



INSTITUTE ON WOMEN  
& CRIMINAL JUSTICE

## **LAWS BANNING SHACKLING DURING CHILDBIRTH GAINING MOMENTUM NATIONWIDE**

Women who are incarcerated often encounter gender-specific conditions and situations that can exacerbate the challenges and humiliations of life in prison: they pay exorbitant prices for menstrual supplies in the prison commissary, may not have access to adequate gynecological care, and many endure sexual harassment and abuse by corrections staff. And, while pregnant women in the community are granted an extra measure of courtesy and assistance, pregnant inmates are subject to treatment that is degrading and potentially dangerous.

In most states, laws permit physical restraint of incarcerated women during childbirth. Sometimes they are cuffed to the hospital bed at both the ankles and wrists, and, in some cases, women are restrained at the belly with wide metal belly shackles or with a belly chain. Each of these restraints prevents a woman from walking or shifting position, furthering the discomfort of labor and creating additional risk for complications. The Women's Prison Association (WPA) shares the view of a broad community of prisoners' rights and women's advocates, that the use of physical restraints during labor and childbirth is a demeaning violation of civil and human rights that should be banned in order to protect the health and dignity of mother and infant.

Correctional authorities have justified the practice, citing concerns that prisoners might turn violent or attempt escape. There is no data to support those concerns, given that the vast majority of women in prison and jails are nonviolent offenders, and, in jurisdictions where women were not shackled during childbirth, not a single woman has tried to escape.

### **Opposition to Shackling is Widespread**

The American College of Obstetricians and Gynecologists (ACOG), the American College of Nurse Midwives, the American Public Health Association and the American Medical Association (AMA) have condemned shackling during childbirth. The AMA calls the practice "dangerous" and "barbaric" in its position paper on shackling, pointing out that restraints not only cause "excruciating pain" but "can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures." If the fetal heartbeat slows, and an immediate Caesarian-section is required, the time lost to fumbling with shackle locks could cause brain damage and even death, explains Dr. Maureen Phipps, Associate Professor of Obstetrics and Gynecology and Community Health at Brown University, and chair of the ACOG's committee on health care for underserved women.

While shackling during childbirth is common for prisoners in the United States, international human rights protocols consider it torture. In 2006 the United Nations Committee Against Torture alerted the U.S. government that shackling during childbirth is a violation of the UN Convention Against Torture, to which the United States is a signatory. The Committee urged that the U.S. "adopt all appropriate measures to ensure that women in detention are treated in conformity with international standards."

### **More States Are Banning Shackling for Women in Labor**

After years of work by civil rights, public health, women's and prisoners' advocacy groups, concerns about shackling during childbirth are finally gaining attention across the country.

In September 2008, the Federal Bureau of Prisons banned belly shackles and the routine use of all other restraints during labor and delivery. However, restraints are still standard equipment in most state prisons and jails.

Thirteen states--California, Colorado, Idaho, Illinois, New Mexico, Nevada, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and West Virginia--now prohibit shackling during labor and delivery, except in the rare instance when a woman is considered either dangerous or a flight risk. (Some also explicitly prohibit shackling or other restraints during transport to a hospital and during recovery after the birth.) In the past several months, anti-shackling bills have been introduced in ten more states: Arizona, Connecticut, Florida,

Georgia, Hawaii, Iowa, Massachusetts, New Jersey, Oregon, and Virginia. Bills are also pending in California, Illinois, and New York that would strengthen current laws. But today, thirty-seven states have no laws on the subject; at least twenty either have no policy at all addressing when restraints can be used on laboring women or have a policy which allows for the use of dangerous leg irons or waist chains on women in labor. No state prohibits restraints during the entire pregnancy. Among the most expansive are New Jersey's proposed law--which would outlaw restraints during "pregnancy-related medical distress" as well as transport, delivery and postpartum.

### **What We Recommend**

WPA believes that there is an over-reliance on incarceration as the response to crime in the U.S. The majority of incarcerated women are sentenced for non-violent, drug-related and property crimes and we could more effectively address and eliminate their criminal activity through community-based sentencing and services. Those women who are in custody should be held in the least restrictive conditions possible.

U.S. policies and practices should conform to international standards of human rights and to constitutional protections against cruel and unusual punishment. Every state should pass laws that explicitly forbid the use of shackles or other restraints on women in childbirth. The ban on shackling in federal prisons should be extended to U.S. immigration detention centers.

The best approach is an outright ban on the use of physical restraints during childbirth. When a correction officer is posted outside the delivery room, there is no need for any cuffs or shackles. To date, though, all states with anti-shackling laws provide for exceptions, and advocates acknowledge that successful passage of future bills will probably depend upon inclusion of such exceptions. Any exceptions should be made only in extreme circumstances, in the extremely rare and unlikely instance when a woman presents a danger to herself or to others.

Even in states which have enacted bans on shackling, implementation can be a challenge. Jill Morrison, Senior Counsel at the National Women's Law Center, suggests that statutes provide for adequate training for corrections staff to ensure that a ban is properly enforced, and that there are "sufficient repercussions when the policy is breached."

Late last year, the American Medical Association drafted model anti-shackling legislation, largely based on the New Mexico law passed in 2009, and on language proposed by the ACLU. The AMA's proposed law for state adoption reads:

*No restraints of any kind shall be used on a prisoner or detainee during labor, transport to a medical facility, delivery, and postpartum recovery unless there are compelling grounds to believe that the prisoner or detainee presents (1) an immediate and serious threat of harm to herself, staff or others; or (2) a substantial flight risk and cannot be reasonably contained by other means. Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.*

Decisions about care and treatment of a woman who arrives at a hospital to give birth--whether she is in state custody or not--should be made by medical professionals and patients, not by correction officers. Doctors and nurses are accustomed to handling patients who are difficult to engage and manage, including those with symptomatic psychosis or who are drug-addicted and either under their influence or suffering from withdrawal. There is no reason to doubt the ability of these professionals to manage the labor and delivery for a woman who happens to be serving a prison sentence. It is almost unimaginable that a health professional would resort to chaining a maternity patient to her bed, and no woman should have to endure the pain and indignity of giving birth in chains.