

“Mothers in Chains”

How national and state legislation have
been enacted to stop the practice of
shackling incarcerated pregnant women

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Introduction

As long as there have been female prisoners, there have been countless accounts of molestation, rape, and other violence toward incarcerated women. Unlike Hollywood depictions, these instances do not just occur in the dark, sinister cells of third-world countries; the United States has seen multiple court cases and news stories about the abuse of female inmates. Over the past decade the treatment of pregnant prisoners has opened public discussion. Shackling pregnant inmates while in labor, during delivery, and during postpartum recovery is a common practice throughout the nation. This is a degrading and harmful practice, deemed unnecessary by many human rights and medical organizations. There is now a national effort to protect these women and their infants by mandates passed by state legislatures to ban the practice. As of the 2010 Legislative Session, Washington State has joined these efforts.

This research paper will first describe the history of the issue of shackling in the United States; the types of restraints used and health issues associated with them; the history of shackling in Washington State; and efforts to change these practices concerned organizations nationwide and statewide in Washington State. Next, the course of the Senate and House bills during the 2010 Washington State Legislative Session will be discussed in their entirety, from initial drafting to their passing the Legislature. Lastly, the final legislation and the author's policy proposal are addressed.

History of Shackling Pregnant Inmates in the United States

The shackling of incarcerated women in the United States first became national news in 1988 with an incident in New York. Former inmate Tina Reynolds was pregnant during her incarceration at Rikers Island correctional facility in New York City. When she began labor, she was transported to the hospital in shackles. After the delivery of her son she was denied the

opportunity to hold him with both arms, as one wrist was shackled to her hospital bed.¹ This story reached the public and many women's rights organizations vowed to see these practices stopped.

Two reports produced by human rights organizations showed more on the poor handling of incarcerated women. In 1993 Human Rights Watch published a Global Report on Prisons that detailed the treatment of incarcerated people across the world. There was little found on any positive treatment of female prisoners. Instead, the atrocities of human rights violations were jaw-dropping. This report found that while "some countries provide decent care and conditions for pregnant women, many pay little regard to medical needs and others inflict deliberate cruelty upon pregnant women."² Romania was highly ranked for their humane treatment of pregnant inmates. Not all nations can claim this distinction. In the report, two countries have accounts of violent abuse of pregnant inmates. In India, a pregnant woman was brutally whipped, leaving giant bruises across her body.³ In Turkey, a 23 year old woman in her first trimester was shackled, given electric shock treatment, beaten, and then raped.

Six years later in 1999, Amnesty International published Rights for All: "Not Part of My Sentence" Violations of the Human Rights of Women in Custody, which details the disturbing treatment of women in United States prisons. The report details instances of groping, rape, sexual slavery, and abuse. The report also details the shackling of pregnant prisoners and the insufficient care they receive, describing several instances where leg shackles were used on women while they were giving birth.⁴ The deplorable treatment of women prisoners seen in

¹ Casey Seiler, "Update: legislature passes anti-shackling measure," New York Senate site of Velmanette Montgomery, 20 May 2009.

² *Global Report on Prisons*. Human Rights Watch, xxiv, 1993.

³ Ibid.

⁴ Diane Ruggiero, "Torture, plain and simple": Amnesty International reports abuse in women's prisons," CNN.com, 4 Mar., 1999.

these reports incited numerous organizations to bring awareness to this issue. Unfortunately, it would seem that several more cases would have to happen in order for Americans to become more fully aware of the abuses being experienced by incarcerated pregnant women in prisons throughout the United States.

The first massively media-covered case of the shackling of an incarcerated pregnant woman occurred in 2003. Twenty-nine year old Shawanna Nelson was a pregnant nonviolent offender incarcerated at the McPherson Unit in Newport, Arkansas for credit card fraud and bad checks.⁵ When she went into labor, Nelson was given nothing but Tylenol for twelve hours before she was taken to the hospital. She was shackled during the entirety of her transportation, delivery, and postpartum recovery, except during the actual birth of her child; during which her legs were cuffed to the sides of her hospital bed.⁶ She had asked to have her shackles removed so she could readjust to relieve the cramps and pain she was experiencing, a request denied by the guard overseeing her. The two nurses helping her through her labor also asked for the shackles to be removed. This was only permitted while the child was actually being born. Nelson sued the Arkansas Department of Corrections and Correctional Medical Services on the basis that her treatment by the correctional officers violated the United State Constitution's Eighth Amendment protection against cruel and unusual punishment.⁷ In 2009, the U.S. Court of Appeals Eighth Circuit in *Nelson v. Norris* ruled in favor of plaintiff Nelson, stating that "constitutional protections against shackling of pregnant women during labor had been clearly established by decisions of the [United States] Supreme Court and lower [federal] courts that shackling pregnant women in labor violates [the] 8th Amendment's prohibition on cruel and

⁵Adam Liptak, "Prisons Often Shackle Pregnant Inmates in Labor," The New York Times, 2 Mar. 2006.

