

# An “Act to prohibit the shackling of pregnant prisoners” model state legislation

## The problem

The use of shackles to restrain a pregnant woman during the birthing process is a barbaric practice that needlessly inflicts excruciating pain and humiliation. At the 2010 American Medical Association (AMA) Annual Meeting, the House of Delegates adopted policy condemning the practice of shackling pregnant prisoners (Res. 203, A-10). Over the past several years, this inhumane practice has garnered much media attention. Despite the public outcry over restraining pregnant prisoners, it remains routine practice in many American prisons and jails.

## The solution

Along with AMA, the Federal Bureau of Prisons, the U.S. Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists (ACOG), the American Civil Liberties Union (ACLU) and the American Public Health Association all oppose shackling women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman’s health and well-being. In fact, the vast majority of female prisoners or detainees incarcerated are non-violent offenders and restraining these prisoners and detainees increases their potential for physical harm from an accidental trip or fall. Moreover, freedom from physical restraints is especially critical during labor, delivery and postpartum recovery after delivery. Most importantly, restraints on a pregnant woman can interfere with the medical staff’s ability to appropriately assist in childbirth or to conduct sudden emergency procedures.

In addition to condemning the practice of shackling pregnant prisoners, Resolution 203 called for the AMA to develop model state legislation prohibiting the use of shackles on pregnant incarcerated women unless flight or safety concerns exist. Specifically, Resolution 203 recommended that the model bill reflect language in New Mexico’s anti-shackling legislation which states:

- An adult or juvenile correctional facility, detention center or local jail shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the 2nd or 3rd trimester of pregnancy.
- No restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents:
  - An immediate and serious threat of harm to herself, staff or others; or
  - A substantial flight risk and cannot be reasonably contained by other means.
  - If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints necessary to ensure safety and security shall be used.”<sup>1</sup>

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<sup>1</sup> N.M. Stat. Ann. § 33-1-4.2 (2009)

In November, 2010, the AMA adopted model state legislation entitled an “Act to Prohibit the Shackling of Pregnant Prisoners.” The AMA model state legislation is based on the New Mexico language referenced above, as well as guidance from ACOG and the ACLU, which has a similar model bill prohibiting the use of shackles on prisoners known to be pregnant. The AMA model state legislation is a straightforward prohibition on the practice of shackling pregnant prisoners or detainees while still allowing for restraints in the rare occasions there is a significant risk for the safety of medical personnel or substantial flight risk. The AMA model state legislation extends the shackling prohibition to the second and third trimester due to safety risks shackling poses to pregnant women as dictated by Resolution 203. The AMA model state legislation can be introduced as a stand-alone measure or incorporated into a larger bill that more broadly addresses prison reform.

Currently, there are at least 21 states that have laws prohibiting the practice of shackling pregnant prisoners during labor (Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington, and West Virginia). The AMA model state legislation and below talking points can be an important advocacy tool for states interested in protecting the health and safety of pregnant incarcerated women.

## Talking points

### **There is broad support to ban the shackling of pregnant prisoners.**

- The American Medical Association, The Federal Bureau of Prisons<sup>2</sup>, the U.S. Marshals Service<sup>3</sup>, the American Correctional Association<sup>4</sup>, the American College of Obstetricians and Gynecologists<sup>5</sup>, and the American Public Health Association<sup>6</sup> all oppose shackling women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman’s health and well being.
- International human rights bodies have repeatedly expressed concern about policies that permit the shackling of pregnant and birthing women.<sup>7</sup>
- (Insert Bill number) would require the (insert appropriate prison governing authority) to set uniform standards for how pregnant prisoners are restrained throughout pregnancy, and for implementation of the provisions of (insert bill number.) It will ensure that we maintain safety of correctional workers as well as pregnant prisoners, and will help in enforcement of provisions currently in the Penal Code.

<sup>2</sup> 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](http://www.bop.gov/policy/progstat/5538_005.pdf).

<sup>3</sup> U.S. Marshals Serv., Policy 9.1 (Restraining Devices) §§ (D)(3)(e), (h) (as amended in 2008).

<sup>4</sup> ACA File No. 2008-023, Standards Comm Meetings Minutes, ACA 138th Cong. Of Corr. (Am. Corr. Ass’n, New Orleans, La.) Aug. 8, 2008 at 62, available at [http://www.aca.org/standards/pdfs/Standards\\_Committee\\_Meeting\\_August\\_2008.pdf](http://www.aca.org/standards/pdfs/Standards_Committee_Meeting_August_2008.pdf).

<sup>5</sup> American College of Obstetricians and Gynecologists. Health and health care of incarcerated adult and adolescent females. In: Special issues in women's health. Washington, DC: ACOG; 2005. p. 89-101.

