

“ An Act Concerning Fair Treatment of Incarcerated Women”

Senate Bill No. 13

September 10, 2018

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Department of Public Health

Agenda

- Background - Incarcerated pregnant women in the US
- The practice of shackling pregnant women
 - - Public awareness
 - - Legal considerations
 - - Health risks
- Best practices and recommendations
- Current status in the US
- Sample legislation
- CT legislation
- Q&A

Objectives

- Describe the risks associated with use of restraints in incarcerated pregnant women
- Describe the current landscape of laws, policies and practices to assure that pregnant incarcerated women are not restrained
- Articulate the key principles and recommendations outlined in Best Practice Statements
- Describe CT Legislation

Adult and Juvenile Female Offenders Conference

Hartford, CT 2015

- Co-sponsored by the Association on Programs for Female Offenders (APFO) since 2003
 - APFO addresses issues for women and girls involved in the criminal justice system.
- CT Women Consortium was selected to host the 3-day conference.
 - 4,000 participants from across the U.S.
 - Support was provided by Connecticut's Department of Correction, Department of Mental Health and Addiction Services, Department of Children and Families, Department of Public Health, and Court Support Services Division



AJFO Conference 2015

- The common themes were that
 - Prisons and prison policies were **designed for men**
 - Numbers of women being incarcerated in the U.S. are ↑
 - Most women are NOT violent offenders
- Conference topics included:
 - Art and dance therapy
 - **Shackling during pregnancy and best practice standards**
 - Trauma-informed care
 - Mother-child units
 - Re-entry
 - Alternatives to incarceration

Shackling of Pregnant Women



Presented to the Medicaid Managed Care Council
Women's Health Subcommittee
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Incarcerated Pregnant Women in the United States

POPULATION	TOTAL NO. OF FEMALES	PREGNANT AT INTAKE	
		No. of Intakes	Percent of Intakes
Jails	94,000	4,700	5
State prisons	101,300	4,052	4
Federal prisons	13,700	411	3
TOTAL	209,000	9,163	4.4

Source: National Task Force on the Use of Restraints with Pregnant Women under Correctional Custody (2012). Data: BJS 2009 & 2010

- The number of women in prison—along with the number of women giving birth in prison—continues to rise each year.

Incarcerated Women in the U.S.

- Most women are incarcerated for nonviolent crimes, including drug and property offenses
- The women in the criminal justice system are among the most vulnerable in our society
- Barriers currently exist to the provision of recommended care for incarcerated pregnant women and adolescents



Shackling in Pregnancy



- Growing national interest in adopting gender-responsive approaches.
- The international human rights community has repeatedly expressed concern about the shackling of pregnant women deprived of their liberty in the United States (U. Chicago, ACLU, 2013).
- Justification of shackling are unpersuasive (U. Chicago, ACLU, 2013).
 - The vast majority of women in U.S. prisons are non-violent offenders, and therefore pose a low security risk

Risks associated with restraints and shackling during pregnancy

- Use of restraints on pregnant incarcerated women may compromise health and put the woman and fetus at risk.
- Increases the risk of falls and decreases the woman's ability to protect herself and the fetus if she does fall.
- Limits mobility and may increase the risk of venous thrombosis.

Source: ACOG, 2011



Risks (cont.)

- May prevent or inhibit mother/child bonding and interfere with the mother's safe handling of her infant.
- Physical restraints interfere with the ability of health care providers to safely practice medicine by reducing their ability to assess and evaluate the mother and the fetus and making labor and delivery more difficult