⁶Ibid.

⁷Anna Clark, "Giving Birth in Chains: The Shackling of Incarcerated Women During Labor and Delivery," 6 June 2009.

unusual punishment.”⁸ This was the first time a federal court ruled on a specific case of a woman shackled during labor. Nelson’s case opened up the door for future victims of shackling to sue, and increased the likelihood that these lawsuits might succeed and ultimately alter the laws and practices in United States prisons regarding pregnant inmates.

In September of 2005, Samantha Luther of Wisconsin was taken to the hospital to forcibly induce her labor. Doctors tried several methods; all the while Luther was shackled. Part of the process required her to pace for several hours, during which she was required to keep her ankle shackles on. This gave her only 18 inches of leg room to in each stride.⁹ By the time she delivered her child, her ankles were raw. The shackles were only removed while the baby was being born, then immediately reattached. Though she gave birth to a healthy son, she felt humiliated by her treatment. After Luther went public with her experience in 2006, the Wisconsin Department of Corrections changed staff policy to no longer use restraints on pregnant incarcerated females during labor, delivery, and recovery.¹⁰ Though there was no legislation or law to come from this case, state prison policies were changed.

In California in 2005, 21 year old Desiree Callahan was an inmate at San Joaquin Valley Prison and had to be rushed to the hospital due to pregnancy complications. She was shackled to her bed with an armed guard watching her while under anesthesia for an emergency surgery in an attempt to save her and her child. At no time were her restraints removed. Sadly, the emergency Cesarean surgery performed could not save her baby girl. Not only was Callahan distraught from the loss of her infant, but she was traumatized by her treatment by the attending correctional officers. She explained that “even if [she] had a ride and everything, [she] couldn’t

⁸ ACLU, “Federal Appeals Court Condemns Shackling of Pregnant Prisoners in Labor,” 2 Oct. 2009.

⁹ Ibid.

¹⁰ Amnesty USA, “Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women,” Amnesty International, 2006.

make it to the front door.”¹¹ She was not permitted to move around for recovery purposes until her nurses pleaded with the guard to allow her to be unshackled. After this case, the issue of shackling inmates in labor became a state-wide topic of conversation. Other former California inmates came forward with their stories of shackles during labor. California media brought it to the attention of the public that it is estimated that “between 1998 and 2004, California prisoners gave birth to 1,300 babies.”¹² Because of the outcry from the media and private citizens, the California Legislature passed legislation Prime-Sponsored by Assemblywoman Sally Lieber banning the shackling of pregnant prisoners during labor, delivery, and recovery.¹³

Amnesty International released the Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women report in 2006 as a follow-up to their 1999 report. Amnesty International sent surveys to all 50 states, but only received responses from 39. At this point, only two states (Illinois and California) had legislation regulating the use of restraints on pregnant women. Missouri has policy that allows restraints during labor, but not delivery. It detailed that 8 state departments of corrections, including Washington, may use belly chains and leg irons during the transport of pregnant prisoners. The report also detailed that 21 state departments of corrections do allow for the use of restraints during labor. However, some improvement was noted: 15 state departments of corrections reported they have policies or practices stipulating that no restraints are to be used during labor and birth. Washington State was listed as one of the states reporting this.

¹¹ Ibid.

¹² Karen de Sa, "Legislation Calls For An End To Cuffing Women During Labor." *San Jose Mercury News*. 1 Aug. 2005.

¹³ Amnesty USA, "Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women," Amnesty International, 2006.

In 2008, a late-term pregnant immigrant in Tennessee was arrested on a charge of careless driving and held in jail.¹⁴ While Juana Villegas was in custody, she went into labor. She was taken to the hospital, “where she was handcuffed to the bed by her right wrist and left ankle until shortly before birth.”¹⁵ Though the officers followed the jail policy, Sheriff Daron Hall of Davidson County admitted the policies may have been “a little more than may have been necessary in every case.”¹⁶ After her complaint, a policy change occurred so that pregnant women would no longer be shackled at the Nashville jail.

