

## Restraining Pregnant Inmates

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### Issue

This report summarizes state laws and currently proposed legislation on the use of restraints on pregnant women in correctional facilities, including during transportation, labor, delivery, and postpartum recovery.

### Summary

At least 25 states (not including Connecticut) and the District of Columbia have laws that prohibit or restrict the use of restraints on pregnant inmates (Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Louisiana, Maine, Massachusetts, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, Washington, and West Virginia). Four of these states (Massachusetts, Maryland, New Jersey, and Rhode Island) have proposed legislation in the current session to expand existing laws.

#### *Federal Court Cases*

*Federal courts have held that shackling an inmate during labor and delivery is a violation of her Eighth Amendment right against cruel and unusual punishment.*

*At the end of this report are brief descriptions of two such opinions: Nelson v. Correctional Medical Services and Brawley v. State of Washington.*

The laws limiting the use of restraints on pregnant inmates generally prohibit or restrict the use of restraints during transportation, labor, delivery, and postpartum recovery, unless there are extraordinary circumstances. Typically “extraordinary circumstances” exist where a correctional officer or employee makes an individualized determination that restraints are necessary to prevent escape or harm.

The remaining 25 states have no laws limiting the use of restraints on pregnant inmates. However, at least six of these states (Connecticut, Kentucky, Missouri, North Carolina, Oklahoma, and Wisconsin) have proposed legislation in the current session to impose such restrictions.

Connecticut is among the states with administrative policies that address the use of restraints on pregnant women in correctional facilities.

## States that Prohibit or Restrict Restraining Pregnant Inmates

Table 1 summarizes the state laws that prohibit or restrict the use of restraints on pregnant or postpartum inmates. New York law explicitly covers postpartum recovery regardless of pregnancy outcome.

In most of these states, when restraints are used, the type and application must be the least restrictive possible and correctional staff must immediately remove them upon the request of the treating health care professional. The laws generally prohibit the use of waist chains, other devices that cross or touch a pregnant inmate’s abdomen, or handcuffs behind her back. Some require written documentation of when restraints are used and prescribe record retention periods for such documents.

**Table 1: States that Prohibit or Restrict Restraining Pregnant Inmates**

State (Statute/Regulation)	Restraint Provisions
<p style="text-align: center;">Arizona</p> <p style="text-align: center;">(Ariz. Rev. Stat. § <a href="#">31-601</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on a prisoner or detainee who is being transported for delivery or during labor, delivery, and postpartum recovery, unless the (1) attending medical staff requests it or (2) corrections official makes an individualized determination of an extraordinary circumstance.</li> <li>• Prohibits the use of leg restraints, waist restraints, or restraints that hinder the ability of the physician to move the prisoner or detainee during labor or delivery.</li> <li>• Requires that any restraint be applied in the least restrictive manner necessary.</li> <li>• Specifies required documentation when restraints are used.</li> <li>• Allows the use of a security tether chain of a certain length attached to the bed frame and the prisoner's or detainee's ankle during postpartum recovery.</li> </ul>

Table 1 (continued)

