THE SHACKLING OF INCARCERATED PREGNANT WOMEN: A HUMAN RIGHTS VIOLATION COMMITTED REGULARLY IN THE UNITED STATES

An Alternative Report to the Fourth Periodic Report of the United States of America Submitted Pursuant to the International Covenant on Civil and Political Rights

Submitted by:

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August 2013

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The National Prison Project of the ACLU Foundation (NPP) was established in 1972 to protect and promote the civil and constitutional rights of prisoners. Since its founding, the Project has challenged unconstitutional conditions of confinement and over-incarceration at the local, state and federal level through public education, advocacy and successful litigation.

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The International Human Rights Clinic (Clinic) works with non-governmental organizations to design and implement human rights cases and projects. Students learn human rights lawyering skills by working on these cases and projects, all of which are supervised by the director of the Clinic. The Clinic uses international human rights laws and norms to draw attention to human rights violations, develop practical solutions to those problems using interdisciplinary methodologies, and promote accountability on the part of state and non-state actors.

We are grateful to the following individuals and organizations for providing us information for this Report: ACLU Foundation of Florida, Arkansas Voices for the Children Left Behind, Diana Claitor, Correctional Association of New York, Human Rights Project For Girls (rights4girls.com), Legal Aid Society, NARAL Pro-Choice America, National Women's Law Center, Pennsylvania Prison Society, Maggie Jo Poertner, Prisoner's Rights Project, Rachel Roth, and the Texas Jail Project.

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I. EXECUTIVE SUMMARY

The international human rights community has repeatedly expressed concern about the shackling of pregnant women deprived of their liberty in the United States. The federal government has adopted an anti-shackling policy and some states have passed laws or policies restricting shackling. Despite these positive developments, shackling of women prisoners continues to occur in violation of U.S. and international law.

Shackling pregnant women increases the substantial medical risks of childbirth. Shackling of pregnant women is a harmful, painful, and demeaning practice that is rarely necessary to preserve safety. Most female prisoners are non-violent offenders, and women who are pregnant, in labor, or in postpartum recovery are especially low flight and safety risks.

Both international law and U.S. constitutional law prohibit shackling during certain stages of pregnancy, childbirth, and post-partum recovery. Article 10 of the International Covenant on Civil and Political Rights (the "ICCPR") guarantees that persons deprived of their liberty be treated with dignity and respect. Article 7 prohibits torture, or cruel, inhuman, or degrading treatment or punishment. The Eighth Amendment to the U.S. Constitution prohibits cruel or unusual punishments, which some Federal courts have interpreted to prohibit the shackling of pregnant prisoners during childbirth.

While the U.S. federal government has adopted an anti-shackling policy that applies to federal prisons and 24 states have adopted policies limiting (to varying degrees) shackling of pregnant prisoners, legislation enacted by state legislatures is preferable to the adoption of an administrative policy by the executive. Indeed, 18 state legislatures in the United States have in fact passed legislation restricting shackling, but many such laws contain broad exceptions or are not adequately implemented.

We recommend that the UN Human Rights Committee (the "Committee") that monitors compliance with the ICCPR ask and encourage the United States to 1) enact a federal law banning the practice of shackling prisoners during pregnancy, covering, at a minimum, the third trimester, transport to medical facilities, labor, delivery and postpartum recovery, 2) take appropriate measures to ensure that those 32 states that do not have anti-shackling laws to enact comprehensive laws, including training of correctional officers, 3) to review existing state anti-shackling laws and policies to ensure that they are comprehensive and fully-implemented, and 4) to conduct an empirical study to determine the scope of shackling in U.S. prisons and to understand why the practice of shackling pregnant women persists.

II. METHODOLOGY

In conducting research for this Report, the authors: A) undertook desk research, B) gathered information from advocates around the United States who work on anti-shackling efforts, and C)

contacted prison officials around the country to obtain information on state level anti-shackling policies. Below is a more detailed description of the research undertaken by the authors.

A. Desk Research: The authors of this Report conducted research to find anti-shackling laws and policies in all 50 U.S. states. Additionally, the authors reviewed legal, medical, social science books and journals, non-government organization reports, and media reports.

B. Information from Advocates: The authors contacted by email and phone, numerous NGOs, advocacy groups, and experts in the United States that have worked on or are working on anti-shackling advocacy work. Feedback, comments, and information were sought on the current status of the law or policies in the relevant jurisdictions, as well as on the implementation of such laws and policies. In addition, this Report includes information presented at an expert meeting on women in prison convened by the International Human Rights Clinic at The University of Chicago Law School on behalf of Rashida Manjoo, the UN Special Rapporteur on Violence Against Women held on May 14, 2013.

C. Information from State officials: In states where anti-shackling polices were not publicly available, the authors contacted the departments responsible for the operation of the prison system. The authors requested the departments to provide copies of any anti-shackling policies they have adopted. The authors received several responses; the information is included in the Appendix.

III. THE HUMAN RIGHTS COMMITTEE HAS IDENTIFIED SHACKLING AS A HUMAN RIGHTS PROBLEM IN THE UNITED STATES

In response to the U.S. government's Second and Third Periodic Report submitted to the Committee pursuant to the ICCPR in 2006, the Committee raised questions about the shackling of pregnant women deprived of their liberty in the United States.[1] The Committee also expressed concern about "the shackling of detained women during childbirth" in its Concluding Observations on United States' Second and Third Periodic Report.[2] Specifically, the Committee recommended, that the United States "prohibit the shackling of detained women during childbirth."[3]

In its Fourth Periodic Report to the Committee, submitted at the end of 2011, the U.S. government stated that the Bureau of Prisons, which oversees the operation of federal prisons,

[1] *List of Issues to Be Taken Up in Connection with the Consideration of the Second and Third Periodic Reports of the United States of America* ¶ 21, UN Human Rights Council, 86th session (Apr. 26, 2006), UN Doc CCPR/C/USA/Q/3, online at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/list_of_issues_-_us-2006.pdf (visited Aug 23, 2013).
[2] *Concluding Observations of the Human Rights Committee on the Second and Third U.S. Reports to the Committee* ¶ 33, UN Human Rights Committee, 2395th mtg (July 27, 2006), UN Doc CCPR/C/SR.2395, online at http://www1.umn.edu/humanrts/usdocs/hruscomments2.html (visited Aug 23, 2013).
[3] Id.

