

# Shackling of Pregnant Women



Medicaid Managed Care Council  
Women's Health Subcommittee  
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# Agenda

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1. Context - Incarcerated pregnant women in the US
2. The practice of shackling pregnant women
  - Public awareness
  - Legal considerations
  - Health risks
3. Review - best practices and recommendations
4. Current status in the US
5. Sample legislation
6. Q&A

# Objectives

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

# Incarcerated Pregnant Women in the United States

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

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

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

# Incarcerated Women in the U.S.

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



# Shackling in Pregnancy

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



# Risks associated with restraints and shackling during pregnancy

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

Source: ACOG, 2011



## Risks (cont.)

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

Source: ACOG, 2011



# Legal Considerations

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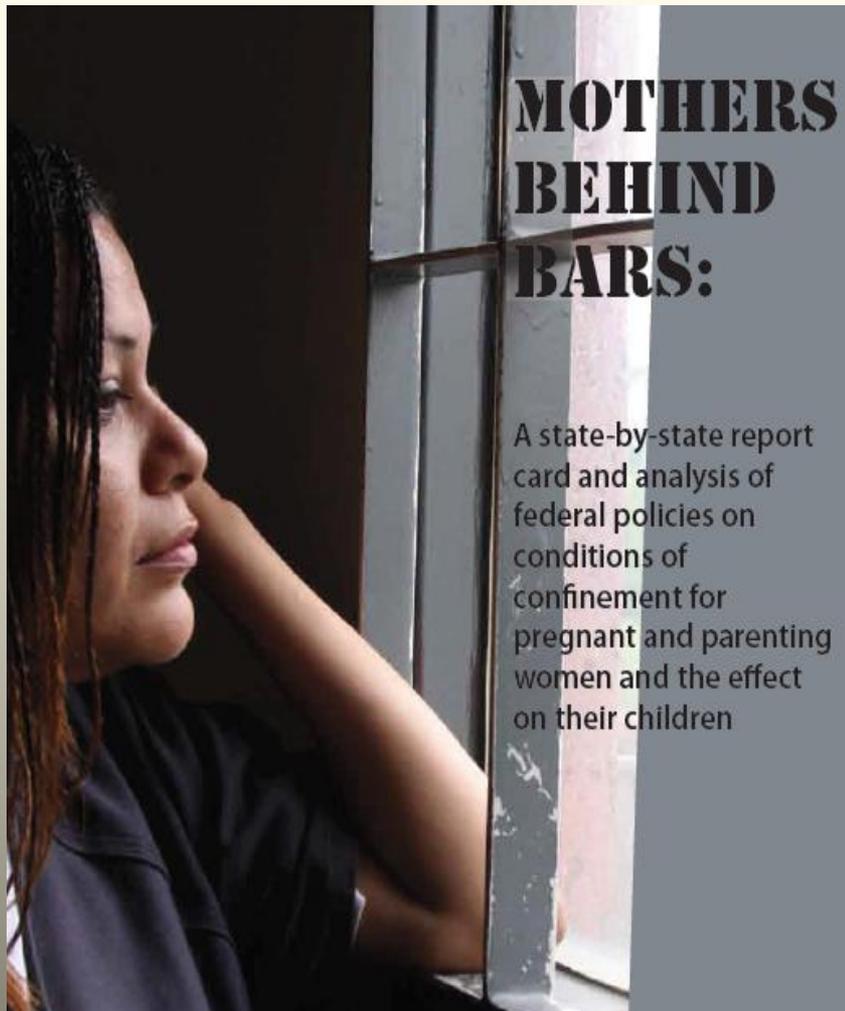
- Shackling violates International Law
- Shackling violates the U.S. Constitution
  - *8<sup>th</sup> Amendment prohibition on cruel & unusual punishment*



- At a federal level, the U.S. government adopted an anti-shackling policy in 2008

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

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

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

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

# Best Practices and Recommendations

# American College of Obstetricians and Gynecologists (ACOG), 2011

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- **ACOG Recommendations**

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



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

# ACOG Best Practices & Recommendations, 2011

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



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

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

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

# National Task Force

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

# National Task Force Best Practices & Recommendation Statement

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

# National Task Force Best Practices & Recommendation Statement

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

# American Psychological Association (APA) Best Practices & Recommendations (2015)

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

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



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

# American Psychological Association

## Best Practices & Recommendations, 2015

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



AMERICAN  
PSYCHOLOGICAL  
ASSOCIATION

# Adult and Juvenile Female Offenders Conference

## Hartford, CT 2015

- Co-sponsored by the Association on Programs for Female Offenders (APFO) since 2003
  - APFO addresses issues for women and girls involved in the criminal justice system.
- In 2015, the CT Women Consortium was selected to host the 3-day conference.
  - 4,000 participants from across the U.S.
  - Support was provided by Connecticut's Department of Correction, Department of Mental Health and Addiction Services, Department of Children and Families, Department of Public Health, and Court Support Services Division

