



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, at least twelve states currently have neither law nor policy to restrict the use of belly chains or leg irons on pregnant women.

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

- The number of women in prison continues to rise each year,¹ increasing the risk of more women giving birth behind bars.
- Twenty-six states – AZ, CA, CO, CT, DE, FL, HI, ID, IL, KY, LA, MD, ME, MA, MN, MO, NV, NM, NY, OK, PA, RI, TX, VT, WA and WV – and the District of Columbia, have laws prohibiting or restricting shackling pregnant prisoners.² There

¹ The number of females under the jurisdiction of state or federal prisons grew by 21% between 2000 and 2010, compared to about a 15% increase in the number of male prisoners, and since 2010, the female jail population has been the fastest growing correctional population, increasing by an average of 3.4% annually. BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., CORRECTIONAL POPULATIONS IN THE UNITED STATES, 2013 (2014), AVAILABLE AT <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5177> [hereinafter "BJS STATISTICS 2013"].

² See ARIZ. REV. STAT. § 31-601; CAL. PENAL CODE §§ 3407, 3423; COLO. REV. STAT. ANN. §§ 17-1-113.7, 17-26-104.7, 19-2-924.7, 26-1-137; CT Pub. Act. No. 18-4; DEL. CODE ANN. TIT. 11, § 6603; D.C. Act 20-596; FLA. STAT. § 944.241; HAW. REV. STAT. §353-122; IDAHO CODE ANN. §20-902; 55 ILL. COMP. STAT. 5/3-15003.6; 730 ILL. COMP. STAT. ANN. 125/17.5; KRS 441.055; LA. REV. STAT. ANN. §§ 15:744.2-744.7; ME S.P. 353; MD. CODE ANN., CORR. SERVS. § 9-601; MASS. GEN. LAWS CH. 127, § 118, *as amended by* 2014 MASS. ACTS CH. 103; MINN. STAT. § 241.87-.88; MO SB 870; NEV. REV. STAT. ANN. § 209.376; N.M. STAT. ANN. § 33-1-4.2; N.Y. CORRECT. LAW § 611; OK HB 3393; 61 PA. CONS. STAT. ANN. § 5905; R.I. GEN. LAWS § 42-56.3-3; TEX. GOV'T CODE ANN. §

are more than 210,000 women in U.S. prisons or jails each year,³ and roughly 4% of those women, or 8,400, were pregnant at the time of admission.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 and task-forces 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

**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

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501.066; TEX. LOC. GOV’T CODE ANN. § 361.082; VT. STAT. ANN. TIT. 28, § 801a; WASH. REV. CODE §§ 72.09.651, 70.48.500; W. VA. CODE §§ 31-20-30a, 25-1-16.

³ The Prison Policy Initiative reported that 219,000 women were incarcerated in the United States in 2017. Aleks Kajstura, *Women’s Mass Incarceration: The Whole Pie 2017* (Oct. 19, 2017) <https://www.prisonpolicy.org/reports/pie2017women.html>.

⁴ Data is limited and the most recent federal study was conducted in 2004; it found that four percent of state prison inmates and three percent of federal inmates reported that they were pregnant at the time of their admission. BUREAU OF JUST. STATS., U.S. DEP’T OF JUST., MEDICAL PROBLEMS OF PRISONERS (2011), available at <http://www.bjs.ojp.usdoj.gov/content/pub/html/mpp/tables/mppt10.cfm>. See also Avalon Johnson, *Access to Elective Abortions for Female Prisoners under the Eighth and Fourteenth Amendments*, 37 AM J.L. & MED. 652, 655 (2011) (reporting that between six and ten percent of women entering jail or prison are pregnant (citing Diana Kasdan, *Abortion Access for Incarcerated Women: Are Correctional Health Practices in Conflict with Constitutional Standards?*, 41 PERSP. ON SEXUAL & REPROD. HEALTH 59 (2009))).

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

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

- The American Public Health Association recommends that “[w]omen must never be shackled during labor and delivery.”⁷
- The National Task Force on the Use of Restraints with Pregnant Women under Correctional Custody, initially convened by the Department of Justice, created a best practices statement in 2014 that recommended the use of restraints on pregnant women and girls under correctional custody be limited to “absolute necessity.”⁸
- The Federal Bureau of Prisons,⁹ U.S. Immigration and Customs Enforcement,¹⁰ U.S. Marshals Service,¹¹ and the American Correctional Association¹² 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.¹³
- 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.¹⁴ Leg restraints also cause severe

Shawanna’s Story:

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childbirth, the use of shackles caused her to soil 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.

⁷ AM. PUBLIC HEALTH ASSN, TASK FORCE ON CORR. CARE STANDARDS, STANDARDS FOR HEALTH SERVICES IN CORRECTIONAL INSTITUTIONS (3D ED. 2003).

⁸ BUREAU OF JUST. ASST., U.S. DEP’T OF JUST., BEST PRACTICES IN THE USE OF RESTRAINTS WITH PREGNANT WOMEN AND GIRLS UNDER CORRECTIONAL CUSTODY (2014), *available at* http://www.nasmhpd.org/docs/NCTIC/Best_Practices_Use_of_Restraints_Pregnant.pdf.

