

Stop Shackling Pregnant Inmates

Cordelia Gilligan

Pregnant women across the United States are being restricted in their movement and restrained by cuffs and chains while in transport to the hospital, before labor, and in some cases even during labor. Doctors and human rights organizations protest this practice, called shackling, as **unsafe and unnecessary**, yet it continues to happen. Why? The women in question are incarcerated.

The population of women in prison has been rapidly increasing over the past 20 years, in large part due to the effects of the War on Drugs, and is now the **fastest growing prison population** (Ferszt, G. G., & Clarke, J. G. (2012)). The healthcare provided by prisons has not adjusted to this fact, as most women's prison policies haven't changed since they were first formed and used the exact same policies as men's prisons (DiNardo, C. (2018)). The problem with using female indifferent policies is that incarcerated men can't become pregnant.

Shackling prisoners in order to prevent them from escaping was designed with imprisoned men in mind, rather than imprisoned women (Henriques, Z. & Gladwin, B.). Most currently incarcerated women have committed non-violent crimes and **demonstrate no signs of attempting escape** and have limited mobility due to their pregnancy (Ferszt, G. G., & Clarke, J. G. (2012)), yet the primary argument used in defense of shackling is the possibility of escape or the threat of violence. In prisons prohibit shackling, flight risks haven't been a problem (Thomas, S. Y., & Lanterman, J. L. (2017)).

Medical Risks of Shackling

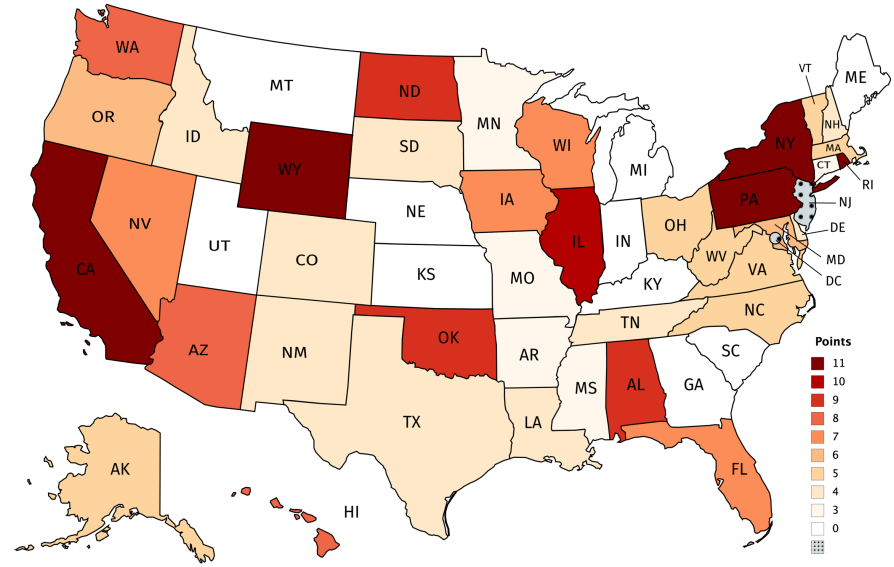
- Pregnant women who are imprisoned are at higher risk of unintended pregnancy and preterm birth (Knittel, A., Ti, A., Schear, S., & Comfort, M. (2017))
- Shackles can **prevent nurses and doctors from assessing the health of the mother and fetus** during routine checkups and labor (Association of Women's Health, Obstetric, and Neonatal Nursing)
- Limited movement **makes the labor process more difficult** and more painful, as changing position and being mobile during labor can shorten the process and lessen labor pains (Shackling Incarcerated Pregnant Women)
- Shackles can cause **bruising and severe cuts** during labor (Thomas, S. Y., & Lanterman, J. L. (2017))
- Shackling can exacerbate imbalance among pregnant women, **increasing the risk of falling**, which poses a threat to both the mother and the fetus (American Civil Liberties Union)
- If emergency care is needed in response to falling, maternal hemorrhage, abnormal fetus heartbeat rate, or another medical problem **shackles can delay lifesaving procedures** (Shackling Incarcerated Pregnant Women)

International Standards on Shackling

The United Nations Standard Minimum Rule for the Treatment of Prisoners prohibits shackling pregnant prisoners, as does the international treaty from the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (American Civil Liberties Union)

Shackling in North Carolina

It only recently became prison policy to prohibit the shackling of inmates while in labor, a change from policy that only prohibited shackling while an inmate is pushing. There is no legislation regarding shackling, which makes issuing legal claims more difficult. Other states besides North Carolina have implemented limitations on shackling, but no states have implemented a complete, no-exceptions ban on shackling (Thomas, S. Y., & Lanterman, J. L. (2017)). A ban would be the most effective protective measure, as flight risk and safety exemptions are more often used as loopholes than true exceptions. In a nationwide survey on the state of shackling in different states conducted in 2017, North Carolina received five out of 13 points between state law and prison policy.



