

THE SHACKLING OF PREGNANT INMATES

WHITE PAPER

MAYOR'S COUNCIL FOR WOMEN

Prepared by:

The Justice Committee
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Submitted by the Justice Committee

Mayor's Council For Women

I. INTRODUCTION

The Justice Committee addressed the issue of shackling of pregnant women inmates because of the inhumanity of the practice as well as the health risk to both mother and her unborn child. Because the federal government and some states have adopted an anti-shackling policy, the Committee felt that it was time to address the matter in the Chattanooga area and in the State in general.

II. COMMITTEE STRUCTURE AND WORK

In addition to a literature review, the Justice Committee worked, as a whole, in preparing a survey questionnaire and in conducting county jail personnel interviews and statewide research. The questionnaire focused on shackling of pregnant inmates in the eleven county jails in Tennessee's Third Congressional District. This document contains the results of that work and addresses the medical and legal consequences of shackling pregnant women inmates.

III. ISSUES ADDRESSED

The basic issues addressed were:

1. How pervasive is the shackling of pregnant woman inmates?
2. Does the use of shackles or restraints pose health risks to pregnant women inmates and their unborn children?
3. Does the use of shackles or restraints on pregnant women inmates constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution?

IV. DISCUSSION

The women's prison population has skyrocketed in the United States during the last decades and has the highest incarceration rate of women in the world with approximately 112,000 in federal and state prisons (Maruschak, Berzofsky & Unangst, 2015) and another 110,000 in jails (Vera Institute of Justice 2016). These figures do not include the number of women housed in private correction facilities. It is estimated that 6% to 10% of women are pregnant when they enter prison or jail (Sufirin, 2014).

Pregnant incarcerated women have been identified as a particularly high-risk group and among the most vulnerable women in the United States. The health of these women is often compromised by lack of prenatal care, poor nutrition, sexually transmitted infections, intimate partner violence, and drug and alcohol dependence (Bronson & Berzofsky, 2017; Carson, 2015; Lynch et al., 2014 Sufirin, 2014).

SHACKLING AND RESTRAINTS

The practice of shackling (also called restraints) includes the use of a mechanical device to control and limit the movement of a prisoner's body or limbs. These include ankle cuffs, belly chains, soft restraint, or hard metal handcuffs. The use of shackling poses health risks to pregnant women and their unborn child. Currently, only 22 states have legislation prohibiting or limiting the shackling of pregnant women (U.S. Department of Justice, 2012).

States vary in their legislation. For example, some ban the use of shackles while women are transported to medical facilities during childbirth and in the immediate post-partum period. Other states ban shackling only during labor and birth. Some states have policy but many times they are not enforced. Other states have neither policy or law.

The initial purpose of using restraints with pregnant incarcerated women was to prevent women from escaping or harming themselves or others. There are no data to support this reasoning. In fact, no escape attempts have been reported among pregnant incarcerated women who were not shackled during childbirth. (Ferszt 2018)

The dangerous practice of shackling pregnant women is being reconsidered and in many cases prohibited due to both proven and potential harm to the mother and child. Restraints make it difficult for doctors to adequately assess the condition of the mother and the fetus, and to provide prompt medical intervention when necessary. Restraints also make the process of labor and delivery more painful. The Federal Bureau of Prisons (BOP) in September 2008 ended shackling pregnant inmates as a matter of routine in all federal correctional facilities (Rebecca Project for Human Rights & National Women's Law Center, 2010).

POTENTIAL NEGATIVE OUTCOME

Restraints prevent a pregnant woman from breaking a fall, which can lead to abdominal trauma, potentially resulting in placental abruption maternal hemorrhage, and even stillbirth. When a woman is restrained, the ability of health care providers to assess and evaluate her and her fetus is compromised (Sufrin, 2014). Restraints make it difficult for doctors to adequately assess the condition of the mother and the fetus, and to provide prompt medical intervention when necessary. In the prenatal period, shackling can delay the prompt assessment of vaginal bleeding. Shackling limits mobility during labor. Walking and moving around with the freedom to change positions in labor can result in less discomfort and a shorter, less painful labor with less need for medication, thereby decreasing risks for women and newborns (ACOG, 2011).