<p><b>State</b> <b>(Statute/Regulation)</b></p>	<p><b>Restraint Provisions</b></p>
<p>California</p> <p>(Cal. Penal Code § <a href="#">3423</a>; Cal. Code Regs. tit. 15 §§ <a href="#">1058.5</a> &amp; <a href="#">3268.2</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits shackling by the wrist, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, unless circumstances exist that require the immediate use of mechanical restraints to avoid the imminent threat of death, escape, or great bodily injury, and only for when such threat exists.</li> <li>• Limits the use of restraints to handcuffs in front during transportation of a pregnant inmate off institutional grounds.</li> <li>• Requires restraints to be removed immediately when medically necessary.</li> <li>• Requires facility administrators, in cooperation with the responsible physician, to develop written policies and procedures for the use of restraint devices on pregnant inmates.</li> <li>• Requires the correctional facility to advise inmates confirmed to be pregnant of the standards and policies that govern the use of restraints on pregnant inmates.</li> </ul>
<p>Colorado</p> <p>(Colo. Rev. Stat. §§ <a href="#">17-1-113.7</a>, <a href="#">17-26-104.7</a>, &amp; <a href="#">26-1-137</a>)</p>	<ul style="list-style-type: none"> <li>• Requires the use of the least restrictive restraints necessary to ensure safety if the staff has actual knowledge or a reasonable belief that the inmate is pregnant, including during postpartum recovery and transportation to or from the corrections facility.</li> <li>• Prohibits the use of restraints during labor and delivery, unless (1) it is medically necessary, (2) the inmate presents an immediate and serious risk of harm, or (3) there is a substantial risk of escape that cannot be reduced by other means.</li> <li>• Prohibits the use of leg shackles or waist restraints on an inmate during labor, delivery, and postpartum recovery while in a medical facility, or during transportation to or from a medical facility for childbirth.</li> <li>• Requires written documentation when restraints are used and specifies retention periods for such records.</li> <li>• Requires staff to provide inmates determined to be pregnant with written, plain language notification of the policy and laws on the use of restraints.</li> <li>• Requires the Department of Correction to ensure that the staff receives adequate training.</li> </ul>
<p>Delaware</p> <p>(Del. Code Ann. tit. 11 § <a href="#">6603</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on a pregnant prisoner or detainee during labor, delivery, or postpartum recovery, unless the corrections official determines that she presents an extraordinary circumstance.</li> <li>• Restraints must be removed immediately when it is medically necessary.</li> <li>• Prohibits leg or waist restraints during labor or delivery.</li> <li>• Requires that restraints be applied in the least restrictive manner necessary.</li> <li>• Requires written documentation when restraints are used and specifies retention periods for such records.</li> </ul>

Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Florida</p> <p>(<i>Fla. Stat. Ann.</i> § <a href="#">944.241</a>; <i>Fla. Admin. Code Ann. r.</i> <a href="#">33-602.211</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints on a prisoner known to be pregnant during labor, delivery, or postpartum recovery unless the corrections official determines that she presents an extraordinary circumstance.</li> <li>Allows physicians to request that restraints not be used, however, restraints may be applied if an officer determines that there is an extraordinary safety risk.</li> <li>Prohibits the use of leg, ankle, or waist restraints during labor and delivery.</li> <li>Prohibits the use of leg, ankle, or waist restraints during the third trimester or when requested by the treating physician, unless there are significant documentable security reasons that require wrist restraints to be applied at the front.</li> <li>Requires restraints to be applied in the least restrictive manner possible and the officer must follow prescribed documentation and record retention requirements.</li> </ul>
<p>Hawaii</p> <p>(<i>Haw. Rev. Stat.</i> § <a href="#">353-122</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints during labor or childbirth unless hospital restrains for medical safety.</li> <li>Prohibits the use of leg irons or waist chains on a pregnant inmate.</li> <li>Allows the use of restraints under “extraordinary circumstances” (i.e., risk of harm or escape), in which case (1) restraints must be the least restrictive available and the most reasonable under the circumstances and (2) correctional personnel must document the circumstances and the restraints used.</li> <li>Requires removal of restraints if a treating health professional requests it.</li> </ul>
<p>Idaho</p> <p>(<i>Idaho Code</i> § <a href="#">20-902</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints during labor and delivery, except for extraordinary circumstances (i.e., the corrections official determines that restraints are necessary to prevent escape or harm).</li> <li>Allows the health professional to request removal of the restraints and requires corrections officials to immediately do so.</li> <li>Prohibits the use of leg or waist restraints during labor or delivery under any circumstance.</li> <li>Requires that restraints be applied in the least restrictive manner possible and the officer must follow documentation and record retention requirements.</li> </ul>
<p>Illinois</p> <p>(55 <i>ILL. Comp. Stat. Ann.</i> <a href="#">5/3-6-7</a> &amp; <a href="#">5/3-15003.6</a>; 730 <i>ILL. Comp. Stat. Ann.</i> <a href="#">125/17.5</a>; 20 <i>ILL. Adm. Cod</i> <a href="#">701.160</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints on a prisoner who is (1) determined by a qualified medical professional to be pregnant and is known to be pregnant or (2) in postpartum recovery (i.e., when she is in the medical facility after birth), unless the corrections official determines that there is a substantial flight risk or some other extraordinary circumstance that requires them to be used to ensure safety.</li> <li>Requires immediate removal of restraints upon the written or oral request of medical personnel.</li> <li>Prohibits the use of leg irons, shackles, or waist shackles on any pregnant or postpartum inmate regardless of security classification.</li> <li>Prohibits the use of restraints during labor, except for medical therapeutic restraints.</li> <li>Restraints used must be the least restrictive possible to ensure safety and security but must not include leg irons, shackles, or waist shackles.</li> <li>Prohibits the use of handcuffs, shackles, or restraints during the transportation of a pregnant inmate to a medical facility for childbirth.</li> </ul>

Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Louisiana</p> <p>(La. Rev. Stat. Ann. § <a href="#">15:744.3</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints on a prisoner while she is in labor and during delivery unless medical staff orders therapeutic restraints due to a psychiatric or medical disorder (“therapeutic restraints” do not include metal handcuffs or shackles).</li> <li>Prohibits the use of restraints during any pregnancy-related medical distress or transportation to a medical facility or the Louisiana Correctional Institute for Women for delivery or any pregnancy-related medical distress, or during postpartum recovery, unless there are compelling grounds to believe that there is (1) an immediate and serious threat of physical harm or (2) a substantial flight risk that cannot be contained by other means.</li> <li>Allows health professional to request restraint removal and requires corrections officials to immediately remove restraints upon such a request.</li> <li>Requires the type of restraint applied and its application to be the least restrictive manner necessary.</li> <li>Prohibits the use of waist restraints during transportation to a medical facility or during postpartum recovery.</li> <li>Requires the officer using restraints to follow prescribed documentation and record retention requirements.</li> </ul>
<p>Maine</p> <p>(Me. Rev. Stat. Ann. tit. 30-A, §§ <a href="#">1582</a> &amp; <a href="#">3102</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints on a prisoner known to be pregnant, including during transport to a medical facility or birthing center, labor, delivery, and postpartum recovery, unless the jail administrator or his or her designee determines there is an extraordinary circumstance.</li> <li>Specifies that an extraordinary circumstance exists when a jail administrator or designee of the jail administrator determines that there is a substantial flight risk or other extraordinary medical or security concern.</li> <li>Requires the corrections officer to immediately remove restraints upon the request of the treating health professional.</li> <li>Prohibits the use of (1) leg or waist restraints and (2) all restraints during labor or childbirth.</li> <li>Requires restraints to be applied in the least restrictive manner possible and the officer must follow prescribed documentation and record retention requirements.</li> </ul>
<p>Maryland</p> <p>(MD Code, Corr. Servs., § <a href="#">9-601</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of restraints on an inmate while in labor or during delivery, except as determined by the medical professional responsible for inmate’s care.</li> <li>Limits the use of physical restraint on an inmate known to be pregnant or in postpartum recovery to when the (1) correctional official makes a recorded determination that it is required to ensure safety and security and (2) restraint is the least restrictive necessary and does not include waist or leg restraints.</li> <li>Requires the corrections officer to immediately remove restraints upon the request of the treating health professional.</li> <li>Requires the department and the managing official of each local correctional facility or the managing official of the agency designated to transport inmates to develop a policy that (1) requires a physical restraint used on a pregnant inmate during transport to be the least restrictive necessary and (2) establishes a method for reporting the use of physical restraints on pregnant inmates.</li> </ul>

Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Massachusetts</p> <p>(<i>Mass. Gen. Laws ch. 127, § 118</i>; <i>3 Mass. Regs. Code § 924.17</i>)</p>	<ul style="list-style-type: none"> <li>• Limits the use of restraints on an inmate during the second and third trimesters of pregnancy or during post-delivery recuperation, including during transportation, to handcuffs in front.</li> <li>• Specifies that pregnant inmates must be transported to and from visits to medical providers and court proceedings in vehicles equipped with seatbelts.</li> <li>• Prohibits the use of restraints during labor or delivery, including during transportation.</li> <li>• Prohibits the use of restraints during post-delivery recuperation, except under extraordinary circumstances (i.e., a situation in which a correction officer determines that the inmate presents an immediate and serious threat of harm or an immediate and credible risk of escape that cannot be stopped by other reasonable means).</li> <li>• Restraint must be the least restrictive available and the most reasonable under the circumstances, approved by the superintendent, and documented by the corrections officer.</li> <li>• Prohibits leg or waist restraints on a pregnant or postpartum inmate.</li> <li>• Requires immediate removal of restraints at the request of the treating health professional.</li> </ul>
<p>Minnesota</p> <p>(<i>Minn. Stat. § 241.88</i>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on an inmate known to be pregnant unless the correction facility representative determines that they are reasonably necessary for legitimate safety and security needs.</li> <li>• Requires restraints to be the least restrictive available and the most reasonable under the circumstances.</li> <li>• Prohibits the use of waist chains, other devices that cross or touch a pregnant inmate's abdomen, or handcuffs behind her back.</li> <li>• Requires wrist restraints to be applied during transportation in front.</li> <li>• Allows a correctional facility representative to restrain an inmate who is in labor or within three days after giving birth only if (1) there is a substantial flight risk or some other extraordinary medical or security circumstance; (2) the representative determined that restraints are necessary to prevent escape or injury; (3) there is no objection from the treating medical provider; and (4) the restraints used are the least restrictive type and are used in the least restrictive manner.</li> <li>• Requires the head of each correctional facility to provide training to staff members.</li> </ul>
<p>Nevada</p> <p>(<i>Nev. Rev. Stat. 209.376</i>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on an offender or prisoner during labor, delivery, or post-delivery recuperation unless there are compelling reasons to believe that she presents a (1) serious and immediate threat of harm or (2) substantial flight risk and cannot be reasonably confined by other means.</li> <li>• Requires the least restrictive restraints necessary to ensure safety and security.</li> </ul>

Table 1 (continued)

<p><b>State (Statute/Regulation)</b></p>	<p><b>Restraint Provisions</b></p>
<p>New Jersey  (N.J. Admin. Code § <a href="#">10A:31-13.10</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints without prior medical approval, other than handcuffs, on a pregnant inmate, unless there are reasonable grounds to believe that she presents an immediate (1) serious threat of harm or (2) credible risk of escape that cannot be reasonably contained through other means.</li> <li>• Prohibits the use of restraints during labor and delivery and the post-partum period, unless the use of restraints meets the criteria above.</li> <li>• Prohibits the use of abdominal restraints, leg and ankle restraints, wrist restraints behind the back, or four-point restraints on a pregnant inmate.</li> <li>• Requires medical personnel to review the placement of restraints as soon as practicable.</li> <li>• Requires that standard operating procedures be established to address the (1) use of restraints on a pregnant inmate during transportation, (2) frequency for reassessing the use of restraints, and (3) documentation for the use of restraints.</li> </ul>
<p>New Mexico  (N.M. Stat. Ann. § <a href="#">33-1-4.2</a>)</p>	<ul style="list-style-type: none"> <li>• Allows a correctional facility, detention center, and local jail to use the least restrictive restraints necessary when it has actual or constructive knowledge that an inmate is in the second or third trimester of pregnancy.</li> <li>• Prohibits the use of restraints on an inmate who is in labor, delivery, or recuperating from delivery unless there are compelling grounds to believe that she presents (1) an immediate and serious threat of harm or (2) a substantial flight risk and cannot be reasonably contained by other means.</li> <li>• Requires restraints to be the least restrictive restraints necessary to ensure safety and security.</li> </ul>
<p>New York  (N.Y. Correct. Law § <a href="#">611(1)</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints absent extraordinary circumstances during transport of an inmate who is (1) known to be pregnant and about to give birth or (2) within eight weeks after delivery or pregnancy outcome.</li> <li>• Specifies that extraordinary circumstances allow for the use of restraints if the superintendent or sheriff or his or her designee or medical professional responsible for the institution determines that restraints are necessary to prevent risk of injury and the inmate cannot reasonably be restrained by other means.</li> <li>• Specifies also that extraordinary circumstances allow for the correctional personnel responsible for transporting an inmate known to be pregnant or within eight weeks after delivery or pregnancy outcome to restrain an inmate if there is an immediate risk of serious injury and she cannot reasonably be restrained by other means.</li> </ul>

Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Pennsylvania</p> <p>(61 Pa. Cons. Stat. § <a href="#">5905</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits a correctional institution from applying restraints to a prisoner or detainee known to be pregnant during labor, any pregnancy-related medical distress, delivery, postpartum, or transport to a medical facility as for any of the preceding conditions after the beginning of the second trimester of pregnancy, except as specified below.</li> <li>• Allows reasonable restraint if the correctional institution staff determines that there is a substantial risk of imminent flight or some other extraordinary medical or security circumstance requires restraint to ensure safety.</li> <li>• Requires that the type and application of restraints be the least restrictive possible and correctional staff must immediately remove them upon the request of the health care professional.</li> <li>• Prohibits the use of leg or waist restraints during labor.</li> <li>• Requires correctional staff to report the incident to the correctional institution in a reasonable amount of time after the restraint occurs.</li> </ul>
<p>Rhode Island</p> <p>(R.I. Gen. Laws § <a href="#">42-56.3-3</a> R.I. Code R. §§ <a href="#">17-1-19:II</a>)</p>	<ul style="list-style-type: none"> <li>• Allows only medically appropriate restraints when the department of corrections has actual or constructive knowledge that a prisoner or detainee is in the second or third trimester of pregnancy.</li> <li>• Prohibits the use of handcuffs, shackles, or other restraints during transport to a medical facility, labor, delivery, or postpartum recovery unless there are compelling grounds to believe that there is an immediate and serious threat of physical harm or a substantial flight risk that cannot be reasonably contained by other means.</li> <li>• Requires a correctional officer to immediately remove restraints if the health professional requests it but, absent exigent circumstances, the medical director of the department of corrections must first be consulted.</li> <li>• Prohibits the use of leg or waist restraints during labor or delivery and waist restraints during postpartum recovery.</li> <li>• Requires the type and the application of restraints used to be the least restrictive manner necessary and the correctional office must document the reason in writing within five days and the records must be retained.</li> </ul>
<p>Tennessee</p> <p>Tenn. Comp. R. &amp; Regs. 0250-04-08.11(3)(c)</p>	<ul style="list-style-type: none"> <li>• Limits the use of restraints on pregnant youth to wrist restraints only.</li> <li>• Allows limited use of security benches or mechanical restraints during classification or preparation for transport.</li> </ul>



Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Texas</p> <p>(37 Tex. Admin. Code § <a href="#">273.2</a>; Tex. Gov't Code Ann. §§ <a href="#">501.066</a> &amp; <a href="#">361.082</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits using restraints on an inmate during labor, delivery, or recovery from delivery, unless the director or director's designee determines it is necessary to (1) ensure safety and security or (2) prevent a substantial risk of attempted escape.</li> <li>Requires the type of restraint and the manner in which it is used to be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.</li> <li>Requires documentation of use of restraints which must include the (1) events leading up to the need for restraints, (2) time the restraints were applied, (3) reason for their use, (4) observations of the inmate's behavior and condition, and (5) time the restraints were removed.</li> </ul>
<p>Vermont</p> <p>(Vt. Stat. Ann. tit. 28 § <a href="#">801a</a>)</p>	<ul style="list-style-type: none"> <li>Prohibits the use of mechanical restraints on an inmate after she has been declared in active labor by an attending health care practitioner, unless she presents a substantial flight risk or other extraordinary circumstances require it.</li> <li>Requires that the inmate remains unrestrained after delivery while in recovery at the hospital.</li> <li>Requires the commissioner of corrections to make written findings as to why mechanical restraints were necessary, if they were used.</li> </ul>
<p>Virginia</p> <p>(6 Va. Admin. Code § <a href="#">15-40-985</a>)</p>	<p>During Transportation:</p> <ul style="list-style-type: none"> <li>Limits the use of restraints on inmates known to be pregnant to handcuffs only in front, unless it is determined that the inmate is a flight risk or danger or the totality of the circumstances creates a serious security risk.</li> <li>Requires any restraint to be the least restrictive method necessary.</li> <li>Prohibits the use of waist chains.</li> <li>Requires security staff to notify a supervisor as soon as reasonably possible and submit a use of force report if more restrictive restraints are needed.</li> </ul> <p>During Labor and Delivery:</p> <ul style="list-style-type: none"> <li>Prohibits the use of restraints during labor and delivery unless it is determined that the inmate is a flight risk or danger or the totality of the circumstances creates a serious security risk.</li> <li>Requires the least restrictive restraint alternative to be used in consultation with the health professional, which must be immediately removed if the health professional requests it and security staff must notify the supervisor, as soon as reasonably practical but no later than the conclusion of the shift, for review and justification.</li> <li>Prohibits the use of waist chains or waist belts.</li> </ul> <p>During Postpartum Recovery:</p> <ul style="list-style-type: none"> <li>Allows an inmate, based on the circumstances, to be restrained in the least restrictive method (i.e., one ankle restraint or one arm restraint), except when the inmate is a flight risk or danger, or the totality of the circumstances creates a serious security risk.</li> <li>Requires security staff to notify a supervisor as soon as reasonably practical and submit a use of force report to a supervisor no later than the conclusion of the shift for review and justification if more restrictive restraints are used.</li> </ul>