This map demonstrates the quality of legislation regarding shackling policies on a scale of 0 to 13 based on a nationwide survey (Thomas, S. Y., & Lanterman, J. L. (2017)). Each point corresponds to a question about an aspect of state laws and policies on shackling. The highest scoring states received 11 points because no states have a complete ban on shackling.

Recommended Policy Solution

North Carolina's General Assembly should pass **Senate Bill 786: The Healthy Mother and Child Shackling Prohibition:**

- a) *"A correctional institution shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility, delivery, postpartum recovery, and the postpartum period, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance,*
 - 1) *except that: If the physician, obstetrical provider, nurse, or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints.*
 - 2) *Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery."*
- b) *"If restraints are used on a prisoner or detainee...*
 - 1) *The type of restraint applied and the application of the restraint shall be accomplished in the least restrictive manner necessary.*
 - 2) *The corrections official shall make written findings within 10 days as to the extraordinary circumstance that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least five years and be made available for public inspection, except that no individually identifying information of any prisoner or detainee shall be made public under this Article without the prisoner or detainee's prior written consent."*
- c) *"Section 3: There is appropriated from the General Fund to the Department of Public Safety, Division of Adult Correction and Juvenile Justice, the sum of two hundred fifty thousand dollars (\$250,000) for fiscal year 2018-2019 in recurring funds to be allocated to policy implementation, education, and training of the procedures outlined in Section 1 of this act."*

This bill is a good first step, as having official state doctrine, rather than only prison policy, provides a stronger legal framework to protect the health of pregnant incarcerated women and their fetuses, and it also implements accountability measures.

Works Cited

American Civil Liberties Union, ACLU Reproductive Freedom Project and ACLU National Prison Project. (n.d.). *ACLU Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers* [Press release]. Retrieved from https://www.aclu.org/files/assets/anti-shackling_briefing_paper_stand_alone.pdf

DiNardo, C. (2018). Pregnancy in confinement, anti-shackling laws and the "extraordinary circumstances" loophole. *Duke Journal of Gender Law & Policy*, 25(2), 271-295. Retrieved from <http://libproxy.lib.unc.edu/login?url=https://search-proquest-com.libproxy.lib.unc.edu/docview/2088483177?accountid=14244>

Ferszt, G. G., & Clarke, J. G. (2012). Health Care of Pregnant Women in U.S. State Prisons. *Journal of Health Care for the Poor and Underserved*, 23(2), 557-569. doi:10.1353/hpu.2012.0048

Knittel, A., Ti, A., Schear, S., & Comfort, M. (2017). Evidence-based recommendations to improve reproductive healthcare for incarcerated women. *International Journal of Prisoner Health*, 13(3), 200-206. Retrieved from <http://libproxy.lib.unc.edu/login?url=https://search-proquest-com.libproxy.lib.unc.edu/docview/1940356675?accountid=14244>

Henriques, Z. & Gladwin, B. (2013). Pregnancy and motherhood behind bars. In L. Gideon (Ed.), *Special needs offenders in correctional institutions* (pp. 83-116). Thousand Oaks, CA: SAGE Publications, Inc. doi: 10.4135/9781452275444.n4

James, K. (2017, December 22). Upholding the Dignity of Incarcerated Women. Retrieved from <https://www.americanprogress.org/issues/women/news/2017/12/22/444468/upholding-dignity-incarcerated-women/>

Shackling Incarcerated Pregnant Women. (2011). *Journal of Obstetric, Gynecologic & Neonatal Nursing*, 40(6), 817-818. doi:10.1111/j.1552-6909.2011.01300.x

Thomas, S. Y., & Lanterman, J. L. (2017). A National Analysis of Shackling Laws and Policies as They Relate to Pregnant Incarcerated Women. *Feminist Criminology*, 155708511773761. doi:10.1177/1557085117737617