Several shackling cases emerged from New York in 2008. Venita Pinckney was incarcerated at Bedford Hills Correctional Facility for violating parole when she went into labor. She was transported to the hospital with a chain around her womb area and her hands and ankles shackled.¹⁷ Erica Knox, another inmate in New York, was also restrained to her bed after giving birth.¹⁸ New York jails had reportedly ended routine shackling in 1992 after Tina Reynolds came forward, but accounts of other inmates show otherwise. In 2009, the most recent anti-shackling legislation



Figure 1. Anti-Shackling protest in New York outside Gov. Paterson’s office by WORTH. Image courtesy of Yanina Manolova, AP.

was passed in New York and was very heavily publicized. Senator Velmanette Montgomery and Assemblyman Nick Perry joined forces with formerly incarcerated New York women who had

¹⁴ Associated Press, “Tennessee: Pregnant Inmates at Jail will No Longer Be Restrained,” The New York Times, 29 Aug. 2008.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Emily Douglas, “New York Gov. Paterson Promises to Sign Anti-Shackling Bill.” Reproductive Health Reality Check, 18 Aug. 2009.

delivered their children in shackles. New York Governor David Paterson gave his praise and support for the legislation after several protests aimed toward getting his attention occurred outside of his office. The New York legislation, now law, prohibits the use of restraints on incarcerated pregnant females (except in extraordinary circumstances) by state and local correctional authorities during labor, delivery, and post-natal recovery.¹⁹

Prior to New York, change has taken place in several states and institutions following reports of these atrocities. In 2000, Illinois became the first state to ban the practice of shackling women during childbirth.²⁰ Since then, Arkansas, California New Mexico, Texas, Vermont, and New York have strengthened the rules, including in some cases banning it outright. While not all states have passed legislation or policy, many county and city jails have created their own policies, such as that of Davidson County in Tennessee. Currently, Washington and Pennsylvania have pending legislation that proposes limits on shackling of delivering mothers.²¹ In Washington, the legislation has passed the Legislature and it awaiting action by the Governor.

Policy at the Federal and International Level

At the federal level, the United States Marshal's Service (USMS) has addressed the issue of shackling pregnant inmates. USMS policy was revised in 2007 to include provisions providing that "restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, delivering her baby, or is in immediate post-delivery recuperation."²² The Pregnant Prisoners section was also revised to require "restraints must be the least restrictive necessary to ensure safety and security" and that "any deviations from the

¹⁹ Velmanette Montgomery, "Legislators and Human Rights Activists Hail end of Shackling Incarcerated Pregnant Women," New York State Senate site of Velmanette Montgomery, 19 May 2009.

²⁰ *Women's Voices: Advocacy by Criminal Justice- Involved Women*. Women's Prison Association Institute on Women & Criminal Justice, Mar. 2009.

²¹ "Help Break the Chains That Shackle," *Philadelphia NOW*, 10 Feb. 2010. Web. 11 Feb. 2010.

²² USMS Policy 9.1 (Restraining Devices) section (D)(3) 2007.

utilization of full standard restraints on a pregnant prisoner (waist chain, leg irons, and handcuffs) must first be approved by a USMS Management Official.”²³ The Federal Bureau of Prisons and the American Correction Association each adopted policies restricting the use of restraints on women in labor in 2008.²⁴ The Federal Bureau of Prisons policy states that any escort staff must be trained on how to transport prisoners, and that there should be no use of restraints on women in labor unless there is a risk of harm to the prisoner or others.²⁵

Internationally, there is little law on this subject. One exception is the United Nations Standard for the Treatment of All Prisoners. In it, Rule 33 states that shackles should not be used on inmates unless they are a danger to themselves, others or property, or have a history of trying to escape.²⁶ Amnesty International deems the use of restraints on pregnant prisoners a “cruel, inhuman and degrading form of treatment in violation of both the UN Convention Against Torture and the International Covenant on Civil and Political Rights.”²⁷ The United States is a signatory of the UN Convention Against Torture, and has both signed and ratified the International Covenant on Civil and Political Rights.

Problems with Current Laws

Even with anti-shackling laws in place, there are sometimes problems enforcing them in local government jails. Currently, *Zaborowski and Jackson v. Sheriff* is before the United States Court of Appeals 7th Circuit, filed by four Illinois women who claim to have been shackled during their pregnancies while incarcerated in Cook County. There is speculation the jail personnel may have thought Illinois law did not apply because they are a county and not a state

²³ Ibid.

²⁴ Associated Press, “N.Y. nears ban on shackling the pregnant,” MSNBC, 25 Aug. 2009.

²⁵ Joyce K. Conley. Letter to Senator Richard Durbin. 17 Oct. 2007. US Department of Justice.

²⁶ Amnesty USA, “Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women,” Amnesty International, 2006.