"would no longer engage in the practice of shackling pregnant women during transportation, labor and delivery, except in the most extreme circumstances."[4] The Fourth Periodic Report also states that many U.S. states have restricted the use of restraints on incarcerated pregnant women in state prisons,[5] and that there is a "significant trend toward developing explicit policies" banning the practice of shackling pregnant inmates.[6]

At its 107th session in March 2013, the Committee released its List of Issues in connection with the Fourth Periodic Report of the United States and requested further clarification as to "whether the State party intends to prohibit the shackling of detained pregnant women during transport, labor, delivery and post-delivery, under all circumstances."[7] The U.S. government responded to these questions in a manner similar to its statements in the Fourth Periodic Report, highlighting those federal and state anti-shackling laws and policies that are in compliance the ICCPR.[8]

IV. SHACKLING IS HARMFUL AND UNJUSTIFIED

A. Background on Shackling

The women's prison population has skyrocketed in the United States during the last few decades.[9] A disproportionate number of these women are African American and Latina.[10] About 6% of incarcerated women are pregnant.[11] Many incarcerated women are shackled during labor, childbirth, or recovery even in places where policies or laws prohibit such shackling.[12] The

[4] *Consideration of reports submitted by States parties under article 40 of the Covenant, Fourth periodic report: United States of America* ¶ 231, UN Human Rights Committee (May 22, 2012), UN Doc CCPR/C/USA/4, online at http://www.refworld.org/docid/5146fe622.html (visited Aug 23, 2013).
[5] Id at ¶ 232.
[6] Id at ¶ 233.
[7] *List of issues in relation to the fourth periodic report of the United States of America* ¶ 16, UN Human Rights Committee, 107th session (Apr 29, 2013), UN Doc CCPR/C/USA/Q/4, online at http://www.ushrnetwork.org/sites/ushrnetwork.org/files/official_usa_iccpr_list_of_issues_-2013.pdf (visited August 23, 2013).
[8] *United States Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights* ¶ 85, UN Human Rights Committee, 109th session (Apr 29, 2013), UN Doc CCPR/C/USA/Q/4/Add.1, online at http://www2.ohchr.org/english/bodies/hrc/hrcs109.htm (visited Aug 23, 2013).
[9] There are almost 110,000 women in state and federal correctional facilities in the United States, and nearly another 100,000 in county and city jails. U.S. Bureau of Justice Statistics, *Prisoners in 2012 - Advance Count* at 2, Table 1 (July 2013), NCJ 242467, online at http://www.bjs.gov/content/pub/pdf/p12ac.pdf (visited Aug 23, 2013); U.S. Bureau of Justice Statistics, *Jail Inmates at Midyear 2012 - Statistical Tables* at 5, Table 2 (May 2013), NCJ 241264, online at http://www.bjs.gov/content/pub/pdf/jim12st.pdf (visited Aug 23, 2013).
[10] The Sentencing Project Fact Sheet at 2 (September 2012), online at http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Sep24sp.pdf (visited Aug 23, 2013).
[11] Ginette Gosselin Ferszt, *Giving Birth in Shackles: It's time to stop restraining pregnant inmates during childbirth,* 110(2) American J Nursing 11 (2010); American College of Nurse-Midwives, *Position Statement: Shackling/Restraint of Pregnant Women Who Are Incarcerated* at 1, online at http://www.midwife.org/ACNM/files/ACNMLibraryData/UPLOADFILENAME/000000000276/Anti-Shackling%20Position%20Statement%20June%202012.pdf (visited Aug 23, 2013).
[12] See *Brawley v. State of Washington*, 712 F Supp 2d 1208 (WD Wash 2010); *Zaborowski v. Dart*, WL 6660999 (ND Ill. 2011).

practice of shackling includes placing shackles or handcuffs around a woman's ankles or wrists and sometimes chains around her stomach.[13] Evidence that the practice continues throughout the United States is demonstrated by the fact that in recent years both individual plaintiffs and class action groups have brought claims involving shackling in Arkansas, Illinois, Tennessee, Washington, and the District of Columbia.[14]

Some observers argue that the practice of shackling pregnant women deprived of their liberty became common as an unexpected consequence of the adoption of gender-neutral policies in criminal justice systems.[15] Male inmates were placed in restraints when hospitalized for check-ups or treatment. These same policies were then advanced for women without regard to women's particular circumstances. Others have argued that shackling occurs because of the "unthinking" importation of prison rules into the hospital settings.[16] A recent article asserts that both "race and gender are at the heart of the practice of shackling female prisoners during labor and childbirth."[17] It further notes that shackling "appears as a manifestation of the punishment of 'unfit' or 'undesirable' women for exercising the choice to become mothers."[18]

> *"As I was close to delivering my baby, I was in a lot of pain and I was screaming for the nurse…. The sheriff didn't give me any sympathy or any privacy. He left the handcuff shackled to the bed and the leg iron shackled to the stirrup while I was delivering my baby.*
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> - Melissa Hall, arrested for the possession of a controlled substance in 2006 in Illinois. Melissa's left ankle and left wrist were shackled during pregnancy and labor. Recently, a federal district court approved a $4.1 million settlement for a class action of which Ms. Hall is a member.
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> [Source: Testimony before Illinois Senate, October 2011]

B. Shackling is Harmful to the Health of the Woman and the Child

Incarcerated women often experience high-risk pregnancies due to a lack of adequate prenatal nutrition and care in prisons. Shackling increases the risks associated with pregnancy, labor and delivery.[19] Major national medical and correctional associations have explicitly opposed the

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[13] See Women's Prison Association: Institute on Women & Criminal Justice, *Laws Banning Shackling During Birth Gaining Momentum Nationwide* at 1, online at http://www.wpaonline.org/pdf/Shackling%20Brief_final.pdf (visited Aug 23, 2013).

[14] *Nelson v Corr Med Servs,* 583 F 3d 522, 533 (8th Cir 2009); *Zaborowski,* WL 6660999; *Villegas v Metro Gov't of Nashville*, 709 F 3d 563 (6th Cir 2013); *Brawley,* 712 F Supp 2d 1208; *Women Prisoners of DC v District of Columbia*, 93 F.3d 910 (DC Cir 1996).

[15] See Claire Louise Griggs, *Birthing Barbarism: The Unconstitutionality of Shackling Pregnant Prisoners*, 20(1) Am U J Gender Soc Pol & L 247, 250 (2011); Colleen Mastony, *Childbirth in Chains*, News (Chicago Tribune July 18, 2010), online at http://articles.chicagotribune.com/2010-07-18/news/ct-met-shackled-mothers-20100718_1_shackles-handcuffs-labor (visited Aug 23, 2013).

[16] Dana L. Sichel, *Giving Birth in Shackles: A Constitutional and Human Rights Violation,* 16 Am U J Gender Soc Pol & L. 223, 235 (2008).

[17] Pricilla A. Ocen, *Race, Punishing Prisoners: Incarceration, and the Shackling of Pregnant Prisoners*, 100 Cal L Rev 1239, 1243 (2012).

[18] Id at 1244.