Table 1 (continued)

State (Statute/Regulation)	Restraint Provisions
<p>Washington</p> <p>(Wash. Rev. Code §§ <a href="#">70.48-500</a> &amp; <a href="#">72.09.651</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on an inmate during transportation to and from visits to medical providers and court proceedings during her third trimester or during postpartum recovery, except in extraordinary circumstances.</li> <li>• Specifies that “extraordinary circumstances” exist where a correctional officer or employee determines that restraints are necessary to prevent escape or harm.</li> <li>• Prohibits the use of restraints during labor and childbirth, except for hospital restraints requested for the medical safety of a patient by treating physicians.</li> <li>• Prohibits the use of leg irons or waist chains on pregnant inmates.</li> <li>• Requires, if restraints are used, that (1) the officer or employee must fully document in writing the kind of restraint used and why those restraints were considered the least restrictive available and the most reasonable under the circumstances and (2) they must be immediately removed if the treating health professional requests it.</li> </ul>
<p>Washington D.C.</p> <p>(D.C. Code Ann. § <a href="#">24-276.02</a>)</p>	<ul style="list-style-type: none"> <li>• Allows the use of restraints on an inmate who is known to be pregnant, if the restraint is the least restrictive available and the most reasonable under the circumstances.</li> <li>• Provides that if more restrictive restraints are used on an inmate known to be pregnant, their use must be subject to established reporting requirements.</li> <li>• Generally prohibits the use of restraints on an inmate who is in the third trimester of pregnancy or in postpartum recovery, including during transport to a medical facility or while receiving treatment at a medical facility.</li> <li>• Allows the administrator to authorize the use of restraints on an inmate in the third trimester of pregnancy or in postpartum recovery after determining that extraordinary circumstances apply and restraints are necessary to prevent harm.</li> <li>• Requires immediate removal of restraints if the health professional determines that its removal is medically necessary to protect the inmate’s, or her baby’s, health or safety.</li> <li>• Prohibits the use of restraints on an inmate in labor.</li> </ul>
<p>West Virginia</p> <p>(W. Va. Code §§ <a href="#">25-1-16</a> &amp; <a href="#">31-20-30a</a>)</p>	<ul style="list-style-type: none"> <li>• Prohibits restraining pregnant inmates from the second trimester until the end of the pregnancy, unless there is a risk of harm or escape.</li> <li>• Requires restraint used to be in a manner reasonably necessary, after consultation with an appropriate health care professional, to assure that it will not pose an unreasonable risk to the inmate or the fetus.</li> </ul>

Source: Office of Legislative Research Library

## Proposed Legislation - 2017 and 2018 Session Years

Table 2 summarizes proposed legislation in 10 states to restrict the use of restraints on pregnant and postpartum inmates, including during transportation, labor, delivery, and postpartum recovery.

Four of these proposals (Maryland, Massachusetts, New Jersey, and Rhode Island) expand on restrictions in existing laws, as summarized in Table 1 above. For example, the Massachusetts proposal requires specific training for staff that supervise female inmates.

The remaining six proposals generally prohibit the use of restraints, but allow the use of the least restrictive type under certain extraordinary circumstances. Oklahoma is the only state that would make it a misdemeanor, punishable by up to one year in prison, a fine of \$1,000, or both, if a correctional officer uses restraints on a pregnant inmate during delivery.