²⁷ Ibid.

correction center.²⁸ However, in an email from the Clerk for Assistant State Attorney Patrick Smith, he said identical state laws cover county corrections facilities.²⁹ Patrick Smith, representing Cook County in this case, said in a phone call that county jail state laws have been modified and that they generally transfer pregnant inmates to home-arrest to be monitored by the sheriff's office. He was reluctant to say much on the case, either due to legal restraints or to personal unwillingness. Regardless, it is clear that even with laws to end the use of restraints on incarcerated pregnant women, their implementation by local governments continues to be debated.

How Many Babies Are Born to Incarcerated Mothers?

When discussing the issue of shackling pregnant inmates, the question of how many babies are actually born to incarcerated mothers inevitably is raised. That there is little data on the actual number of how many children are born to incarcerated mothers either statewide or nationwide. However, according to data from the Washington Corrections Center for Women, there is an average of three births per month from incarcerated women at the facility, or an average of 30 births per year.³⁰ This is just one correctional facility in the state. At a public hearing, Washington State Supreme Court Chief Justice Barbara Madsen cited the number of 39-40 births per year statewide at correctional facilities. Nationally, the Federal Bureau of Justice's statistics show that 3 percent of federal inmates were pregnant in 2008 when they were first incarcerated.³¹

²⁸ Email from David Miller, 24 Feb. 2010.

²⁹ Email from Ian Rexroad, 10 Mar. 2010.

³⁰ Washington Corrections Center for Women. Delivery List and Statistics. 9 Oct. 2009.

³¹ Associated Press, "N.Y. nears ban on shackling the pregnant," MSNBC, 25 Aug. 2009.

Types of Restraints Used on Incarcerated Pregnant Women

The types of restraints used vary from state to state, jail to jail, and prison to prison. The most commonly used restraint on inmates is handcuffs. For incarcerated pregnant women, the types of handcuffs used are either “soft restraint” handcuffs, plastic ties, or the typical metal handcuffs. The “soft” vinyl restraints (Figure 2) are the preferred type and are



Figure 2. Soft Restraints. Image courtesy of the Washington State Department of Corrections.

considered the only acceptable for use on incarcerated pregnant women. There exist, however, two other types of restraints which can be dangerous and inhumane for pregnant women: leg restraints and belly chains. These are used far too frequently on pregnant prisoners, and can



Figure 3. Ankle restraints. Image from handcuffwarehouse.com.

cause damage to both the mother and child. Leg restraints (Figure 3) can be made of chainlink, Kevlar, or nylon “seatbelt” material. The restraint consists of a band with clasps which goes around the inmates’ ankles. In addition to leg restraints, belly chains are also cited in shackling cases. Belly chains (Figure 4) are a routine restraint used on incarcerated persons.

They consist of an actual chain that is placed around the abdomen of the prisoner, with the chain attached at the front. Leg restraints and belly chains are usually banned in policies are created to reduce or end the shackling of pregnant women.

Health Risks

Unnecessarily restraining pregnant prisoners violate the prisoner's human rights and can lead to serious physical harm and stress, which are detrimental to both the mother and child. The most detrimental physical harm can come from the use of leg irons and belly chains. For example, there are several reported cases where a pregnant woman's ankles were shackled together by a leg iron while



Figure 4. Stomach restraint. Image from thedutyrig.com.

being forced to walk. Sarah Ainsworth, the Legal Voice attorney who brought the Washington case forward, sees this as an incredibly dangerous practice. If the woman were to trip due to the leg irons restraining her movement “they could easily fall with no way to stop from hurting themselves or their baby,” as their hands would likely be cuffed together as well.³²

Restraints during labor and delivery are also physically harmful to both mother and child. From the reported cases, incarcerated pregnant women are commonly restrained to their hospital beds either by wrist or ankle. This is a very unsafe practice. Obtaining permission to remove the restraints and moving the mother to another location in the hospital can be a lengthy process. According to Dr. Patricia Garcia of Chicago, Illinois, “if there were need for a C-section, the mother [would need] to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage for the baby.”³³ Restraints also reduce the mother's range of motion. This can cause or exacerbate painful cramps and limit a mother's ability to roll onto her side or to squat to successfully deliver the child.

³² Sara Ainsworth, phone interview, 8 Feb. 2010.

³³ Amnesty USA, “Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women,” Amnesty International, 2006.

Restraints can cause not only physical harm, but also high levels of stress that can lead to physical harm to both the mother and child. Physically, the mother is prevented from getting exercise necessary to alleviate stress with restraints shackling her legs together. The physical stress on the woman's body from restraints can decrease the flow of blood, and therefore the flow of oxygen to her fetus.³⁴ According to researchers, mobility during labor can reduce severe pain and the need for pain medication. It can also result in shorter labors, less continuous monitoring, and fewer Cesarean sections operations.³⁵ Restraints can also cause emotional stress, contributing to complications such as preterm labor, severe nausea and dehydration, high blood pressure, kidney and bladder infections, and vaginal bleeding, which are all detrimental to the health of both the mother and child.³⁶ The overall care of the mother is exceptionally important to the health of the child, including nutrition and regular check-ups. Excessive restraints and shackling go in the opposite direction.

