess. (La. 2012) (enacted).

³ BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., PRISON INMATES AT MIDYEAR 2008: STATISTICAL TABLES 2-3 (2009).

⁴ BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., WOMEN OFFENDERS 8 (1999).

⁵ Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, Comm. Op. No. 511, at 3 (Am. Coll. Obstetricians & Gynecologists 2011), available at <http://www.acog.org/~media/Committee%20Opinions/Committee%20on%20Health%20Care%20for%20Underserved%20Women/co511.pdf?dmc=1&ts=20120705T1030058298>.

⁶ RES. 203: SHACKLING OF PREGNANT WOMEN IN LABOR (Am. Med. Ass'n 2010), available at <http://www.ama-assn.org/assets/meeting/2010a/a10-ref-comm-b.pdf>.

⁷ STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS 108 (Am. Public Health Ass'n 2003).

⁸ FED. BUREAU OF PRISONS, PROGRAM STATEMENT: ESCORTED TRIPS, NO. 5538.05, at § 570.45 (Oct. 6, 2008), available at http://www.bop.gov/policy/progstat/5538_005.pdf.

Service,¹⁰ and the American Correctional Association¹¹ have all adopted policies to limit the use of shackles on pregnant prisoners.

Shackling poses an unacceptable risk to women's health.

- Freedom from physical restraints is especially critical during labor, delivery, and during postpartum. Women often need to move around during labor, delivery and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures.¹²
- Because shackling limits the ability of a woman to move during labor, she is left unable to adequately shift positions in order to manage the extreme pains of labor and childbirth.
- Given the nature of childbirth, shackling women during labor can lead to bruising as a result of leg and abdomen restraints.¹³ Leg restraints also cause severe cuts on women's ankles because of the strains associated with childbirth.¹⁴
- Using restraints after delivery may prevent mothers from effectively healing and breast-feeding.¹⁵

Shackling poses an unacceptable risk to the health and safety of the fetus and the life of a child.

- Pregnancy can create problems with balance that are exacerbated by shackling. Falls can injure not only the mother, but also the fetus.¹⁶
- When restraints are used during labor, doctors are limited in how they can manipulate a mother for the safety of the unborn child.

Shawanna's Story:

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the sheets because she could not be unshackled quickly enough to get to a bathroom.

With the help of the ACLU's National Prison Project, Reproductive Freedom Project, and Women's Rights Project, a full panel of the 8th Circuit Federal Court of Appeals heard Nelson's case and the Court found that legal precedent clearly establishes the constitutional protections against shackling pregnant women in labor. This decision paved the way for Nelson's lawsuit to go to trial where a jury found that the officer who shackled her violated the Constitution.

⁹ PERFORMANCE-BASED NAT'L DETENTION STANDARDS 178-79, 258-59 (U.S. Immigr. & Customs Enforcement) (as amended in 2011), available at <http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf>.

¹⁰ U.S. MARSHALS SERV., POLICY 9.1 (RESTRAINING DEVICES) §§ (D)(3)(e), (h) (as amended in 2010).

¹¹ ADULT CORRECTIONAL INSTITUTIONS (ACI) STANDARDS, 4-4190-1 (Am. Corr. Ass'n 4th ed.) (supplemented 2010).

¹² Am. Coll. Obstetricians & Gynecologists, *supra* note 5.

¹³ *Id.*

¹⁴ Dana L. Sichel, *Giving Birth in Shackles: A Constitutional and Human Rights Violation*, 16 AM. U. J. GENDER SOC. POL'Y & L. 223, 225 (2007).

¹⁵ Dr. Patricia Garcia, Statement to Chi. Legal Aid to Incarcerated Mothers (Dec. 1998), in AMNESTY INT'L, ABUSE OF WOMEN IN CUSTODY: SEXUAL MISCONDUCT AND THE SHACKLING OF PREGNANT WOMEN 23 (2001).

¹⁶ Julie B. Ehrlich & Lynn M. Paltrow, *Jailing Pregnant Women Raises Health Risks*, WOMEN'S ENEWS, Sept. 9, 2006, www.womensenews.org/article.cfm/dyn/aid/2894.