**Table 2: States with Proposed Legislation to Restrict Restraining Pregnant Inmates**

State (Bill)	Bill Provisions
Connecticut ( <a href="#">2018 SB 13</a> )	<ul style="list-style-type: none"> <li>• Generally prohibits staff from using leg or waist restraints on any inmate determined, by a licensed health care provider, to be pregnant or in the postpartum period.</li> <li>• Allows a pregnant inmate to be restrained using handcuffs that are placed on the wrists in front unless there are compelling grounds to believe that she presents (1) an immediate and serious threat of harm or (2) a substantial flight risk and cannot be reasonably contained by other means, in which case she may be placed in wrist, leg, or waist restraints, but the least restrictive kind of restraint considering the circumstances.</li> <li>• Requires correctional staff to document specific information regarding the decision to use restraints.</li> <li>• Requires correctional staff to transport any inmate, determined to be in the second or third trimester of a pregnancy by a licensed health care provider, to and from visits to health care providers and court proceedings in a vehicle equipped with seatbelts.</li> </ul>
Kentucky (2018 SB 133)	<ul style="list-style-type: none"> <li>• Allows the use of restraints on an inmate known to be pregnant but only with handcuffs in front unless further restraint is required for protection.</li> <li>• Prohibits shackling or restraining an inmate during childbirth.</li> </ul>
Maryland (2018 SB 629)	<ul style="list-style-type: none"> <li>• Requires correctional facilities to have a written policy regarding the medical care of pregnant inmates that addresses, among other things, transportation to and from the labor and delivery facility. (This expands existing law's restriction on the use of restraints, see Table 1 above.)</li> </ul>
Massachusetts (2017 HB 2474)	<ul style="list-style-type: none"> <li>• During postpartum recovery of six weeks, or longer as determined by the attending physician (1) requires that an inmate be transported in a vehicle equipped with seatbelts and (2) allows the use of handcuffs in front of the inmate.</li> <li>• Requires annual training of staff members who transfer or supervise female inmates.</li> <li>• Establishes reporting requirements for superintendents or administrators of correctional facilities on the use of restraints and compliance with related law. (This expands existing law's restriction on the use of restraints, see Table 1 above.)</li> </ul>
Missouri (2018 SB 803)	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on an offender in her third trimester during transportation to and from visits to health care providers or court, or during medical appointments and examinations, labor, delivery, or 48 hours postdelivery, unless extraordinary circumstances exist.</li> <li>• Establishes documentation and record retention requirements that apply when restraints are used.</li> <li>• Prohibits the use of leg, ankle, waist, or any mechanical restraints on an inmate during her third trimester or 48 hours postdelivery, but allows wrist restraints in front which must be removed if a health care provider requests it.</li> </ul>

Table 2 (continued)

State (Bill)	Bill Provisions
New Jersey (2018 AB 2186)	<ul style="list-style-type: none"> <li>• Generally prohibits the use of mechanical restraints on an inmate known to be pregnant during any stage of labor, any pregnancy-related medical distress, transport to a medical facility, delivery, or postpartum.</li> <li>• Allows the use of the least restrictive type and application of restraint necessary if it is determined that (1) the inmate poses a substantial flight risk or (2) extraordinary medical or security circumstances exist.</li> <li>• Requires correctional staff or the correctional medical service provider to attend to a restrained inmate at all times and to immediately remove restraints upon the healthcare provider's request. (This expands existing law's restriction on the use of restraints, see Table 1 above.)</li> </ul>
North Carolina (2017 SB 639)	<ul style="list-style-type: none"> <li>• Generally prohibits the use of restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility, delivery, and postpartum recovery, unless the corrections official determines that the prisoner or detainee presents an extraordinary circumstance.</li> <li>• Requires the corrections officer to immediately remove all restraints if the health professional treating the prisoner or detainee requests it.</li> <li>• Prohibits leg or waist restraints on any prisoner or detainee who is in labor or delivery.</li> <li>• Requires the type and application of the restraint to be the least restrictive manner necessary.</li> <li>• Establishes documentation and record retention requirements that apply when restraints are used.</li> </ul>
Oklahoma (2017 HB 3393)	<ul style="list-style-type: none"> <li>• Generally prohibits the use of restraints when transporting an inmate who is in labor or while the inmate is delivering or recuperating from the delivery.</li> <li>• Allows the use of restraints during recuperation if there are compelling grounds to believe that she presents an immediate and serious threat of harm or is a substantial flight risk and cannot be reasonably contained by other means.</li> <li>• Allows the use of the least restrictive restraints necessary when a facility has actual or constructive knowledge that an inmate is pregnant.</li> <li>• Prohibits specific restraints and control techniques, such as abdominal restraints that directly constrict the area of pregnancy.</li> <li>• Requires consultation with medical staff and approval from the warden, director of a detention center, or sheriff of a county jail before applying restraints.</li> <li>• Makes it a misdemeanor, punishable by up to one year in prison, a fine of \$1,000, or both, for a correctional officer to use restraints on an inmate during delivery.</li> </ul>
Rhode Island (2017 SB 282)	<ul style="list-style-type: none"> <li>• Prohibits the use of handcuffs, shackles, or other restraints on a prisoner or detainee known to be pregnant, during the third trimester of her pregnancy to or from a court proceeding, unless there are compelling grounds to believe that she presents an immediate risk of harm or flight. (This expands existing law's restriction on the use of restraints, see Table 1 above.)</li> </ul>