Washington State Shackling Case

Shackling gained notoriety in Washington State due to a recent court case. In June 2009, the Washington State Department of Corrections was sued by a Kitsap County woman who had been shackled during labor. Casandra Brawley was incarcerated with a 14 month sentence for second degree theft in 2007, during which she was pregnant. Brawley revealed the story of her treatment at the Washington's Corrections Center for Women. "Her water broke and she was leaking bloody discharge- and she repeatedly expressed to prison officials that 'something was wrong,' but her pleas were largely ignored."³⁷ Finally, three days later, Brawley was transported to St. Joseph's Hospital in Tacoma with a metal chain shackled around her stomach. She was

³⁴ Velmanette Montgomery, "Legislators and Human Rights Activists Hail end of Shackling Incarcerated Pregnant Women," New York State Senate Blog, 19 May 2009.

³⁵ Terri Schilling, "Healthy Birth Practice #2," Lamaze International.

³⁶ Ramona Danielson, "Pram-O-Gram: Prenatal Stress and Complications." North Dakota Department of Health.

³⁷ Amie Newman, "A Lack of Restraints: Washington's Anti-Shackling Efforts," 2 Feb. 2010, RH Reality Check.

then fastened by leg restraints to her hospital bed, where the doctor tried to induce labor by breaking the amniotic sac, which had drained completely. She had an immediate emergency Cesarean section, with the restraints removed only after the request of the doctor so her emergency procedure could be performed.³⁸ Brawley spent three days at St. Joseph's in recovery, with a leg iron shackling her to her bed during her entire stay.³⁹ The lawsuit is still open and is waiting for a decision.

The Birth of the Washington Anti-Shackling Legislation

Cassandra Brawley is not the only woman to fall victim to mistreatment by correctional officers in the state of Washington. Because of these atrocities, legislation was sponsored by 22nd Legislative District Senator Karen Fraser with SB 6500 and 27th District Representative Jeannie Darneille with HB 2747. The "Anti-Shackling Bills" were introduced during the 2010 session in an attempt to curb the mistreatment and shackling of pregnant prisoners. The concept of creating Anti-Shackling legislation in Washington was developed by Legal Voice and Washington State National Organization for Women (NOW). The Washington State Supreme Court Gender and Justice Commission, after proponents brought it to its attention, also discussed the issue. The Gender and Justice Commission, chaired by Washington State Chief Justice Barbara Madsen, discussed the issue at a meeting. Lonnie Johns-Brown, an advocate of women's rights, became involved with the issue through her role as a NOW lobbyist when the Thurston County Chapter brought it to the state board as a concern.⁴⁰ Legal Voice became involved through a lawsuit filed by a Washington woman who was shackled during her delivery while incarcerated. Legal Voice joined forces with NOW and ACLU Washington. In November 2009, Johns-Brown, senior Senate Democratic Committee staff Bernie Ryan, and Pam Crone

³⁸ Associated Press, "N.Y. nears ban on shackling the pregnant," MSNBC, 25 Aug. 2009.

³⁹ Amie Newman, "A Lack of Restraints: Washington's Anti-Shackling Efforts," 2 Feb. 2010, RH Reality Check.

⁴⁰ Email from Lonnie Johns-Brown, 8 Mar. 2010.

contacted Senator Fraser to be the prime sponsor in the Senate because of the Senator's long history of working for advancement of women. Also, Johns-Brown contacted Senator Fraser because there is an active NOW chapter in the Senator's district who would help. There was a stakeholder meeting on December 16, 2009 at the Tacoma YWCA to discuss the issue of shackling incarcerated pregnant women. The meeting was so well-attended that the room was at capacity, full of representatives from corrections, jails, county corrections, women's rights organizations, and individuals. Representative Darneille and Senator Debbie Regala were present at the meeting, but Senator Fraser was unable to attend. After the meeting, Johns-Brown then contacted Sara Ainsworth and Pam Crone of Legal Voice, who put together a draft bill with the assistance of House Democratic Caucus staff Jane Beyer.