Source: ACOG, 2011

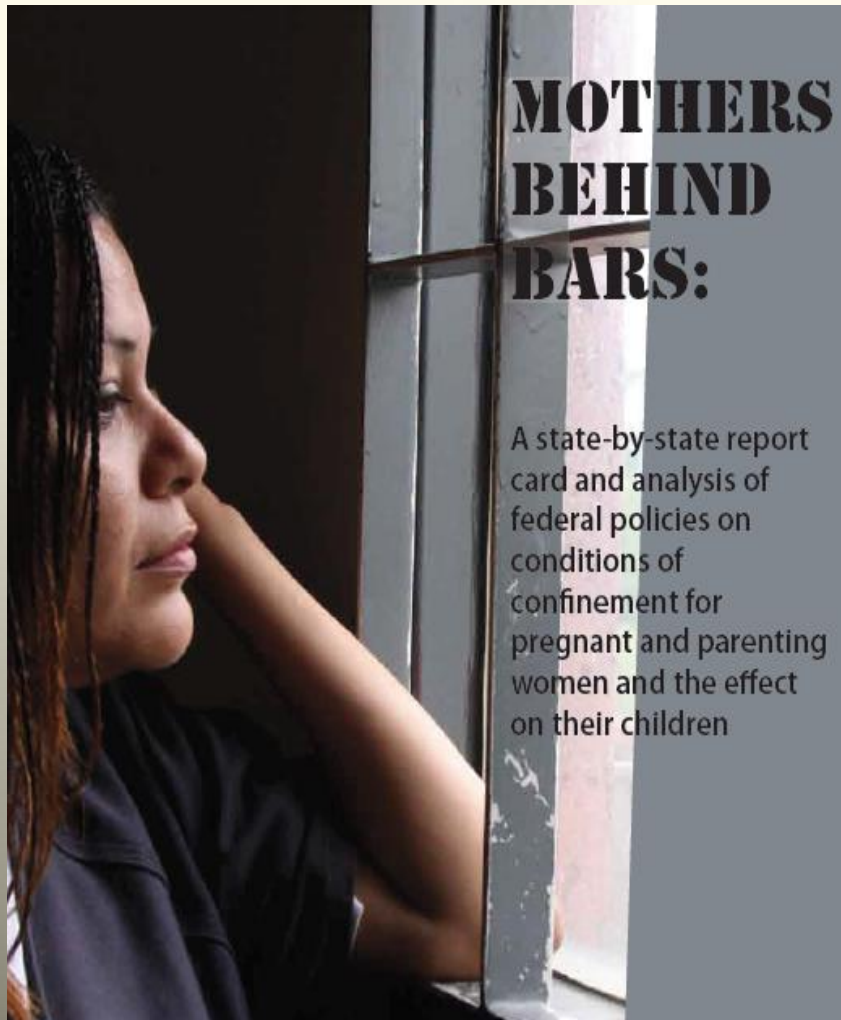


Legal Considerations

- Shackling violates International Law
- Shackling violates the U.S. Constitution
 - *8th Amendment prohibition on cruel & unusual punishment*
- At a federal level, the U.S. government adopted an anti-shackling policy in 2008



Rebecca Project for Human Rights & National Women's Law Center (2010)



- Rebecca Project
 - Advocating for justice, dignity and policy reform for vulnerable women and girls in the US and Africa
- National Womens Law Center
 - Works to expand opportunities and eliminate barriers for women & their families

Mothers Behind Bars: A State-by-State Report Card

- Report released in 2010
 - Reviewed prenatal care, shackling policies, family-based treatment as an alternative to incarceration and prison nurseries
 - Graded states based on state laws and correction policies
 - Discussed federal policies and recommendations for improvement
- Report gained state, national and media attention

Best Practices and Recommendations

American College of Obstetricians and Gynecologists (ACOG), 2011

- **ACOG Recommendations**

- Shackling during transportation to medical care facilities and during the receipt of health services should occur only in exceptional circumstances
- If restraint is needed, it should be the **least restrictive possible**
- The woman should be allowed to lie on her side, not flat on her back or stomach. Pressure should not be applied to the abdomen.



The American College of
Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

ACOG Best Practices & Recommendations, 2011

- Women **should never be shackled during evaluation** for labor or during labor and delivery.
- Correctional officers should be available and required to **remove the shackles immediately** upon request of medical personnel.
- If restraint is used, a **report should be filed** by the Department of Corrections and reviewed by an independent body.
- There should be **consequences for individuals and institutions when use of restraints** was unjustified.



The American College of
Obstetricians and Gynecologists
WOMEN'S HEALTH CARE PHYSICIANS

National Task Force

- Convened by the U.S. Department of Justice in 2011 to articulate a set of principles to guide agencies and jurisdictions in the development of local policy & practice
- Best Practices are relevant across a variety of settings
 - Criminal justice
 - Juvenile justice
 - Psychiatric
 - Forensic hospitals
 - Law enforcement transport, and
 - Others
- Document applies to women >18 and girls <18 who are pregnant, laboring and delivering, or in the post-partum period

National Task Force Best Practices & Recommendation Statement

- Following type of restraints expressly prohibited:
 - Abdominal restraints,
 - leg and ankle restraints,
 - wrist restraints,
 - four-point restraints
- Restraints should never be used on a woman or girl during labor and delivery

National Task Force Best Practices & Recommendation Statement

- Restraints should be avoided during postpartum period.
- When transporting a pregnant women or girl, restraints should not be used except where **absolutely necessary**
- Standard operating procedures should outline a clear process and frequency for reassessing the use of restraints when they have deemed absolutely necessary

*Best Practices Statement in the Use of
Restraints with Pregnant Women Under
Correctional Custody
2012*

US. Department of Justice *National Task Force on the Use of Restraints
with Pregnant Women under Correctional Custody, 2012*

American Psychological Association (APA)

Best Practices & Recommendations (2015)

...The APA supports strictly enforced restrictions in the United States on the shackling of incarcerated women and adolescents during pregnancy, childbirth, and recovery.