[19] See American College of Obstetricians and Gynecologists, Women's Health Care Physician: Committee on Health Care for Underserved Women, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females* at 3 (Committee Opinion Number 511, Nov 2011), online at

practice.[20] Medical professionals have articulated several arguments against the shackling of pregnant women:

1. Assessment of physical conditions: Physical restraints frustrate the ability of physicians to adequately assess and evaluate the conditions of the mother and the fetus during labor and delivery.[21] Relatively common but nonetheless serious complications such as hypertensive disease, which accounts for 17.6% of maternal deaths in the United States, and vaginal bleeding are more difficult to diagnose and treat if a woman is shackled[22] Additionally, it is not possible to conduct diagnostic tests required to determine the source of abdominal pains associated with pregnancy when a woman is shackled.[23]

2. Labor: Current research shows that walking, changing positions, or otherwise moving about can reduce both the duration and painfulness of labor.[24] Women who are shackled to a bed are unable to move and thus experience longer and more painful labor than is necessary. [25] Shackling also restricts childbirth positions such as squatting that some consider more effective than traditional positions.[26]

"Being shackled in transport to give birth was a demoralizing, uncomfortable and frightening experience. I was at Dwight [Correctional Facility] when I went into labor. I was placed in handcuffs, had a heavy chain across my belly that my hands were attached to, along with leg irons on my ankles. I was scared to walk because of the restrictive leg irons…

When I got to the hospital, I felt the cold, hard stares of people as I was escorted into the lobby of the hospital. People were whispering and pointing at me and the receptionist was very rude. Birthing my child should have brought joy to me, but instead I remember the alienation and the looks of disgust I got. No one saw me as a woman – I was hidden away in the last room like someone's dirty little secret. I have never committed a violent crime – I am minimum security, but I was treated like I was a murderer."

- LaDonna Hopkins, an Illinois resident, was charged for a nonviolent crime in 2011. She was shackled during transport to the hospital while in labor.

[Source: Testimony before Illinois House of Representatives, March 2011]

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http://www.acog.org/~/media/Committee%20Opinions/Committee%20on%20Health%20Care%20for%20Underserved%20Women/co511.pdf?dmc=1&ts=20130725T1738421657 (visited Aug 23, 2013).

[20] See, for example, Id; American Medical Association, *Issue Brief: Shackling of pregnant prisoners* (2011); American College of Nurse-Midwives, *Position Statement* (cited in note 11); American Correctional Health Services Association, *Position Statement: Use of Shackles on Pregnant Inmates* (Aug 10, 2009), online at http://www.achsa.org/position-statements/ (visited Aug 23, 2013); Association of Women's Health, Obstetric and Neonatal Nurses, *Position Statement: Shackling Incarcerated Pregnant Women*, 40(6) J Obstretric Gynecologic & Neonatal Nursing 817 (2011).

[21] American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women* at 3 (cited in note 19).

[22] Id.

[23] Id.

[24] Association of Women's Health, Obstetric and Neonatal Nurses, *Position Statement* at 817 (cited in note 20).

[25] Id at 817-818.

[26] See Jason Gardosi, Noreen Hutson, Chris B-Lynch, Randomised, *Controlled Trial of Squatting in the Second Stage of Labour*, 334 The Lancelet 74-77 (July 8, 1989).

3. Emergency procedures: Reduced mobility due to shackling may also cause undue delay in the event that an emergency operation is necessary. For instance, in the event of an emergency caesarian delivery, even a short delay may result in permanent brain damage for the baby.[27] Shackling also compromises the physician's ability to perform necessary procedures in the event of other complications during delivery, such as hemorrhages, a decrease in fetal heart tones, and preeclampsia.[28]

4. Risk of fall: The pregnant uterus shifts a woman's center of gravity. Shackles may throw a pregnant woman off-balance or make walking more difficult, which may increase her risk of falling.[29] During a fall, a shackled woman is unable to use her arms to protect herself and her abdomen, which may result in harm to the mother and the baby.[30]

5. Postpartum recovery and bonding: Restricting mobility during the postpartum stage places the woman at a substantial risk of thromboembolic disease and postpartum hemorrhage.[31] Shackling also limits the mother's ability to breastfeed and bond with her newborn.[32] A mother's contact with her newborn is critical to establishing an appropriate mother-child attachment necessary for optimal child development.[33]

C. Justifications for Shackling are Unpersuasive

Supporters of shackling offer several justifications for its continued use. First, they argue that shackling prevents pregnant inmates from harming themselves and others. Steve Patterson of the Cook County Sheriff's Office in Illinois explained that the practice of shackling continues to exist because "[w]e have to bring inmates to the same area that the general public comes to."[34] Patterson further emphasized the need to consider the interests of the other patients in the hospital. He stated, "if you're laying [sic] in hospital bed, and in the next hospital bed is a woman who's in on a double murder charge, because she's pregnant she shouldn't be handcuffed to the side of the bed – I think if you're the person laying [sic] in bed next to her you might disagree."[35]

Second, some supporters justify shackling on the basis that it prevents pregnant inmates from attempting to escape. As one department of corrections officer said: "Basically, we don't want

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[27] Amnesty International USA, *Women in Custody* at 30, online at http://www.amnestyusa.org/pdf/custodyissues.pdf (visited Aug 23, 2013).
[28] Id. See also American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women* at 3 (cited in note 19).
[29] American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women* at 3 (cited in note 19).
[30] Id.
[31] American College of Nurse-Midwives, *Position Statement* at 1 (cited in note 11).
[32] Id; American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women* at 3 (cited in note 19).
[33] See Marshall Klaus, Richard Jerauld, Nancy Kreger, Willie McAlpine, Meredith Steffa, John Kennel, *Maternal Attachment — Importance of the First Postpartum Days*, 286(9) New Engl J Med 460 (Mar 2, 1972).
[34] Andrea Hsu, *Difficult Births: Laboring and Delivering in Shackles,* All Things Considered (NPR July 16, 2010), online at http://www.npr.org/templates/story/story.php?storyId=128563037 (visited Aug 23, 2013).
[35] Id.

them to escape – that's the bottom line."[36] Moreover, Patterson claimed that in 1998, a pregnant inmate escaped from the hospital during a medical visit and was caught on hospital grounds.[37]

The vast majority of women in U.S. prisons are non-violent offenders, and therefore pose a low security risk.[38] Among states that have restricted the shackling of pregnant women, none have reported any subsequent instances of women in labor escaping or causing harm to themselves, the public, security guards, or medical staff.[39] For example, since New York City and Illinois implemented anti-shackling laws in 1990 and 2000, respectively, there have been no incidents of inmates admitted to birthing centers or hospitals attempting to escape or harming officers or staff.[40] Given the physical and mental rigors of labor and childbirth, it should be unsurprising that incarcerated women in these jurisdictions have not attempted to escape or cause harm to themselves or others during labor, delivery, or postpartum recovery. Moreover, in most cases pregnant prisoners do not share delivery rooms with other patients, particularly if they have committed serious offences.[41]

A Physician's view

"In response to a question, Dr. Cookingham indicated that neither she nor members of the staff have ever feared for their safety. Most of the patients receive epidurals, which hampers their ability to move swiftly or run out of the labor room. For those who do not have an epidural, the pain restricts them from going too far or harming the people taking care of them."

[Source: Excerpt from Arizona House of Representatives Committee Minutes, February 29, 2012]

In rare cases where safety or flight concerns are legitimate, measures are already in place to safeguard the public and medical staff. In most cases, armed guards accompany pregnant women into the delivery room or are stationed immediately outside.[42] In addition, exceptions to prohibitions on shackling, which allow pregnant women to be shackled for legitimate safety reasons, provide sufficient safeguards against flight and security risks.