Table 2 (continued)

State (Bill)	Bill Provisions
Wisconsin (2017 SB 393)	<ul style="list-style-type: none"> <li>• Prohibits the use of restraints on an inmate known to be pregnant, unless a correctional facility representative determines that restraints are reasonably necessary for safety and security needs.</li> <li>• Requires restraints to be the least restrictive effective type and the most reasonable under the circumstances.</li> <li>• Prohibits, during the transport of a pregnant inmate, the use of leg irons, waist chains, or other devices that cross or touch the abdomen, or handcuffs or other devices affixed behind her.</li> <li>• Prohibits the use of restraints during labor or the three days following delivery unless the restraints are the least restrictive effective type and are used in the least restrictive manner and there is (1) a substantial risk of harm or flight, (2) a determination that restraints are necessary to prevent escape or injury, and (3) no objection by the treating medical care provider.</li> </ul>

Source: National Conference of State Legislatures

## Connecticut – Department of Correction (DOC) Policy

The DOC’s policy on the use of restraints on pregnant and postpartum inmates is governed by Administrative Directive Number 6.4, which took effect August 26, 2015.

### *Known to be Pregnant or in Postpartum Period*

Before an inmate who is (1) known to be pregnant or (2) in the postpartum recovery period is placed in leg irons or other restraints, the Health Services Unit must be consulted for approval. If the Health Services Unit determines that placement in leg irons or other restraints are not medically advisable, the use is not allowed (DOC Administrative Directives § 6.4.14.A.3).

### *Third Trimester of Pregnancy*

The policy prohibits using leg irons on an inmate who is in the third trimester of pregnancy, unless the shift commander determines that security requires it and the Health Services Unit does not find it medically problematic (DOC Administrative Directives § 6.4.14.A.3).

### *Labor and Delivery*

The policy also prohibits the use of restraints on an inmate in labor or during delivery (DOC Administrative Directives § 6.4.14.A.3).

## ***Transportation - Shackling to Stationary Objects***

An inmate must not be shackled to a stationary object in a moving vehicle, absent an emergency. The inmate must be removed from the object as soon as the emergency is over, and an incident report must be filed with the shift supervisor by the end of the work shift (DOC Administrative Directives § 6.4.14.A.1).

## **Recent Federal Court Cases**

Federal courts have held that shackling an inmate during labor and delivery is a violation of her Eighth Amendment right against cruel and unusual punishment. Below are brief descriptions of two such opinions.

### ***Nelson v. Correctional Medical Services***

In *Nelson v. Correctional Medical Services*, an inmate brought action against the director of the Arkansas Department of Correction and a corrections officer, alleging that while giving birth she was forced to go through the final stages of labor with both legs shackled to her hospital bed in violation of the Eighth Amendment. In relevant part, the court (1) held that the inmate had a right not to be shackled unless she was likely a security or flight risk and (2) denied summary judgment for the officer because factual issues existed as to whether the officer's conduct constituted deliberate indifference in violation of the Eighth Amendment (583 F.3d 522, 533 (8th Cir. 2009)).

### ***Brawley v. State of Washington***

In *Brawley v. State of Washington*, a former inmate brought action against the Washington State Department of Corrections and various officials, seeking relief from constitutional violations that she alleged occurred during the birth of her first child. The department sought summary judgment, which the court denied and held that:

1. the inmate showed that shackling inmates while they are in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense;
2. the inmate, who was shackled to a hospital bed while giving birth, objectively showed that she had a serious medical need and was exposed to unnecessary risk for purposes of her Eighth Amendment claim; and
3. material issues of fact as to whether officers were deliberately indifferent to the risks of harm and the serious medical needs when they shackled the inmate to the hospital bed precluded summary judgment for the inmate (712 F.Supp.2d 1208, 1221 (W.D. Wash 2010)).

MK:cmg