“This dangerous and degrading practice stands in direct conflict with our commitment to opposing cruel, inhuman, and degrading punishment and to promoting human and civil rights.”



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

American Psychological Association

Best Practices & Recommendations, 2015

- APA Recommendations:
 - Issue an Executive Order or agency-wide priority at DOJ to encourage community standard prenatal and postpartum care and end the practice of shackling, except in extreme circumstances.
 - Give priority in awarding DOJ grants to those states that have eliminated shackling, through policy, statute, or other mechanism.
 - Require or incentivize the collection and reporting of state- and local-level data on ... the number of incidents of shackling during pregnancy, labor, and recovery.



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

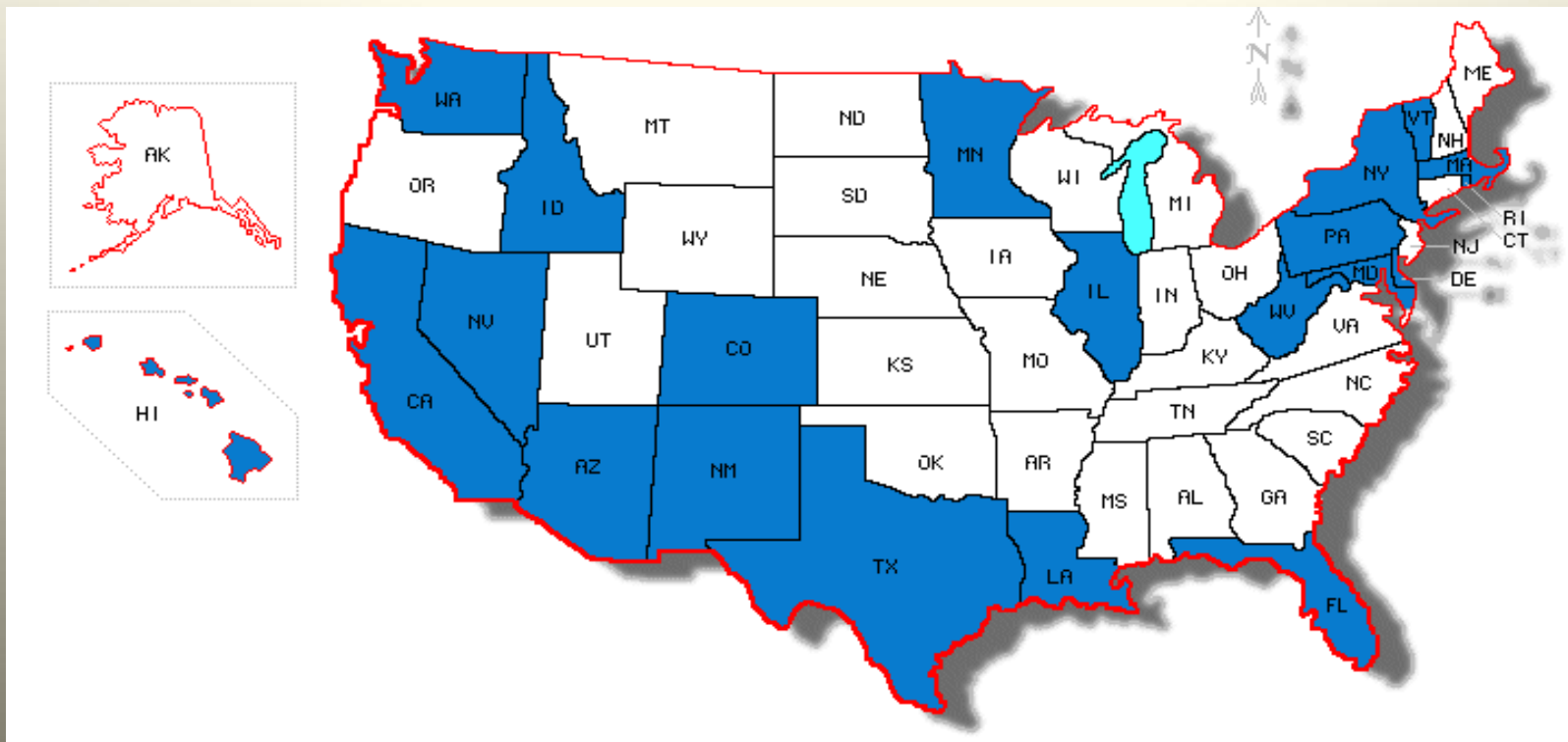
“Implementing Policies and Practices on the Non-use of Restraints with Incarcerated Pregnant Women” webinar, December 14, 2015