[36] iHealth Beat, *Legislation Would Ban Use of Restraints on Female Prisoners While in Labor* (Aug 1, 2005), online at: http://www.ihealthbeat.org/california-healthline/articles/2005/8/1/legislation-would-ban-use-of-restraints-on-female-prisoners-while-in-labor?view=print (visited Aug 23, 2013).
[37] See Hsu, *Difficult Births* (cited in note 34).
[38] ACLU Reproductive Freedom Project and ACLU National Prison Project, *ACLU Briefing Paper: The Shackling of Pregnant Women & Girls in U.S. Prisons, Jails & Youth Detention Centers* at 5, online at https://www.aclu.org/files/assets/anti-shackling_briefing_paper_stand_alone.pdf (visited Aug 23, 2013).
[39] Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, National News (NY Times March 2, 2006), online at http://www.nytimes.com/2006/03/02/national/02shackles.html?_r=0 (visited Aug 26, 2013).
[40] ACLU Reproductive Freedom Project and ACLU National Prison Project, *Preventing Shackling of Pregnant Prisoners and Detainees: A Legislative Toolkit* at 26 (2011), online at http://womenincarcerated.org/media/legislativetoolkit.pdf (visited Aug 23, 2013).
[41] Correspondence from August 19, 2013 with Gail Smith of Chicago Legal Advocacy for Incarcerated Mothers, regarding her conversation with Catherine D. Deamant, MD from John H. Stroger Jr. Hospital in Chicago, Illinois, on file with authors.
[42] ACLU, *Briefing Paper* at 5 (cited in note 38).

V. INTERNATIONAL LAW AND U.S. CONSTITUTIONAL LAW PROHIBIT SHACKLING

A. Shackling Violates International Law

The practice of shackling pregnant women contravenes multiple international human rights treaties that the United States has ratified, including the ICCPR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT"). Shackling violates Article 7 of the ICCPR, which states that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Shackling also implicates Article 2 and Article 26 of the ICCPR, both of which enshrine the right to equality and to be free from discrimination. Shackling pregnant prisoners infringes the right to be free from discrimination because it disproportionately impacts women of color, who are overrepresented in U.S. prisons.[43] Shackling of pregnant women deprived of the liberty also infringes Article 10 of the ICCPR, which provides that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."

When the United States ratified the ICCPR, it did so with the following reservation: "That the United States considers itself bound by Article 7 to the extent that "cruel, inhuman or degrading treatment or punishment" means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States."[44] This reservation, however, does not change the applicability of Article 7 because the practice of shackling is inconsistent with the Eighth Amendment of the U.S. Constitution, as discussed in the Section V.B. (*Shackling Violates the United States Constitution*). The United States did not provide a reservation, declaration or understanding in relation to Article 10 of the ICCPR.

Shackling of pregnant prisoners contravenes the CAT, which prohibits States from applying torture and cruel,

> *"According to Nelson's orthopedist, the shackling injured and deformed her hips, preventing them from going 'back into the place where they need to be.' In the opinion of her neurosurgeon the injury to her hips may cause lifelong pain, and he therefore prescribed powerful pain medication for her. Nelson testified that as a result of her injuries she cannot engage in 'ordinary activities' such as playing with her children or participating in athletics. She is unable to sleep or bear weight on her left side or to sit or stand for extended periods. Nelson has also been advised not to have any more children because of her injuries."*
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> - Shawanna was shackled during the final stages of labor. She was a non-violent offender imprisoned for writing bad checks.
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> [Source: Opinion in *Nelson v Corr Med Servs,* 583 F.3d 522, 526 (8th Cir. 2009)]

[43] Dana Sussman, *Bound by Injustice: Challenging the Use of Shackles on Incarcerated Pregnant Women*, 15 Cardozo J L & Gender, 477, 482 (2008), online at http://www.cardozolawandgender.com/uploads/2/7/7/6/2776881/15-3_sussman.pdf (visited Aug 28, 2013); Ocen, 100 Cal L Rev at 1250-1251 (cited in note 17).

[44] U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights ¶ I(3), in 138 Cong Rec S4781-01 (daily ed., April 2, 1992), online at http://www1.umn.edu/humanrts/usdocs/civilres.html (visited Aug 26, 2013).

inhuman or degrading treatment or punishment.[45] The committee that monitors the implementation of the CAT has expressed concern about the shackling of pregnant prisoners.[46] The UN Special Rapporteur on torture and the UN special Rapporteur on violence against women have both also identified the practice as problematic.[47] The UN Special Rapporteur on violence against woman specifically recommended that the United States: "Adopt legislation banning the use of restraints on pregnant women, including during labor or delivery, unless there are overwhelming security concerns that cannot be handled by any other method."[48]

Shackling of pregnant prisoners also raises concerns under the UN Standard Minimum Rules for the Treatment of Prisoners, which prohibits the use of restraints as a form of punishment and outside of well-defined exceptions.[49] The recently adopted UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders—also known as the Bangkok Rules—explicitly states: "Instruments of restraint shall never be used on women during labour, during birth and immediately after birth."[50]

B. Shackling Violates the United States Constitution

Several U.S. federal courts that have considered the shackling of pregnant women deprived of their liberty and held that the practice contravenes the Eighth Amendment's prohibition on cruel and unusual punishment.[51] In 2013, the Federal Court of Appeals for the Sixth Circuit held that the shackling of pregnant detainees while in labor poses a substantial risk of serious harm and "offends contemporary standards of human decency such that the practice violates the Eighth

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[45] *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, General Assembly, Meeting no. 93 (Dec 10, 1984), UN Doc A/RES/39/46, online at http://www.un.org/documents/ga/res/39/a39r046.htm (visited Aug 28, 2013).

[46] *Conclusions and recommendations of the Committee against Torture, United States of America* ¶ 33, Committee against Torture (May 2006), UN Doc CAT/C/USA/C/2, online at http://www1.umn.edu/humanrts/cat/observations/usa2006.html (visited Aug 26, 2013).

[47] *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development* ¶ 41, Human Rights Council, 7th session (Jan 15, 2008), UN Doc A/HRC/7/3, online at http://www.refworld.org/pdfid/47c2c5452.pdf (visited Aug 26, 2013); *Report of the mission to the United States of America on the issue of violence against women in state and federal prisons* ¶¶ 53-54, Commission on Human Rights, 55th session (Jan 4, 1999), UN Doc E/CN.4/1999/68/Add.2, online at http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/7560a6237c67bb118025674c004406e9 (visited Aug 26, 2013).

[48] *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Rashida Manjoo: Mission to the United States of America* ¶ C(h), Human Rights Council, 17th session (June 6, 2011), UN Doc A/HRC/17/26/Add.5, online at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/138/26/PDF/G1113826.pdf (visited Aug 28, 2013).

[49] *Standard Minimum Rules for the Treatment of Prisoners* ¶ 33, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Aug 30, 1966), UN Doc A/CONF/611, annex I, ESC res. 663C, 24 UN ESCOR Supp. (No. 1) at 11, UN Doc E/3048 (1957), amended ESC res 2076, 62 UN ESCOR Supp. (No. 1) at 35, UN Doc E/5988 (1977), online at http://www1.umn.edu/humanrts/instree/g1smr.htm (visited Aug 26, 2013).