# AJFO Conference 2015

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

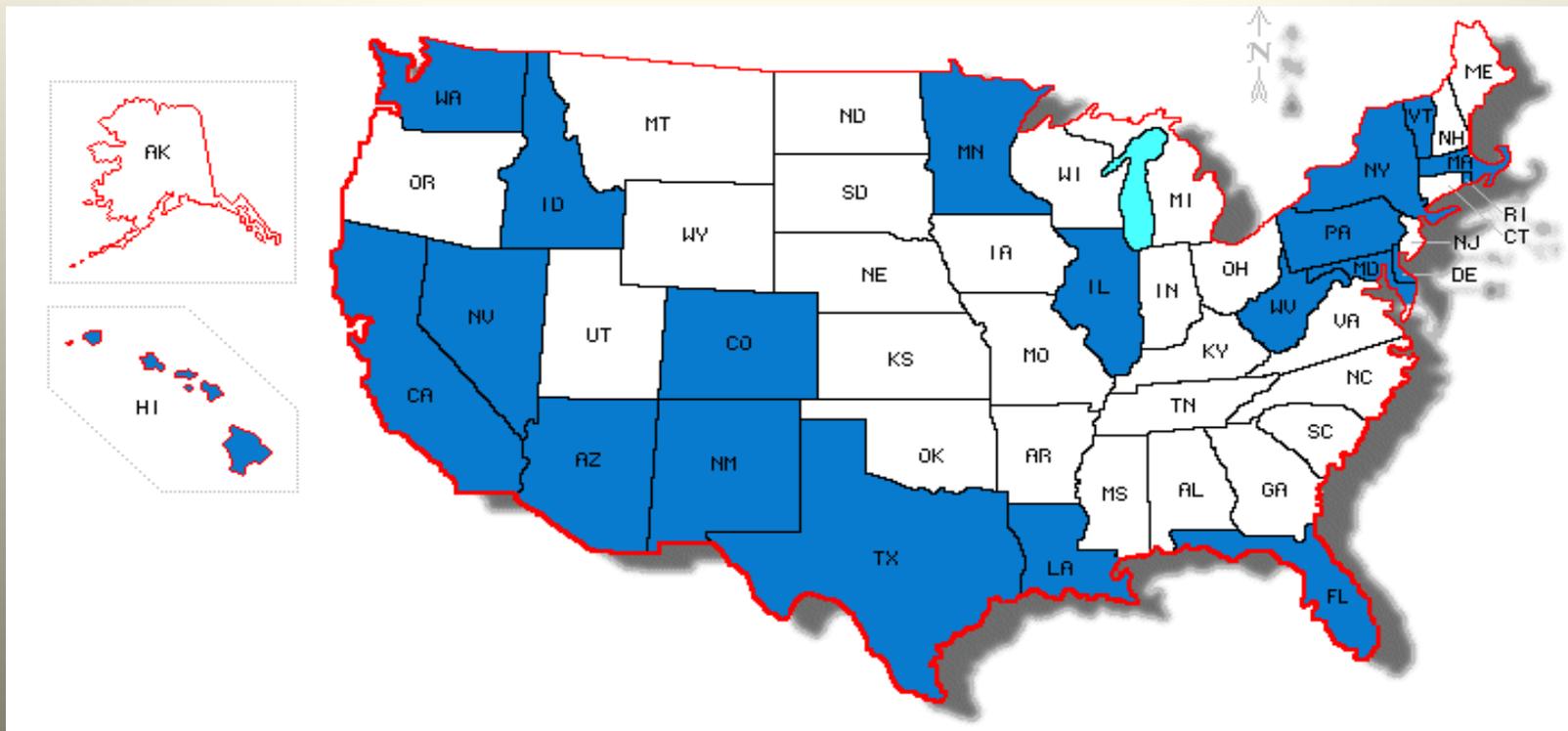
# **“Implementing Policies and Practices on the Non-use of Restraints with Incarcerated Pregnant Women” webinar. December 14, 2015**