Hypertensive conditions are relatively common, and shackled women with hypertension may encounter problems, particularly if they experience an eclamptic seizure (convulsions), during which they may suffer injuries directly related to the restraints. Unnecessary delays of potentially lifesaving measures in the event of an obstetric emergency, including hemorrhage or abnormalities of the fetal heart rate that requires prompt intervention and possibly urgent cesarean birth, can also occur from the use of shackles (ACOG, 2011)

After giving birth, most incarcerated women are allowed only 24 hours with their newborns in the hospital; this separation can be psychologically traumatizing for them. And the critical

importance of mother-newborn bonding in the initial hours and days after birth has been noted in the literature. Shackling limits a woman's ability to be in contact with her newborn and may interfere with her safe handling of her newborn (ACOG, 2011).

POLICY REVIEW

1. MARTINEZ: In 2016, the Federal Court of Appeals for the Ninth Circuit in the United States stated, "Shackling while in labor offends contemporary standards on human decency such that the practice violates the Eighth Amendment's probation against the unnecessary and wanton infliction of pain . . . it poses a substantial risk for serious harm" (Mendioila-Martinez v. Arpaio, 2016, p 24).

In a **Tennessee case**, Plaintiff Juana Villegas brought suit under 42 U.S.C. § 1983, claiming violations of her Eighth Amendment rights (made applicable to pretrial detainees through the Fourteenth Amendment) as a result of her being restrained and shackled prior to and following giving birth while in the custody of law enforcement authorities employed by Defendant Metropolitan Government of Nashville and Davidson County.

Ms. Villegas, then an undocumented immigrant, was arrested when she was nine months pregnant. The arresting officer, who suspected she was undocumented, chose to exercise his discretion and arrest her instead of issuing her a citation for traffic infraction. Ms. Villegas's three children were in the car with her when she was stopped. She was taken to jail and while she was in jail she went into labor. Her legs were shackled together as she was transported to the hospital. One of her feet was cuffed to the bed and a guard remained in her room the entire time. She was separated from her newborn, given a breast pump and returned to the jail where the breast pump was confiscated. She was then released two days later with a breast infection. Her infant in the meantime had developed jaundice. Villegas sued Davidson County. In 2011 a federal judge ruled in Ms. Villegas's favor, finding that jail officers had shown "deliberate indifference" to her medical needs by cuffing her ankle to her hospital bed through most of her labor and during recovery. In 2013, a federal judge ruled that shackling during labor and again after giving birth amounted to unconstitutional interference with her medical care as well as subjected both her and her unborn child to medical risks. Davidson County agreed to settle the case for \$490,000.00.

The Davidson County Sheriff's Office issued a new policy that ended the shackling of detained pregnant women (Juana Villegas de la Paz v. Metro Nashville Government, 2013).

In June 2013, Charity Flerl was arrested in Hamilton County after falling behind on her child support payments. She was six months pregnant at that time. Because the Hamilton County Jail only houses men, she was sent to the Silverdale Correctional Facility in Chattanooga run by private prison corporation Corrections Corporation of America. In September, she went into labor. Guards shackled her hands, feet, and wrists before taking her to the hospital. While there, two armed guards remained in the room and she was shackled to the bed during labor. According to her attorney, Chris Clem, she spent two days of postpartum recovery with an arm and leg shackled at all times. In March 2014, Flerl filed a federal lawsuit against Corrections Corporation of America, the Hamilton County Sheriff Jim Hammond and guards for the

Silverdale Correctional Facility. Her suit demands that the Hamilton County Jail change its policy of shackling all non-violent prisoners during labor, delivery, and postpartum (Law, 2014).

2. FIRST STEP ACT: The First Step Act was signed into law by President Donald Trump on December 21, 2018. The First Step Act is a federal law that expands in-prison and post-release employment programming, includes components related to alternatives to prison for low-risk prisoners such as home confinement, **prohibits restraints on pregnant prisoners**, and mandates evidence-based treatment for opioid and heroin abuse, among others. The U.S. Senate approved the Act with a vote of 87-12, and the House with a vote of 358-36. While this law affects only the federal system, the guidelines pertaining to the shackling of pregnant women can be adopted to state law as well as local policy (Vox, 2019).