[50] *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* rule 24, General Assembly, Third Committee, 65th session (Oct 6, 2010), UN Doc A/C.3/65/L.5, online at http://www.ihra.net/files/2010/11/04/english.pdf (visited Aug 26, 2013).

[51] *Women Prisoners of DC*, 844 F Supp 634; *Brawley*, 712 F Supp 2d 1208; *Nelson,* 583 F 3d at 533. For a discussion of shackling and the Eighth Amendment, see Griggs, 20(1) Am U J Gender Soc Pol & L at 259 (cited in note 15).

Amendment's prohibition against the 'unnecessary and wanton infliction of pain'—i.e., it poses a substantial risk of serious harm."[52] The United States' understanding that Article 7 of the ICCPR extends only so far as the Eighth Amendment is therefore not a limitation on its obligation to prohibit shackling, but rather a confirmation.

VI. FEDERAL AND STATE LAWS, GAPS, AND IMPLEMENTATION

A. Federal Level

The U.S. government adopted an anti-shackling policy in 2008. This is an encouraging development; however, the policy only applies to prisons and detention centers operated by the federal government, and does not reach state and local facilities.[53] Moreover, the policy was enacted by the Executive, not the U.S. Congress. Legislation is preferable to policies for the reasons discussed below, in Section VI.B.2 (*States should adopt laws rather than policies*.)

The U.S. Department of Justice has also convened a task force to develop a best practices guide to be disseminated nationwide at the end of 2013.[54] This federal effort is laudable, but in order to be effective the guide must be used to affect real policy change at the state and local level throughout the United States.

B. State Level

Beginning with Illinois in 2000, several U.S. states have introduced laws and policies that restrict the practice of shackling pregnant inmates, particularly during labor. According to our research as of August 2013:

- 18 states have laws that restrict the use of restraints on pregnant inmates;
- 24 states limit the use of restraints on pregnant inmates only by policies; and
- 8 states have no laws or policies or any other form of regulation addressing the use of restraints on pregnant inmates.

Among the 24 states that regulate the use of restraints only at the policy level, 5 have policies that do not meaningfully limit their use and 6 have not made their policies publicly available, or have done so only in redacted or summarized form. For these 6 policies, we have relied on summary information provided by the state agencies. The table in the Appendix provides a summary of the status of laws and policies addressing the shackling of pregnant prisoners in the 50 U.S. states.

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[52] *Villegas,* 709 F 3d at 574 (remanded to resolve whether the plaintiff presented a legitimate flight risk).
[53] ACLU, *Bureau of Prisons Revises Policy on Shackling of Pregnant Inmates* (Daily Kos Oct 20, 2008), online at http://www.dailykos.com/story/2008/10/20/636336/-Bureau-of-Prisons-Revises-Policy-RE-Shackling-of-Pregnant-Inmates-in-Federal-Prisons (visited Aug 26, 2013).
[54] National Resource Center on Justice Involved Women, *Newsletter* (Dec 2012), online at http://cjinvolvedwomen.org/sites/all/Newsletters/NRCJIWDecember2012Newsletter.html (visited Aug 26, 2013); Email correspondence from July 30, 2013 with Yasmin Vafa of Rights4Girls on record with authors.

1. Some state laws and policies contain broad exceptions or lack key provisions

The adoption of anti-shackling laws and policies by 18 U.S. states represents considerable progress. However, not all of the current laws and policies restricting the use of restraints provide comprehensive protection against shackling. As a result, even in states where laws and policies restricting shackling of pregnant women are in place, the practice continues.

The following are provisions that a comprehensive anti-shackling law should include:

i. Prohibition on the Use of Restraints: Women or girls known to be pregnant should not be shackled, including, at a minimum, during their third trimester, transport to medical facilities, labor, delivery, or postpartum recovery.[55]

Some polices do not contain explicit prohibitions. For example, the Montana Department of Corrections policy states: "Facilities that house female offenders will establish restraint procedures for the transport of pregnant offenders based on mutually-approved security and medical considerations."[56] This policy does not prohibit shackling and gives too much discretion to each individual facility.

Additionally, a number of state anti-shackling laws only provide protection to prisoners during some stages of childbirth. For example, Idaho's law only limits the use of restraints during labor and delivery, but not postpartum recovery.[57] Laws such as these should be improved by extending protection to postpartum recovery.

ii. Exception in Extraordinary Circumstances: Exceptions to the prohibition on the use of restraints during pregnancy should only be allowed when there is a (1) serious flight risk that cannot be prevented by other means, and (2) immediate and serious threat of harm to self and others that cannot be prevented by other means.[58] However, restraints should *never* be used during labor or childbirth.[59]

iii. Type of Restraint: If restraints must be used in extraordinary circumstances, only the least restrictive restraints necessary to ensure safety and security should be used.[60] In most cases, therapeutic (soft) restraints will suffice for these purposes. Waist and leg restraints

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[55] See 61 Pa Stat § 5905(b)(1) for an example of a good general provision, online at http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/61/00.059.005.000..HTM (visited Aug 26, 2013).
[56] Montana Department of Corrections Policy Directive 3.1.12 at IV(F)(4), online at http://www.cor.mt.gov/content/Resources/Policy/Chapter3/3-1-12.pdf (visited Aug 26, 2013).
[57] Idaho Code §§ 20-902, 20-903 (2011), online at http://legislature.idaho.gov/legislation/2011/H0163.pdf (visited Aug 28, 2013).
[58] See, for example, 55 ILCS 5/3-15003.6, online at http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=005500050K3-15003.6 (visited Aug 26, 2013); NY Correction Law § 611, online at http://codes.lp.findlaw.com/nycode/COR/22/611 (visited Aug 26, 2013).
[59] See, for example, Hawaii Rev Stat § 353-122(b) (2011), online at https://law.justia.com/codes/hawaii/2011/division1/title20/chapter353/353-122/ (visited Aug 26, 2013).
[60] See, for example, Nev Rev Stat §209.376 (2011), online at http://law.justia.com/codes/nevada/2011/chapter-209/statute-209.376 (visited Aug 26, 2013).

should never be used.[61] A qualified health service staff must prescribe the necessary precautions, including decisions about the manner in which the pregnant woman is to be restrained.[62] In these circumstances, a qualified health professional should have the final authority as to whether restraints may be used at all.

Specifying the types of restraint that are permissible in exceptional situations protects against the use of dangerous and painful restraints. For example, the law in Rhode Island prohibits the use of waist and leg shackles during labor and delivery under any circumstances.[63] This specific prohibition protects the mother and child from dangerous shackling even when the woman may be a flight risk. In contrast, Nevada's law requires the use of the least restrictive restrains necessary, but does not specify which types of restraints are permitted or prohibited.[64]

iv. Notice: Female prisoners[65] and medical professionals[66] should be notified of both the law restricting shackling and the policies developed to give effect to the law.

