IN THE GENERAL ASSEMBLY STATE OF __________

An Act to Prohibit the Shackling of Pregnant Prisoners

Be it enacted by the People of the State of _____________, represented in the General Assembly:

Section 1. Title. This act shall be known as and may be cited as an “Act to Prohibit the Shackling of Pregnant Prisoners.”

Section 2. Purpose. The Legislature hereby finds and declares that:

(a) Restraining a pregnant woman can pose undue health risks to the woman and her pregnancy.

(b) The vast majority of female prisoners or detainees in [State] are non-violent offenders.

(c) 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.

(d) 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.

(e) Restraints on a pregnant woman can interfere with the medical staff’s ability to appropriately assist in childbirth or to conduct sudden emergency procedures.
The American Medical Association, The Federal Bureau of Prisons, the U.S. Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, 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.

International human rights bodies have repeatedly expressed concern about policies that permit the shackling of pregnant and birthing women.

Section 3. Definitions.

(a) “Restraints” means any physical restraint or mechanical device used to control the movement of a prisoner or detainee’s body and/or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain, or a convex shield.

(b) “Labor” means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(c) “Postpartum recovery” means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after birth.

(d) “Correctional institution” means any entity under the authority of any state, county or municipal law enforcement division that has the power to detain and/or restrain a person under the laws of the State.

(e) “Corrections official” means the official that is responsible for oversight of a correctional institution, or his/her designate.
(f) “Prisoner” means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(g) “Detainee” includes any person detained under the immigration laws of the United States at any correctional facility.

Section 4. Requirements. Restraint of Prisoners and Detainees.

(a) An adult or juvenile correctional institution shall use the least restrictive restraints necessary when the correctional institution has actual or constructive knowledge that a prisoner or detainee is in the second or third trimester of pregnancy. 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.

(b) Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.

(c) If restraints are used on a prisoner or detainee pursuant to subsection (a), the corrections official shall make written findings within ten (10) days as to the extraordinary circumstance that dictated the use of the restraints to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public. These findings shall be kept on file by the institution for at least five (5) years and be made available for
public inspection, except that no information identifying any prisoner or detainee
shall be made public in violation of [insert relevant section] without the prisoner
or detainee’s prior written consent.

Drafting note: If state has a specific statute about the release of private information
about prisoners, it should be cross referenced here.

Section 5. Enforcement. Notice to Prisoners and Detainees

(a) Within 30 days of the effectiveness of this Act, all correctional institutions in [State]
shall develop rules pursuant to this Act.

(b) Correctional institutions shall inform prisoners and detainees of the rules developed
pursuant to subsection (a) upon admission to the correctional institution and
[include policies and practices pursuant to this Act in the prisoner handbook] [post
policies and practices pursuant to this Act in locations in the correctional institution
where such notices are commonly posted, including common housing areas and
medical care facilities].

Drafting note: Select one of the two bracketed clauses that are consistent with
practices in your state prisons and jails, and/or consistent with other statutes governing
the conveyance of information to prisoners or detainees. Many states have statutory
requirements that prison rules be distributed to prisoners; if your state has such a
policy, insert a cross reference to that law in this section.

(c) Within 60 days of the effectiveness of this Act, correctional institutions shall inform
prisoners and detainees within the custody of the correctional institution of the rules
developed pursuant to subsection (a).

Drafting note: if state has a specific statute about the release of private information about prisoners, it
should be cross referenced here.

Drafting note: select one of the two bracketed clauses that is consistent with practices in your state prisons
and jails, and/or consistent with other statutes governing the conveyance of information to prisoners or
detainees. Many states have statutory requirements that prison rules be distributed to prisoners; if your state
has such a policy, insert a cross reference to that law in this section.
Section 5. Effective Date. This Act shall become effective immediately upon being enacted into law.

Section 6. Severability. If any provision of this Act is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Act, and to this end the provisions of this Act are hereby declared severable.