- Hosted by National Resource Center on Justice Involved Women (NRCJIW)
- Reviewed the core principles and recommendations for operational practice outlined in the *National Task Force on the Use of Restraints with Pregnant Women under Correctional Custody*

Current Status by State

Current Status - State Legislation 2015

- **37 states** and the District of Columbia, via statute or policy, prohibit or strictly limit the use of restraints during pregnancy, labor, birthing, and recovery, or a subset of these stages.
- **23 States and the District of Columbia Have Laws Prohibiting Restraints in Labor (Shaded states)**
- **14 states, including Connecticut** did not have laws to limit the use of restraints.



Examples of Sample Legislation



Sample Legislation

- Massachusetts (2014)
 - Chapter 103; Section 118 b)
- Maryland Legislation (2014)
 - Chapter 212; House Bill 27
- Maine Legislation (2015)
 - Chapter 315; "An act to prevent the shackling of pregnant prisoners and pregnant juveniles"

ACOG

- Shackling of incarcerated pregnant women is demeaning and rarely necessary
- Correctional facility restraint and shackling policies were designed to prevent the escape of violent, male offenders.
 - In most cases, they have not been re-designed for the female prison population.
- Most incarcerated women are nonviolent offenders -- jailed for nonviolent crimes including drug and property offenses.
- There are no reported escape attempts among pregnant incarcerated women who were not shackled during childbirth.

ACOG (2018)

- Nausea and vomiting are common symptoms of early pregnancy. Shackling women already suffering is cruel and inhumane.
- The use of shackles during labor compromises a woman's ability to deliver her baby in privacy.
- After delivery, shackling may prevent or inhibit mother-child bonding.

ACOG (2018)

- Incarcerated pregnant women are at high risk for pregnancy complications
- Pregnancies among incarcerated women are often unplanned and high risk.
- Poor nutrition, domestic violence, mental illness, and drug and alcohol abuse are typical.

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ACOG

➤ Physical restraints interfere with safe medical practice

- Restraints limit the ability of medical care providers to assess and evaluate the mother and the fetus.
- Shackling can delay prompt diagnosis of vaginal bleeding which may pose a threat to the woman or the fetus.

ACOG

- Physical restraints interfere with safe medical practice
- Hypertensive disease occurs in approximately 12-22% of pregnancies and is directly responsible for 17.6% of maternal deaths in the US. Preeclampsia can result in seizures which may not be safely treated in a shackled patient.
- Women should never be shackled during evaluation for labor

ACOG

- Physical restraints interfere with safe medical practice
 - During pregnancy and up to 6 weeks postpartum, shackling should occur only in exceptional circumstances after the clinician providing care has considered the health effects of restraints.
 - Correctional officers should be available and required to remove shackles immediately upon the request of medical personnel.

ACOG

- Shackling interferes with normal labor and delivery and puts at risk the health of the pregnant woman and her fetus.
- Pregnant women are more likely to experience balance issues and are at greater risk for falls. Shackling increases this risk and hinders a woman's ability to protect herself and her fetus if she does fall.

ACOG

- Interferences with a woman's ability to ambulate during labor
 - important for adequate pain management, successful cervical dilation and successful vaginal delivery.
- Inhibits ability to move quickly for emergencies of labor and delivery, including shoulder dystocia, hemorrhage, or abnormalities of the fetal heart rate requiring intervention, including urgent cesarean delivery.
- After delivery, shackling may prevent or inhibit mother-child bonding and interfere with the mother's safe handling of her infant.

ACOG Recommendations

- Federal and state governments should adopt policies to support provision of prenatal care for pregnant and postpartum women, following ACOG guidelines.
- Education to increase knowledge of health care providers and correctional officers.
- OBGYNs should support efforts to improve health of incarcerated pregnant women through
 - Advocating, partnering with others opposed to shackling, representation on boards/commissions, work in correctional facilities.

Conclusions

- Growing interest on adopting gender-responsive approaches for pregnant inmates.
- Best practices and recommendations agree on banning the practice of shackling pregnant women during pregnancy
- Most states have regulations in place - nearly half have laws restricting the use of restraints (increasing)

Where Do We Stand?