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

# Current Status by State

# Current Status - State Legislation

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



# Current Status - State Legislation

STATE	RESTRICTS USE OF RESTRAINTS DURING *			PHYSICIAN AUTHORITY TO REMOVE RESTRAINTS	ADDRESSES PRIVACY CONCERNS	CORRECTIONS STAFF MUST DOCUMENT	APPLIES TO JUVENILES	ADDRESSES BROADER HEALTH CONCERNS
	LABOR AND DELIVERY	TRANSPORT	POSTPARTUM "RECOVERY"					
ARIZONA	X	X	X			X	X	
CALIFORNIA * (bill to broaden existing law)	X	X	X	X			X	X
COLORADO	X					X	X	
DELAWARE	X	X	X	X		X		
DISTRICT OF COLUMBIA	X	X	X	X		X	X	
FLORIDA	X		X	X		X	X	
Hawaii*	X	X	X	X	X	X		
Idaho	X			X		X		
ILLINOIS* (bill to broaden existing law)	X	X	X	X	X	X		

Source: 2015 ACOG STATE LEGISLATION TALLY *Incarcerated Pregnant Women: Limiting Use of Restraints*

# Current Status - State Legislation

STATE	RESTRICTS USE OF RESTRAINTS DURING *			PHYSICIAN AUTHORITY TO REMOVE RESTRAINTS	ADDRESSES PRIVACY CONCERNS	CORRECTIONS STAFF MUST DOCUMENT	APPLIES TO JUVENILES	ADDRESSES BROADER HEALTH CONCERNS
	LABOR AND DELIVERY	TRANSPORT	POSTPARTUM "RECOVERY"					
LOUISIANA*	X	X	X	X		X	X	
MAINE*	X	X	X	X	X	X	X	
MARYLAND*	X	X	X	X		X	X	
Massachusetts	X	X	X	X	X	X		X
Minnesota*	X	X	X	X				X
Nevada	X		X				X	
New Mexico	X		X					
New York	X	X	X			X		
Pennsylvania*	X	X	X			X		
Rhode Island	X	X	X	X		X	X	

# Current Status - State Legislation

STATE	RESTRICTS USE OF RESTRAINTS DURING *			PHYSICIAN AUTHORITY TO REMOVE RESTRAINTS	ADDRESSES PRIVACY CONCERNS	CORRECTIONS STAFF MUST DOCUMENT	APPLIES TO JUVENILES	ADDRESSES BROADER HEALTH CONCERNS
	LABOR AND DELIVERY	TRANSPORT	POSTPARTUM "RECOVERY"					
Texas	X		X				X	
Vermont	X		X			X		
WASHINGTON*	X	X	X	X	X	X	X	
WEST VIRGINIA*	X	X	X	X				

\* Denotes legislation that more broadly restricts the use of restraints:

**California, Illinois, Louisiana, Maine, Maryland, Minnesota:** From the time a woman is known to be pregnant

**Louisiana, West Virginia:** During the 2nd or 3rd trimester of pregnancy

**Hawaii, Washington:** During the 3rd trimester of pregnancy

**Pennsylvania:** During any pregnancy-related medical distress

# Sample Legislation



# Massachusetts Legislation (2014)

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- Chapter 103; Section 118 b)
  - ... *During the second and third trimesters of pregnancy or during post-delivery recuperation, as determined by the attending physician, an inmate shall be transported to and from visits to medical providers and court proceedings in a vehicle with seatbelts and **may only be restrained using handcuffs in front.***
  - ... *A pregnant inmate shall receive labor and delivery care in an accredited hospital and shall not be removed to another penal institution for the purpose of giving birth. An inmate who is in **any stage of labor or delivery**, as determined by a licensed health care professional, **shall not be placed in restraints at any time**, including during transportation.*

# Massachusetts Legislation (2014)

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- Chapter 103; Section 118 b)
  - ... An inmate in post-delivery recuperation shall not be placed in restraints, except under **extraordinary circumstances**.
  - ... *“extraordinary circumstances” shall mean a situation in which a correction officer determines that the specific inmate presents **an immediate and serious threat to herself or others** or in which the inmate presents an immediate and **credible risk of escape** that cannot be curtailed by other reasonable means*

# Maryland Legislation (2014)

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- Chapter 212; House Bill 27:

*... A physical restraint may not be used on an inmate while the inmate is in labor or during delivery, except as determined by the medical professional responsible for the care of the inmate...*

*... A physical restraint may be used on an inmate known to be pregnant or in postpartum recovery if... (list of special circumstances)*

# Maine Legislation (2015)

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- Chapter 315;” An act to prevent the shackling of pregnant prisoners and pregnant juveniles”

*... A jail may not use restraints on a prisoner or juvenile known to be pregnant, including during transport to a medical facility or birthing center, labor, delivery and postpartum recovery, **unless the jail administrator** or the designee of the jail administrator makes a determination that the prisoner or juvenile presents an extraordinary circumstance as described in subsection 2...*

# Conclusions

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

Questions?

# Contact

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11. Maine - Chapter 315;”An act to prevent the shackling of pregnant prisoners and pregnant juveniles”