<sup>6</sup> Am. Public , Standards for Health Services In Correctional Institutions 108 (2003).

<sup>7</sup> 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) available at

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/e2d4f5b2dccc0a4cc12571ee00290ce0?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/e2d4f5b2dccc0a4cc12571ee00290ce0?Opendocument); Concluding Observations of the Human Rights Committee: United States of America, 87th Sess., ¶ 33, U.N.

Doc.CCPR/C/USA/CO/3/Rev. 1 (2006) available at

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/34d0a773a44de02bc125725a0034cbdf?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/34d0a773a44de02bc125725a0034cbdf?Opendocument); see also, Amnesty International, Amnesty International’s Findings and Recommendations Relating to Valley State Prison (California) 9 (1999) available at <http://www.amnesty.org/en/library/asset/AMR51/053/1999/en/dom-AMR510531999en.pdf>.

- California, Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas and Vermont have enacted laws prohibiting the shackling of pregnant prisoners.
- Connecticut, Florida, Rhode Island, Washington, and Wyoming have prison policies prohibiting the shackling of pregnant prisoners.
- There is no cost to [State]taxpayers for banning the practice of shackling.

### **Shackling poses undue health risks to pregnant women.**

- Restraining a pregnant woman can pose undue health risks to the woman and her pregnancy.
- Restraining prisoners and detainees increases their potential for physical harm from an accidental trip or fall. The impact of such harm to a pregnant woman can negatively impact her pregnancy.
- Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery. Women often need to move around during labor 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.
- Shackling interferes with a mother's ability to care for her baby immediately after delivery and can limit her ability to breast feed.

### **Banning shackling does not increase security risk.**

- The vast majority of female prisoners or detainees in [State] are non-violent offenders.
- While states justify using restraints to prevent escapes, no women in labor have ever attempted escape.
- California, Illinois, and Vermont - states prohibiting the practice of shackling - have not experienced increased security issues or flight attempts.
- Most women are incarcerated for non-violent crimes; only 14 percent of all violent offenders are women.<sup>8</sup>

### **Findings from *Mothers Behind Bars* Report.**

The Rebecca Project for Human Rights and the National Women's Law Center recently published a state-by-state report card analyzing state laws and policies prohibiting shackling of pregnant prisoners. Highlights from the *Mothers Behind Bars*<sup>9</sup> report include:

- Thirty-six states received failing grades (D/F) for their failure to comprehensively limit, or limit at all, the use of restraints on pregnant women during transportation, labor and delivery and postpartum recuperation.
- Twenty-two states either have no policy at all addressing when restraints can be used on pregnant women or have a policy which allows for the use of dangerous leg irons or waist chains.
- When a pregnant woman is placed in restraints for security reasons, eleven states either allow any officer to make the determination or do not have a policy on who determines whether the woman is a security risk.

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<sup>8</sup> One Million Nonviolent Prisoners, John Irwin PhD, Vincent Schiraldi and Jason Ziedenvert available at [http://www.justicepolicy.org/images/upload/99-03\\_REP\\_OneMillionNonviolentPrisoners\\_AC.pdf](http://www.justicepolicy.org/images/upload/99-03_REP_OneMillionNonviolentPrisoners_AC.pdf)

<sup>9</sup> Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children. (October 2010) available at <http://www.rebeccaproject.org/images/stories/files/mothersbehindbarsreport-2010.pdf>

- Thirty-one states do not require input from medical staff when determining whether restraints will be used.
- Twenty-four states do not require training for individuals handling and transporting incarcerated persons needing medical care or those dealing with pregnant women specifically, or have no policy on training.
- Thirty-one states do not have a policy that holds institutions accountable for shackling pregnant women without adequate justification.
- Thirty-four states do not require each incident of the use of restraints to be reported or reviewed by an independent body.

## **AMA policy related to the prohibition of shackling pregnant prisoners**

### **H-420.957 Shackling of Pregnant Women in Labor**

1. Our AMA supports language recently adopted by the New Mexico legislature that “an adult or juvenile correctional facility, detention center or local jail shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the 2nd or 3rd trimester of pregnancy. No restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents:

- An immediate and serious threat of harm to herself, staff or others; or - A substantial flight risk and cannot be reasonably contained by other means.

If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints necessary to ensure safety and security shall be used.”

2. Our AMA will develop model state legislation prohibiting the use of shackles on pregnant women unless flight or safety concerns exist. (Res. 203, A-10)

### **H-430.997 Standards of Care for Inmates of Correctional Facilities**

Our AMA believes that correctional and detention facilities should provide medical care that meets prevailing community standards. (Res. 60, A-84; Reaffirmed by CLRPD Rep. 3 - I-94; Amended: Res. 416, I-99; Reaffirmed: CEJA Rep. 8, A-09; Reaffirmation I-09)