- CT Senate Bill No. 13 passed in February 2018
 - Section 1 (Effective October 1, 2018)
 - (a) Commissioner of DoC shall ensure that one departmental or contracted, licensed healthcare provider (HCP) be employed at York who is:
 - Trained in prenatal and postpartum care
 - Knowledge to educate any pregnant inmate
 - (b) Licensed HCP shall assess each inmate for pregnancy on admission
 - (c) Provide each pregnant inmate with:
 - (1) counseling & written material known as the “Pregnant Women’s Guide.”
 - (2) provide medical care at York, periodic monitoring and prenatal vitamins as deemed necessary by a HCP,
 - (3) Healthy diet adequate to support pregnancy
 - (4) Clothing, undergarments and sanitary materials deemed appropriate by HCP trained in perinatal medical care,
 - (5) minimum of one hour of ambulatory movement every day,
 - (6) access to postpartum depression treatment by qualified mental health professional. If HCP determines inmate’s pregnancy is high risk, or involves medical complications for mom/baby, the mom (inmate) will be transferred to the medial; infirmary, or hospital deemed appropriate by HCP.

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– Section 1 (Effective October 1, 2018)

- (d) Shall not use any leg or waist restraint on any inmate who is pregnant or postpartum

Can only use handcuffs in the front, except

(1) Inmate MAY be placed in wrist, waist or leg restraints if there are COMPELLING grounds to believe that an inmate presents

(A) an immediate and serious threat of harm to herself, staff and others;

(B) A substantial flight risk and cannot be contained by other means; and

(2) Use of such restraints is approved by the administrator of the institution, or his/her designee. Such restraints will be least restrictive.

CT Legislation

- Correctional staff shall:
 - Document the reason for the restraint, type used, and reasons staff considered for such restraint to be the least restrictive available, most reasonable from preventing harm or escape.
 - Any inmate deemed to be in the 2nd or 3rd trimester, by a licensed HCP, shall be transported to and from medical visits or court with seatbelts.
 - Immediately remove restraints at any time if requested by an attending physician or APRN because of medical reasons.

CT Legislation

- Nothing prohibits licensed healthcare providers from the use of restraints at any time to ensure the medical safety of the inmates.
- Restraints are defined as metal handcuffs, metal leg restraints and waist or tether chains.

Shackling During Labor



Labor & Delivery

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- Each inmate shall receive labor and delivery services in a hospital deemed appropriate, by the departmental or contracted licensed healthcare provider.
- Inmates in labor shall not be restrained at any time, including, but not limited to transport to the hospital.
- Correction officer shall be female, if possible.
- Positioned to protect privacy.

Def. Postpartum Period

- Begins immediately after the birth of a child as the mother's body, including hormone levels and uterus size, returns to a non-pregnant state. The term immediate **postpartum period** is commonly used to refer to the first 6 weeks following childbirth.
- Three phases:
 - 1st is the initial or acute period involves the first 6–12 hours postpartum.
 - 2nd phase is the subacute postpartum period, which lasts 2–6 weeks. Body is undergoing major changes in terms of hemodynamics, genitourinary recovery, metabolism, and emotional status.
 - 3rd phase is the delayed postpartum period, which can last up to 6 months. Changes during this phase are extremely gradual, and pathology is rare. Time of restoration of muscle tone and connective tissue to the pre-pregnant state. ¹³

Postpartum

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- Assessed by a licensed HCP upon return to York.
- Housed in the medical or mental health housing unit, until discharged by a licensed HCP.



Discharge Planning

- Provide counseling and discharge planning to ensure prenatal or pregnancy-related care and follow-up.
- Substance abuse treatment referrals, if appropriate.

Contraception??



Gender Identity

- If gender identity differs from that assigned sex at birth and has a diagnosis of gender dysphoria shall:
 - Be addressed by staff in a manner consistent with inmates identity.
 - Have access to commissary items, clothing, etc. consistent with their identity.
 - Searched by correction office of same sex as they identify.

Gender Identity continued...

- Birth certificate, passport or driver's license that reflects his gender identity will be placed in a correctional facility with inmates of the gender consistent with the inmate's gender identity.

Oversight

- Commissioner of DoC or designee shall report to the joint standing committee of the General Assembly July 1, 2018-June 30, 2019 for instances in which
 - More than one type of restraint was used simultaneously on a pregnant inmate,
 - An inmate incarcerated who gave birth outside of a hospital setting, and
 - Any pregnant inmate held in administrative segregation.

Questions?

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