Stakeholders

Washington State NOW is one of several organizations to address the issue of shackling during labor. Nationally, there are many others: Human Rights Watch, ACLU, American College of Obstetricians and Gynecologists, American Public Health Association, National Perinatal Association, American College of Nurse Midwives, American Medical Women's Association, the Rebecca Project for Human Rights, Women on the Rise Telling HerStory (WORTH), The Center for Reproductive Rights, Amnesty International, Federal Bureau of Prisons, American Corrections Association, the United States Marshals Service, and many others. There are no known national organizations in support of shackling pregnant inmates. The only opposition generally comes from various state or local departments of corrections who express their concern that such legislation would put corrections and medical staff at risk, "noting the inmates are felons."⁴¹

⁴¹ Associated Press, "N.Y. nears ban on shackling the pregnant," MSNBC, 25 Aug. 2009.

Felons they may be, but the cases that have made national news have been from women who were incarcerated for nonviolent offenses, frequently drug-related, credit fraud, or violating parole. This point was made by Legal Voice, the organization that helped bring forth the Casandra Brawley case. Legal Voice and Washington State NOW were major forces in Washington State in support of legislation to stop shackling of incarcerated pregnant women. Other active organizations in support in Washington State include Open Arms Perinatal Services, Gender and Justice Commission, Seattle Chapter of the National Asian Pacific Women's Forum, Northwest Reproductive Justice Collaborative, ACLU of Washington, Washington State Nurses Association, NARAL Pro-Choice Washington, Children's Alliance, Birth Doula, Northwest Women's Law Center, Planned Parenthood, Washington State Medical Association, Washington Defenders Association, Washington Association of Criminal Defense, and Planned Parenthood Votes.⁴² The Seattle University School of Law Women's Law Caucus has been also working on this issue in counties across the state to stop the practice of shackling pregnant incarcerated women. Representatives from several of these organizations, as well as independent nurses and midwives, testified at Legislature committee hearings in support of this bill.

Opposition to the bill came from the Washington Association of Sheriff and Police Chiefs (WASPC), City of Renton Police, City of Auburn, and the King County Adult Corrections Guild.⁴³ A county sheriff informed Senator Fraser that he could not think of any case where a woman was in custody in his jail (or most others) during their third trimester, because such women are usually put on at-home monitoring or discharged. WASPC adamantly wanted language that would limit jail liability, not cover all three trimesters, and allow correctional staff to touch a pregnant prisoner during transportation in order to "guide" without it

⁴² Email from Pamela Crone, 9 Mar. 2010.

⁴³ Testimony/Attendance Roster, House Committee on Human Services, 18 Jan. 2010.

categorized as a restraint. WASPC also wanted to be sure they could use restraints in “extraordinary circumstances” to protect public safety. Though not outwardly opposed, the Washington Federation of State Employees, Association of Washington Cities, Washington State Association of Counties, and the Washington State Department of Corrections expressed concerns about the bill.

Washington State Department of Corrections Policy

Washington State Department of Corrections (DOC) did not take a formal “position” on the bill, but let it be known they felt a statutory policy was unnecessary. They felt their administration’s policies are sufficient. Their current administration has policy prohibiting the use of restraints in the third trimester of pregnancy, except in “extraordinary circumstances.” They note that as part of their policy, they do not restrain women in labor or postpartum recovery until after consultation with the attending doctor. During the first and second trimesters, they do use hand and leg restraints when transporting the inmate. Their policies provide for use of higher levels of restraints on pregnant prisoners who they define as being of higher risk. Interestingly, their definition of “higher risk” appears to be based in great part on “length of sentence” more than “risk of flight” or “danger to others.” The DOC also expressed disapproval of the proposed prohibition of physical restraint, as it would not allow the corrections offer to guide or “calm” the inmate. This was allowed in the final bill. In spite of state and local corrections agencies preferring to address these issues through their own administrative policies, Senator Fraser and Representative Darneille both continued to feel strongly that a statutory policy would be preferable. Statutory policies are much stronger, in that they control administrative policy. They are more lasting, and more certain to be implemented on a more consistent basis than administrative policies, which can change over time as personnel change.

Introduction into the Legislature

Washington's attempt at ending this practice has received several attention-grabbing nicknames since its inception this session; "Mothers in Chains," "Anti-Shackling," or "Labor in Chains" bills. The Senate Bill (SB 6500) and the House Bill (HB 2747) started off as "companion bills" at the beginning of session, meaning they were initially worded identically. Each was amended differently in their respective Chamber's Committees and on the Floor. In the end, the language developed in the Senate was amended on to the House Bill number, with the full cooperation and agreement of the two Prime Sponsors.