⁹ FED. BUREAU OF PRISONS, PROGRAM STATEMENT: ESCORTED TRIPS, NO. 5538.06 AT § 570.45 (August 29, 2014), *available at* http://www.bop.gov/policy/progstat/5538_006.pdf.

¹⁰ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NAT’L DETENTION STANDARDS 2011 AT 178-79, 258-59, *available at* <http://www.ice.gov/doclib/detention-standards/2011/pbnds2011.pdf>.

¹¹ U.S. MARSHALS SERV., POLICY 9.1 (RESTRAINING DEVICES) §§ (D)(3)(e), (h) (as amended in 2010).

¹² AMERICAN CORRECTIONAL ASSN, STANDARDS FOR ADULT CORRECTIONAL INSTITUTIONS, STANDARD 4-4190-1 (4th ed., supplemented 2010).

¹³ ACOG, *Health Care for Pregnant and Postpartum Incarcerated Women*.

¹⁴ *Id.*

- cuts on women's ankles because of the strains associated with childbirth.¹⁵
- Using restraints after delivery may prevent mothers from effectively healing and breast-feeding.¹⁶

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.¹⁷
- When restraints are used during labor, doctors are limited in how they can manipulate a mother for the safety of the unborn child.

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.¹⁸

- 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.¹⁹

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' Eighth Amendment right to be free from cruel and unusual punishment.²⁰
- Women are beginning to file claims under 42 U.S.C. § 1983 and state tort law to challenge this unconstitutional practice.²¹

¹⁵ 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).

¹⁶ Dana Sussman, *Bound by Injustice: Challenging the Use of Shackles on Incarcerated Pregnant Women*, 15 CARDOZO J.L. & GENDER 477, 487 (2009) [hereinafter "Sussman, *Bound by Injustice*"].

¹⁷ Julie B. Ehrlich & Lynn M. Paltrow, *Jailing Pregnant Women Raises Health Risks*, WOMEN'S ENEWS, Sept. 9, 2006, available at www.womensenews.org/article.cfm/dyn/aid/2894.

¹⁸ Sussman, *Bound by Injustice*.

¹⁹ *Id.*

²⁰ Almost forty years ago, the Supreme Court held that prison officials violate the Eighth Amendment when they act with deliberate indifference to prisoner's serious medical needs. *See 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. *See, e.g., Nelson v. Correctional Medical Services*, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because the woman had a "clearly established" right not be shackled absent clear and convincing evidence that she was a security or flight risk); *Women Prisoners of D.C. Dep't of Corr. v. District of Columbia*, 93 F.3d 910, 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"); *Brawley v. State of Washington*, 712 F.Supp.2d 1208, 1221 (W.D. Wash. 2010) (denying summary judgment because shackling a prisoner in labor was clearly established as a violation of the Eighth Amendment).

²¹ *See Mendiola-Marinez v. Arpaio*, 836 F.3d 1239 (9th Cir. 2016); *Nelson v. Correctional Med. Servs.*, 583 F.3d 522 (8th Cir. 2009); *Castro v. Melchor*, 366 P.3d 1058 (2016); *Villegas v. Metropolitan Government of Nashville*, 907 F.Supp.2d 907 (M.D. Tenn. 2012); *Remlinger v. Lebanon County et al.*, No. 1:18-cv-00984-YK-JFS (M.D. Pa. 2018); *Terry v. County of Milwaukee*, No. 17-CV-1112-JPS, 2018 WL 2567721 (E.D. Wisc. June 4, 2018); *Hall v. County of Milwaukee*, No. 17-C-0379, 2018 WL 2376512 (E.D. Wisc. May 23, 2018); *Estate of Swayzer v. Armor Correctional Health Services, Inc.*, No. 16-CV-1703, 2018 WL 1535953 (E.D. Wisc. Mar. 29, 2018); *Rhodes v.*

- 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.²²
- 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.²³
- The United Nations' Committee Against Torture criticized the United States for violating the *Convention Against Torture* by shackling women during childbirth.²⁴

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 risk²⁵ – particularly during labor and postpartum recovery.
- 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.
- In most instances, armed guards accompany shackled women into or around the delivery room. Correctional officers ensure the safety of the physicians, mothers and the newborn without the use of shackling restraints.

Mississippi County, Missouri, No. 1:16CV00084 AGF, 2018 WL 705059 (E.D. Mo. Feb. 5, 2018); *Doe v. County of Milwaukee*, No. 14-CV-200-JPS, 2017 WL 1843262 (E.D. Wic. May 5, 2017); *Riedel v. Jackson County*, No. 15-cv-803 (W.D. Mo. 2016); *Nabors v. Nevada Dept. of Corrections et al.*, No. 2:12-cv-01044-APG-VCF (D. Nev. 2014).

²² 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).

²³ 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).

²⁴ *CAT Conclusions 2006*.

²⁵ BUREAU OF JUST. STATS., U.S. DEP'T OF JUST., CORRECTIONS STATISTICAL ANALYSIS TOOL: PRISONER CHARACTERISTICS (2012), available at <http://www.bjs.gov/index.cfm?ty=nps>.