During the final stages of labor it is important for the physician to act quickly in order to avoid potentially life-threatening emergencies for both the mother and the unborn child. Shackles severely limit this and as such pose a threat to the survival of the fetus.¹⁷

- In instances necessitating an emergency C-section, a delay of as little as five minutes is enough to cause permanent brain damage to the child.¹⁸

Shackling pregnant and birthing women is a violation of domestic constitutional law and international human rights.

- Shackling a woman during labor demonstrates deliberate indifference to a prisoner's serious medical needs, a violation of long-established Supreme Court precedent protecting prisoners' 8th Amendment right to be free from cruel and unusual punishment.¹⁹
- International treaties, such as the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and the *United Nations Standard Minimum Rule for the Treatment of Prisoners* prohibit the practice of shackling pregnant prisoners.²⁰
- International organizations such as the United Nations' Human Rights Committee and the Committee Against Torture, as well as Amnesty International and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, have called for an end to shackling women during pregnancy and postpartum recovery.²¹
- The United Nation's Committee Against Torture criticized the United States for violating the *Convention Against Torture* by shackling women during childbirth.²²

¹⁷ Garcia, *supra* note 15.

¹⁸ *Id.*

¹⁹ The Supreme Court held thirty years ago that prison officials violate the Eighth Amendment when they act with deliberate indifference to prisoner's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Moreover, federal courts have expressly condemned the practice of shackling pregnant women in labor as a violation of the Eighth Amendment. *Nelson v. Correctional Medical Services*, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because shackling pregnant prisoner during labor clearly established as a violation of the Eighth Amendment); *Women Prisoners of D.C. v. District of Columbia*, 93 F.3d 910, 918, 936 (D.C. Cir. 1996) (recognizing that correctional authorities cannot use "restraints on any woman in labor, during delivery, or in recovery immediately after delivery" and noting prison did not challenge district court's finding that "use of physical restraints on pregnant women . . . violate[s] the Eighth Amendment"); *Brawley v. State of Washington*, 712 F.Supp.2d 1208, 1221 (W.D. Wash 2010) (denying summary judgment because shackling a prisoner in labor clearly established as a violation of the Eighth Amendment); and *Villegas v. Metropolitan Government of Davidson County*, 789 F.Supp.2d 895, 919 (M.D. TN 2011) (holding that the "shackling of a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery and denying breast-pump post-partum", violates the Eighth Amendment"); *see also Woman Shackled During Labor Awarded Damages From Deputies*, USA TODAY, August 18, 2011, available at http://www.usatoday.com/news/nation/2011-08-19-tennessee-woman-shackled-labor-damages_n.htm (reporting jury awarded Villegas \$200,000 in damages).

²⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987; Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/611, annex 1 (Aug. 30, 1955).

²¹ AMNESTY INT'L, ABUSE OF WOMEN IN CUSTODY: SEXUAL MISCONDUCT AND THE SHACKLING OF PREGNANT WOMEN 2 (2001); U.N. Comm. Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 33, U.N. Doc. CAT/C/USA/CO/2 (2006) (hereinafter "*CAT Conclusions 2006*"); CPT STANDARDS 92 (Council of Eur. Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002) (rev. 2011).

²² *CAT Conclusions 2006*.

Restricting the use of restraints on pregnant prisoners will not jeopardize the safety of correctional or medical staff.

- The vast majority of incarcerated women are non-violent offenders who pose a low security risk – particularly during labor and postpartum recovery.²³
- Among the states that have restricted shackling of pregnant prisoners none have documented instances of women in labor escaping or causing harm to themselves, the public, security guards, or medical staff.²⁴
- Since New York City jails restricted the use of restraints on inmates admitted for delivery in 1990,²⁵ there have been no reported incidents of escape or harm to medical staff.
- In most instances, armed guards accompany shackled women into or around the delivery room. Correctional officers more than adequately ensure the safety of the physicians, mothers and the newborn without the use of shackling restraints.

²³ BUREAU OF JUST. STATS., *supra* note 4, at 6.

²⁴ Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, N.Y. TIMES, Mar. 2, 2006, at A16, available at <http://www.nytimes.com/2006/03/02/national/02shackles.html>.

²⁵ Stipulation and Order of Settlement at 38-39, *Reynolds v. Sielaff*, No. 81 Civ. 107 (S.D.N.Y. 1990).