For example, the law in California requires that "[u]pon confirmation of an inmate's pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates, including, but not limited to, the provisions of this chapter."[67] Several states, including Nevada, New York, and West Virginia, however, do not have notice requirements in their anti-shackling laws.[68]

v. Training: Correctional officers should be required to undergo classroom and hands-on training on the use of restraint equipment and physical restraint techniques. Officers should also be trained to identify when a woman enters into labor and to understand precisely what constitutes an "extraordinary circumstance" permitting an exception to the ban on shackling.

Strong training requirements are necessary to ensure correctional officers correctly implement the law and to avoid the improper use of restraints. For example, a policy in Minnesota requires correctional officers to be trained to properly use restraint equipment

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[61] See, for example, 55 ILCS 5/3-15003.6 (cited in note 58) ("Leg irons, shackles or waist shackles shall not be used on any pregnant or postpartum prisoner regardless of security classification").
[62] See, for example, Minnesota Department of Corrections Policy 301.081 (2012), online at http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=301.081.htm (visited Aug 26, 2013).
[63] RI Gen Laws Chapter 42-56.3-3(b)-(d), online at http://webserver.rilin.state.ri.us/Statutes/title42/42-56.3/42-56.3-3.HTM (visited Aug 26, 2013).
[64] Nev Rev Stat § 209.376 (cited in note 60).
[65] See, for example, Cal Penal Code § 3407(e), online at http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=03001-04000&file=3400-3409 (visited Aug 26, 2013); Fla Stat § 944.241(5) (2012), online at http://www.flsenate.gov/Laws/Statutes/2012/944.241 (visited Aug 26, 2013).
[66] 11 Del Code Ann § 6604(c), online at http://delcode.delaware.gov/title11/c066/index.shtml (visited Aug 26, 2013).
[67] Cal Penal Code § 3407(e) (cited in note 65).
[68] Nev Rev Stat § 209.376 (cited in note 60); NY Correction Law § 611 (cited in note 58); W Va Code § 25-1-16 (2012), online at http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=25&art=1 (visited Aug 26, 2013).

when it is necessary to do so.[69] Only adequate training policies will ensure that correctional officers correctly implement the law.

vi. Medical Staff Input: Medical staff input provisions require correctional officers to comply with the requests of medical professionals not to apply restraints or to remove them if they have already been applied. Correctional officers should be required to immediately honor requests to remove restraints from attending doctors, nurses, or other medical professional.[70]

For instance, the law in Illinois states: "The corrections official shall immediately remove all restraints upon the written or oral request of medical personnel."[71]

vii. Reporting: Correctional officers should be required by law to submit written reports when restraints are used on pregnant women deprived of their liberty. The report should include (1) the reasons the officer determined extraordinary circumstances existed requiring the use of restraints, (2) the kind of restraints used, (3) the reasons those restraints were considered the least restrictive and most reasonable under the circumstances, and (4) the duration of the use of restraints. The report should be submitted as soon as possible following the use of restraints and reviewed by a supervisory officer or official.[72] It is also recommended that annual reports be submitted that describe all instances of shackling.[73] These reports should be made available for public inspection.[74]

Pennsylvania,[75] Arizona,[76] and Illinois[77] promote accountability by including a reporting provision in their laws. This ensures that whenever restraints are wrongfully used the officer responsible can be held accountable, learn from his or her mistake, and be penalized for it if circumstances warrant. In contrast, California's law has no reporting requirement.[78] Correctional officers in the state who wrongfully restrain pregnant women may therefore never be held accountable or have their behavior corrected.

2. States should adopt laws rather than policies.

While it is laudable that agencies in many states have adopted anti-shackling policies, 24 states have only policies (and no state-wide legislation). Legislation is preferable to such policies.

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[69] Minnesota Department of Corrections Policy 301.081 (cited in note 62).
[70] See, for example, Idaho Code Sec 20-902(2)(a) (cited in note 57); 55 ILCS 5/3-15003.6(b) (cited in note 58).
[71] 55 ILCS 5/3-15003.6(b) (cited in note 58).
[72] Some laws specify a time limit for reporting. See, for example, Fla Stat § 944.241(3)(b)(2) (cited in note 65) (calling for reports within ten days of the use of restraints).
[73] ACLU, *Legislative Toolkit* at 9-10 (cited in note 40).
[74] Id at 10.
[75] 61 Pa Stat § 5905(d) (cited in note 55).
[76] Ariz Rev Stat Ann § 31-601(C)(2), online at http://www.azleg.state.az.us/FormatDocument.asp?inDoc=/ars/31/00601.htm&Title=31&DocType=ARS (visited Aug 26, 2013).
[77] 55 ILCS 5/3-15003.6(c) (cited in note 58).
[78] Cal Penal Code § 3407 (cited in note 65); Cal Penal Code § 3423, online at http://law.onecle.com/california/penal/3423.html (visited Aug 28, 2013).

Legislation is democratically enacted and publicly available. As noted above, state agencies may have internal policies restricting the use of restraints on pregnant women, but they are sometimes not available to the public, rendering true accountability and effective transparency impossible.

Anti-shackling legislation is also more likely to be durable than a policy. Comprehensive legislation must be repealed or amended by an action of the state legislature. The same cannot be said of policies, which may be changed pursuant to internal department rule-making procedures and without any public scrutiny.

Finally, anti-shackling legislation protects women across broader geographic areas. In most instances, policies only apply to prisons and correctional departments that adopt them. State-level legislation, on the other hand, applies to all correctional facilities within the state, requiring facilities that have not implemented policies to cease the practice of shackling.

Shackling Law and Practice in Illinois

Illinois became the first state in the U.S. to ban the use of restraints on women in labor through legislation that became effective January 1, 2000, covering state prisons, Cook County Jail, and all downstate county jails.

In 2008, women in pretrial detention in Cook County reported that they were being placed in restraints during transport to the hospital to give birth, and were shackled to their hospital beds throughout labor. They reported that officers remained present inside the delivery room, which is prohibited under the statute. Women in other Illinois county jails have reported shackling during labor as well. In 2010, women in custody of the Illinois Department of Corrections reported that they were placed in full restraints, including leg irons and belly chains, during labor when they were taken to the hospital to give birth.

On January 13, 2012, Public Act 097-0660 was enacted to strengthen protection against shackling for pregnant women in custody of Cook County.

In 2011 Illinois Department of Corrections Director Salvador Godinez and senior officials agreed to implement an administrative directive providing similar protection against shackling women prisoners throughout pregnancy and for six weeks postpartum. The directive is being implemented but is in the process of formal approval.

[Source: Chicago Legal Advocacy for Incarcerated Mothers]

3. Some states have not adequately implemented anti-shackling laws and polices

Even in states that have enacted anti-shackling laws or policies, the practice of shackling often persists. A plaintiff in a federal case, for example, was shackled during labor despite the existence of a Washington Department of Corrections policy prohibiting the practice.[79] In Illinois, a class action was brought by female prisoners who were shackled despite the existence of a clear state law prohibiting the practice.[80] According to research conducted by the Texas Jail Project and NARAL Pro-Choice America, the passage of an anti-shackling law in Texas has not had a meaningful impact on practices in the state's 247 county jails, where women continue to report inadequate medical treatment and there is little indication of serious

[79] *Brawley,* 712 F Supp 2d at 1221.
[80] *Zaborowski,* WL 6660999.

effort at either oversight or training and education of correctional officers on the use of restraints.[81] These cases and others demonstrate that laws and policies prohibiting the use of restraints on pregnant women must be fully implemented and enforced to be effective.