3. SENATE BILL 1150: Tennessee Senator Raumesh Akbari has introduced Senate Bill 1150 that would not only prohibit the state's inconsistent use of shackling pregnant inmates, but also provide prenatal and postpartum medical care. At the present time, the bill is being heard in committee. **The Justice committee spoke with the Senator and she stated that the challenge in passage of the bill lies with the county jails.** We concur. Our survey questionnaire reveals that 6 of the 11 county jails shackle pregnant inmates (See Appendix A: Questionnaire). Lack of written policy and education on the harm in shackling hinders progress in women's health and hinders protection of some of the most vulnerable; pregnant incarcerated women.

LOCAL INTERVIEWS

The Justice Committee interviewed the following persons. Listed are their comments on shackling pregnant women inmates.

1. Danna Vaughn, Assistant Chief of Department and Community Development of the Chattanooga Police Department stated that **the department uses handcuffs but does not shackle.** Whether to cuff in front or back depends on the female's demeanor. Some women kick, spit, etc. The department transports to the Hamilton County Policy Department and they in turn transport women to Silverdale Detention Facility.

2. Gene Coppinger, Facility Operations of the Hamilton County Sheriff's Office: Captain Coppinger stated that the Hamilton County Jail does not house female inmates. They book the female inmate and transport to Silverdale Detention Facility. He stated that **whether or not they shackle depends on the stage of pregnancy. His department makes a judgment call based on illness or reason.** He further stated, "If the pregnant female inmate is not complaining, we would hand restrain but not the legs. If we cannot tell if a woman is pregnant, we will restrain her in transportation. Some women will say that they are pregnant just so that we will not restrain/shackle her."

3. Joe Fowler, Deputy Chief of Corrections, Hamilton County Sheriff's Office, stated that Silverdale Detention Facility uses hand restraints in front of the inmate **up to the third trimester** (27 weeks).

The Justice Committee feels that it is important to extend the interview process beyond Chattanooga and Hamilton County.

V. CONCLUSIONS AND RECOMMENDATIONS

The Justice Committee believes that all women deserve the right to a safe, healthy and dignified childbirth experience. Giving birth in shackles is a devastating emotional experience for many women; so is transportation to a doctor's office, hospital or birthing center when she is encumbered in shackles, whether hand or ankle cuffs or belly chains. Education and policy are important in accomplishing pregnancy dignity for incarcerated women. Therefore the Justice Committee submits the following recommendations to the City of Chattanooga.

1. Request that the City of Chattanooga, through its Police Department, create and publish a written policy stating that shackling pregnant women inmates creates a health risk to both mother and unborn child and is cruel and unusual treatment in violation of her Eighth Amendment right (United States Constitution).
2. Based on our questionnaire results in which 6 of the 11 counties interviewed shackled pregnant inmates, we recommend that a copy of this policy be forwarded to the 11 counties in Tennessee's Third Congressional District, as described below, with recommendation for its implementation.

The Third Congressional District of Tennessee is represented by Republican Chuck Fleischmann of Chattanooga. The district comprises two halves, joined together through a narrow tendril in Roane County near Ten Mile, TN. The upper half borders Kentucky to the north and composed of Scott, Morgan, Roane, Anderson, and Union counties, as well as most of Campbell County. The lower half borders North Carolina to the east and Georgia to the south. It includes the Counties of Hamilton, Polk, McMinn, Monroe and the southern half of Bradley county.

Respectfully Submitted,

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APPENDIX A

Mayor's Council For Women: Justice Committee

Questionnaire: Shackling of Pregnant Women Inmates

_____ County Jail

- 1 **Female Inmates:** Do you house women inmates in your jail?
A:

- 2 **Policy:** Do you have a policy for the shackling of pregnant female inmates?
A:

- 3 **Shackle:** When transporting a pregnant female inmate to the doctor or hospital for delivery of the birth of her child, do you shackle the inmate?
A:

- 4 **Shackling Procedure:** If so, how do you shackle pregnant inmates?
Arms, legs, waist?
A:

- 5 **Police Officer:** Does a police officer stand guard inside the delivery room or outside the delivery door?
A:

- 6 **Medical Doctor:** Does the doctor's health order to unshackle a pregnant inmate trump the original order to shackle?
A:

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