Senator Karen Fraser prime sponsored SB 6500, with twelve bipartisan members as co-sponsors, most of whom were women. In the House, Representative Jeannie Darneille prime-sponsored HB 2747, with bipartisan co-sponsorship as well. The original legislation:

- prohibited restraints of any kind on an incarcerated pregnant female at any time of their pregnancy, except in extraordinary circumstances, such as the threat of escaping or endangerment
- required that if restraints are deemed necessary, they must be the least restrictive available and most reasonable
- prohibited leg irons or waist chains at any time
- provided that if the doctor, nurse, or other health professional requests that restraints not be used, the attending correctional officer must remove them immediately
- required written notice of the reasons for use of restraints were used within ten days of their usage and required that the record be kept for five years for public inspection

- firmly stated that under no circumstance can restraints be used on females in labor, delivery, or postpartum, and
- created a requirement for development and implementation of a training program for the correctional facility staff at state and local facilities on how to safely manage pregnant inmates.

SB 6500: The Senate Anti-Shackling Bills' Journey with Senator Fraser

Before the Senate Committee hearing, Senator Fraser met with opponents of SB 6500 for their input, from county sheriffs to WASPC. In an attempt to address their concerns, she proposed the following changes to the original bill. The ban on use of shackles was rewritten to apply only to transportation to medical facilities or courts during the third trimester, and to labor, delivery, and postpartum recovery.

Several persuasive concerns about the original bill language were brought to Senator Fraser by representatives of state and local corrections agencies. For example, they were concerned that any female at any time could claim that she is pregnant solely as a strategy to receive special treatment. There was also concern that the term “restraint” was too vague. For example, they mentioned that an officer “guiding” a pregnant inmate by touching her shoulder or arm while walking to or from a vehicle could be considered a “restraint” is to be prohibited. To address this, the definition of “restraint” was rewritten to allow such ordinary “guidance.” Another addition in the substitute bill was to require, that if a corrections officer must be present during labor, that person should be female. Correctional facility personnel worried that the initially proposed training program would be too expensive. To address this, the proposed training program was simplified to require written materials be developed and distributed to all staff who are involved with pregnant inmates. Unchanged in the substitute was the prohibition on

use of restraints during labor and delivery, unless requested by medical staff. Also remaining was the requirement that if restraints are requested, they must be least restrictive and most reasonable, and never consist of waist chains or leg irons. One thing that impeded progress in developing amendments was that interested persons that Senator Fraser wanted to negotiate with were familiar with the House version, or become conversed in the original Senate version, but did not keep up with the new amendments.

The Senate Committee on Human Services and Corrections held a public hearing on the bill on January 26th, 2010. Signed in supporting the bill was Legal Voice, NARAL Pro-Choice Washington, NOW, League of Women Voters, Open Arms Perinatal Services, Midwives Association of Washington State, Washington Chapter of American Academy of Pediatrics, Washington Defenders Association, Children's Alliance, Washington State Nurses Association, Washington State Catholic Conference, and the Washington State Medical Association, and a woman who gave birth during her incarceration. Kimberly Mays shocked the room as she described the terrible treatment she received, the pain caused by her labor in restraints, and the negative and disrespectful behavior toward her which she described as treating her more as an animal than a woman in labor. Testifying in opposition or with concerns on the bill was Cities of Kent, Renton, Puyallup and Washington Association of Sheriffs and Police Chiefs. Their concerns were of the safety of the corrections officers and public, as well as flight-risks that could occur if restraints are removed.

The substitute bill was voted out of Committee with only one member opposing: Senator Dale Brandland, a former county sheriff. The substitute bill was referred to the Senate Rules Committee on February 5th. Many different stakeholders came forward with concerns and proposals to alter the bill. After talking to stakeholders, Senator Fraser developed further

amendments to the bill to address all that seemed reasonable and workable. On February 10th, the Senate Rules Committee voted to move the bill out of Rules to the Senate Floor. A “striker amendment” was written by Senator Fraser with the assistance of Senate Human Services Committee staff Jennifer Strus. It further clarified language and added a requirement for written accounts of restraint usage, at the request of WASPC.

As cutoff approached on February 16th, Senator Fraser elected to not push for SB 6500 to be voted on by the full Senate. This was because HB 2747 had, by that time, passed the House and there was very little time left before the deadline for the Senate to act on many other Senate Bills. The time it would have taken to consider this Senate Bill would have caused another Senate Bill to “die” simply from the “clock running out.” She said that it was less important to her to have her name on the final bill, than to achieve a solution to the issue. SB 6500 is now on the Rules Committee “X” file; where bills are often referred if no future action is expected on them. But the story does not end here.