In states with anti-shackling laws or policies, the continued practice of shackling may be due in part to the inadequate training of correctional officers. Training correctional officers on the existence and scope of applicable laws and policies would be a positive step towards full implementation and enforcement.

VII. SUGGESTED QUESTIONS FOR THE UNITED STATES

We request the Committee members to ask the following questions during the review of the United States' Fourth Periodic Report in October 2013:

1. Does the United States intend to enact a Federal law prohibiting the shackling of detained and incarcerated women during pregnancy, including, at a minimum, the third trimester, transport to medical facilities, labor, delivery and postpartum recovery?

2. How does the United States intend to encourage those U.S. states that do not have legislation anti-shackling laws in place to enact comprehensive anti-shackling legislation?

3. Does the United States intend to review existing state laws or policies to review to ensure that they are comprehensive and do not contain broad exceptions and are fully implemented?

4. Does the United States intend to conduct research to determine why the practice of shackling pregnant women prisoners and detainees continues despite its ban in many States?

VIII. RECOMMENDATIONS

Recommendation #1: The United States should replace its current federal policy with federal legislation.

Recommendation #2: The United States should instruct those 32 states where no anti-shackling laws exist at the state-level to enact comprehensive laws (as described in Section VI.B.1), including training of correctional officers.

Recommendation #3: The United States should review existing state anti-shackling laws and policies to ensure that they are comprehensive (as described in Section VI.B.1) and are fully implemented.

Recommendation #4: The United States should undertake an empirical study to determine the scope of shackling in both federal and state prisons and to understand why pregnant women

[81] Correspondence from Aug 5, 2013 with Diana Claitor of the Texas Jail Project and Maggie Jo Poertner of NARAL Pro-Choice America, on file with authors.

deprived of their liberty continue to be shackled, including in states where anti-shackling bans are in place.

APPENDIX

The table below contains information obtained through a survey of the laws and policies in the 50 U.S. states that regulate the use of restraints on pregnant women deprived of their liberty. A state was considered to have a law or policy regulating the use of restraints if the relevant provision directly addressed the use of restraints on pregnant inmates, even if the law or policy was not comprehensive. The comment column below provides information about policies that do not adequately limit the use of restraints, that are not publicly available or could not be located, and that are only available in redacted or summarized form. States with legislation that has been introduced, but had not yet been enacted at the time of publication, have also been noted in the comment column.

State	Law	Policy	Comment	Source
Alabama	No	Yes		Julia Tutwiler Prison for Women Standard Operating Procedures 9-14[1]
Alaska	No	Yes		Policy and Procedure 1208.22 and1208.15[2]
Arizona	Yes	Yes		Arizona Revised Statutes Annotated § 31-601; Arizona Department of Corrections Order 705.10[3]
Arkansas	No	Yes		Arkansas Department of Community Correction Admin. Directives 00-02 and 00-01; Arkansas Department of Corrections 04-08[4]
California	Yes	Yes		California Penal Code §§ 3407, 3423; Department of Corrections and Rehabilitation Operations Manual,

[1] Online at http://www.asca.net/system/assets/attachments/2648/AL%20Response%20to%20Rebecca%20Report%20-%203-16-11%202.pdf?1301075514.
[2] Online at http://www.asca.net/system/assets/attachments/2375/Alaska_Pregnant_Female_Policy.pdf?1299251457.
[3] Online at http://www.azcorrections.gov/policysearch/700/0705.pdf.
[4] Available at http://www.dcc.arkansas.gov/policy/Documents/prenatalcare.pdf, http://www.dcc.arkansas.gov/policy/Documents/userestraints.pdf, and http://www.asca.net/system/assets/attachments/2360/AR_Pregnant_Inmate_Policies.pdf?1299168426.

State	Law	Policy	Comment	Source
				Chapter 5, Article 1, Section 54045.11[5]
Colorado	Yes	Yes	The policy is not publicly available.	Colorado Revised Statutes 17-1-113.7; Policy[6]
Connecticut	No	Yes		Administrative Directive 6.4 – 14(a)(3)[7]
Delaware	Yes	Yes		Delaware Code Annotated Title 11, § 6601-6605; Department of Corrections Policy Number I-01.2[8]
Florida	Yes	Yes		Florida Statutes § 944.24; Florida Department of Corrections Rule 33-602.211[9]
Georgia	No	No	Legislation introduced (House Bill 653).	
Hawaii	Yes	Yes	The policy could not be located, but is presumed to exist pursuant to Hawaii law.	Hawaii Revised Statutes § 353-122
Idaho	Yes	Yes	A redacted version of policy is publicly available.	Idaho Code §§ 20-902, 20-903; Policy 307.02.01.001[10]
Illinois	Yes	Yes		55 ILCS 5/3-15003.6 (2012), 730 ILCS 125/17.5 (2000), 730 ILCS 5/3-6-7 (2000); Department of Corrections Policy 05.03.130[11]
Indiana	No	No		
Iowa	No	Yes	The policy was promulgated during consideration of a law placing strict limits	

[5] Online at http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/DOM/DOM%20Ch%205-Printed%20Final.pdf.
[6] Summary available at http://www.asca.net/system/assets/attachments/2477/CO_Response_to_Rebecca.pdf?1300295754.
[7] Online at http://www.ct.gov/doc/LIB/doc/PDF/AD/ad0604.pdf.
[8] Available at http://www.asca.net/system/assets/attachments/2445/DE_Use_of_Restraints_for_Pregnant_Offenders.pdf?1299868196.
[9] Online at https://www.flrules.org/gateway/RuleNo.asp?ID=33-602.211.
[10] Available at http://www.idoc.idaho.gov/content/policy/598.
[11] Online at http://www.asca.net/system/assets/attachments/2212/Illinois_Restraints_Policy.pdf?1297282663.

State	Law	Policy	Comment	Source
			on the use of restraints on pregnant prisoners.[12] A redacted version of the policy was made available to lawmakers at the time.[13] The law was not passed and the policy is not publicly available.	
Kansas	No	No		
Kentucky	No	Yes	The policy does not adequately limit the use of restraints.	
Louisiana	Yes	Yes		LSA-R.S. 15 §§ 744.2-744.8; Policy 3-01-021[14]
Maine	No	No		
Maryland	No	No	Legislation proposed (House Bill 829).	
Massachusetts	No	Yes	Legislation proposed (Senate Bill 1171).	521.05-521.07[15]
Michigan	No	Yes	The policy does not adequately limit the use of restraints.[16]	
Minnesota	No	Yes		Policy 301.081[17]
Mississippi	No	Yes		Summary of MDOC SOP 16-15-01 on record with authors.
Missouri	No	Yes	The policy is not publicly available.	Email on record with authors.
Montana	No	Yes	The policy charges facility administrators with developing their own policies and does not adequately limit the use of restraints.	Policy No. Department Of Corrections 3.1.12[18]
Nebraska	No	No		
Nevada	Yes	Yes		Nevada Revised Statutes §209.376; Department of Corrections

[12] Jason Noble, *Iowa House backs off legislation restricting use of shackles on pregnant inmates*, Des Moines Register, Feb. 20, 2013, online at http://blogs.desmoinesregister.com/dmr/index.php/2013/02/20/iowa-house-backs-off-legislation-restricting-use-of-shackles-on-pregnant-inmates/article?gcheck=1.
[13] Id.
[14] Online at http://www.asca.net/system/assets/attachments/2336/LA_Policy_Restraints_on_Pregnant_Inmates.pdf?1298919405.
[15] Summary available at http://www.asca.net/system/assets/attachments/2481/MA_Response_to_Rebecca_and_Policy_Restraints.pdf?1300295850.
[16] Summary online at http://www.asca.net/system/assets/attachments/2482/MI_Director_Response_Mothers_Behind_Bars_3-9-11.pdf?1300295870.
[17] Online at http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=301.081.htm.
[18] Online at http://www.cor.mt.gov/content/Resources/Policy/Chapter3/3-1-12.pdf.

State	Law	Policy	Comment	Source
				Administrative Regulation 407[19]
New Hampshire	No	Yes		Policy and Procedure Directive 6.19[20]
New Jersey	No	Yes	The policy CUS.006.002 indicates that another policy not publicly available (CUS.006.RES.001) provides more detailed treatment on the use of restraints. Legislation proposed in February 2012.	CUS.006.002s[21]
New Mexico	Yes	Yes	The policy could not be located, but is presumed to exist pursuant to New Mexico law.	New Mexico Statutes § 33-1-4.2
New York	Yes	Yes		New York Correction Law § 611; Department of Correctional Services Directive 4916[22]
North Carolina	No	Yes		"Managing the Pregnant Inmate at North Carolina Correctional Institution for Women"[23]
North Dakota	No	Yes		Southwest Multi-County Correctional Center: Policies and Procedures Manual[24]
Ohio	No	Yes	The policy is not publicly available. However, based on a summary of the policy, it does not adequately limit the use of restraints.[25]	
Oklahoma	No	Yes		Department of Corrections Female Offender Health Services Operating Procedures 140145[26] and 040114[27]

[19] Online at http://www.doc.nv.gov/sites/doc/files/pdf/ar/AR407.pdf.
[20] Online at http://www.nh.gov/nhdoc/Policies/documents/6-19b.pdf.
[21] Online at http://www.asca.net/system/assets/attachments/2220/New_Jersey_Restraints_Policy.pdf?1297282835.
[22] Online at http://www.asca.net/system/assets/attachments/2338/NY_Transporting_Pregnant_Inmates_and_Inmate_Mothers_with_Babies.pdf?1298919510.
[23] Online at http://www.asca.net/system/assets/attachments/2484/NC_Pregnant_Policy.pdf?1300295925.
[24] Online at http://www.asca.net/system/assets/attachments/2488/ND_Policy_Restraints_on_Pregnant_IMS.pdf?1300296438.
[25] Online at http://www.asca.net/system/assets/attachments/2227/Ohio_DRC_Restraints_Language.pdf?1297283146.
[26] Online at http://www.ok.gov/doc/documents/op140145.pdf.

State	Law	Policy	Comment	Source
Oregon	No	Yes	Legislation proposed in 2013.	Department of Corrections Policy 40.1.1[28]
Pennsylvania	Yes	Yes		61 Pennsylvania Consolidated Statutes §§ 1104, 1758, 5905; Department of Corrections Policy 6.3.1 §§ 22,33,37[29]
Rhode Island	Yes	Yes		Rhode Island General Laws 42-56.3-3; Department of Corrections Policy 9.17[30]
South Carolina	No	No		
South Dakota	No	Yes		South Dakota Women's Prison Operational Memorandum 4.3.D.6[31]
Tennessee	No	Yes		Administrative Policies and Procedures 506.07 (Section VI D)[32]
Texas	Yes	No		Texas Government Code Annotated § 501.066 (Vernon); Human Resources Code § 244.0075 (Vernon); Texas Loc. Government Code Annotated § 361.082 (Vernon)[33]
Utah	No	No		
Vermont	Yes	Yes	The policy is not publicly available.[34]	28 Vermont Statutes Annotated § 801a[35]
Virginia	No	Yes	A policy was adopted modeled on	

[27] Online at http://www.ok.gov/doc/documents/op040114.pdf.
[28] Online at http://www.oregon.gov/DOC/GECO/docs/rules_policies/40.1.1.pdf.
[29] Online at http://www.asca.net/system/assets/attachments/2223/Pennslvania_Restraints_Policy.pdf?1297282929.
[30] Online at http://www.doc.ri.gov/documents/administration/policy/9.17.pdf.
[31] Online at http://www.asca.net/system/assets/attachments/2466/SD_Restraints_Pregnant_Special_Needs_Inmates_1_-1.pdf?1300120099.
[32] Email providing policies is on record with the authors.
[33] Online at http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.501.htm.
[34] Summary online at http://www.asca.net/system/assets/attachments/2489/VT_Pregnant_Inmates.pdf?1300296461.
[35] Online at http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=28&Chapter=011&Section=00801a.

State	Law	Policy	Comment	Source
			proposed legislation HB 1488, which did not become law. However, the policy is not publicly available and, based on a summary of the policy, it does not adequately limit the use of restraints.[36]	
Washington	Yes	Yes	The policy is not publicly available.	Washington Revised Code §§ 72.09.651, 70.48.500[37]; Department of Corrections Policy 420.250[38]
West Virginia	Yes	Yes		West Virginia Code 25-1-16; 31-20-30a; West Virginia Department of Corrections Policy Directive 307.00[39]
Wisconsin	No	Yes	The policy is not publicly available.	Wisconsin Department of Corrections Division of Adult Institutions Policy 306.00.02[40]
Wyoming	No	Yes	The policy is not publicly available.	Wyoming Department of Corrections Policy and Procedure 3.001[41]

[36] Summary online at http://www.arlnow.com/2011/08/18/va-prisons-to-ban-the-shackling-of-pregnant-inmates/.
[37] Online at http://apps.leg.wa.gov/rcw/default.aspx?cite=72.09.651 http://apps.leg.wa.gov/rcw/default.aspx?cite=70.48.500.
[38] Summary online at http://www.asca.net/system/assets/attachments/2487/WA_Response_to_Rebecca.pdf?1300295996.
[39] Online at http://www.asca.net/system/assets/attachments/2342/WV_Restraints.pdf?1298919686.
[40] Online at http://www.asca.net/system/assets/attachments/2225/Wisconsin_Restraints_Policy.pdf?1297282963.
[41] Online at http://www.asca.net/system/assets/attachments/2345/WY_Use_of_Restraints_on_Pregnant_IMs.jpg?1299009090.