HB 2747: The House Anti-Shackling Bills’ Journey with Representative Darneille

House Bill 2747 was referred to the House Committee on Human Services at the beginning of session, and had a public hearing on January 18th. Similar to the Senate, the House bill had a proposed substitute discussed at the Committee hearing. The substitute was similar to the substitute Senate version. The substitute bill:

- limited use of restraints on incarcerated pregnant inmates to only transportation during the third trimester, and to labor, delivery, and postpartum recovery
- removed the requirement for written findings of the usage of restraints, as well as the training requirements for correctional officers and correctional medical staff

- modified the requirement to post notice of the regulations to only those locations where medical care is provided in the facility.

These changes were well-received by the Committee members. The public hearing was well-attended by both sides of the issue. The attendance roster showed 34 people signed in on the bill. Of the 34 people signed in, many were supportive of the bill; Children's Alliance, Open Arms Perinatal Services, Birth Doula, NOW, Legal Voice, Northwest Women's Law Center, Planned Parenthood, NARAL Pro-Choice Washington, ACLU Washington, Gender and Justice Commission, Washington State National Organization for Woman, Northwest Reproductive Justice Collaborative, and several medical personnel and individuals either testified their support or simply were there to show their support. In opposition or with concerns at the hearing were Washington Federation of State Employees, Association of Washington Cities, City of Auburn, Washington State Association of Counties, Washington Association of Sheriffs and Police Chiefs, City of Renton Police, and the King County Adult Corrections Guild. Testimony in support came from, among others, Representative Darneille and State Supreme Court Chief Justice Barbara Madsen, who is also the chair of the Gender and Justice Commission. She noted that female justices across the nation are discussing the issue and working for policy to end its practice, and that there are 39-40 for births per year statewide in correctional facilities. Representative Darneille noted that there are no examples of flight-risk incidents involving incarcerated women giving birth in the state of Washington. Speeches in opposition put emphasis on the safety of the officers and the public, liability of jails, and flight-risk potential.

SHB 2747 passed out of the Human Services Committee on January 28th and was sent to the House Rules Committee, where it was sent to the floor on February 2nd. On February 11th, with a substitute amendment was adopted on the Floor, then placed on Third Reading to be voted

on for passage from the House. On February 13th, though, the bill was brought back to Second Reading for an amendment. The Floor First Engrossed amendment was adopted while being deliberated on the floor. This Floor amendment altered the bill by:

- prohibited restraints during labor or childbirth unless requested by the medical staff
- required prior authorization for use of restraints in order to identify what restraints might be used
- allowed doctors or nurses to ask for removal of restraints during labor
- required the least restrictive restraints available be used
- prohibited leg irons or waist chains from ever being used
- prohibited corrections officers from being present during labor or delivery unless requested by medical staff
- required a female officer be used if a corrections officer is requested to be present during labor or birth
- required the policy information packet to be given to any corrections staff who work with pregnant inmates, to all female prisoners, and to be posted in medical areas of a corrections facility.

The House Bill passed the House unanimously (with three excused members) and was sent to the Senate, where it was referred to the Committee on Human Services & Corrections, where Senate version has been considered. ESHB 2747 was heard on February 23rd in the Senate Committee, where many of the supporters of the bill from the House hearing came to testify. Representative Darneille and Senator Fraser also testified together in support. The two representatives who attended in opposition with concern were Washington Association of

Sheriffs and Police Chiefs and King County Adult Corrections Guild. The bill was amended in Committee by attaching the Senate version developed by Senator Fraser's work. This was done with Representative Darneille's recommendation. Thus, the following changes were made to the House version:

- to allow hospital restraints to be used in a hospital for patient safety if requested by the physician
- removed the requirement for prior authorization for use of restraints
- the require documentation for any use of restraints (type of restraint, and why they were deemed necessary)
- require adequate posting of the requirements of act in conspicuous locations in medical areas of the correctional facility, but removes the requirement to give females an information packet on the act
- and clarifies that counties are not liable if they comply with requirements of the law.

The Committee approved ESHB 2747, as amended, with the same passage as the Senate version received; all but one member voting yea. It was referred to Senate Rules Committee, which a few days later, voted to send it to the full Senate for a vote. On the Senate Floor, the Committee Amendment (Senator Fraser's version) was adopted by the full Senate after Chair of Senate Human Services Committee Senator Hargrove moved its adoption. Senator Hargrove moved the bill be placed on Third Reading and Final Passage. Senator Jim Hargrove commended Senator Fraser for her careful work on the bill. After his speech in support, Republican Senator Val Stevens stated she supported the bill as well. Senator Jim Honeyford spoke in opposition of the

bill, stating he feels law enforcement officers should have the jurisdiction to decide restraints, not statue.

At the last minute before the vote, Senator Dale Brandland, former Whatcom County Sheriff who had voted against the Anti-Shackling bill in Committee twice and who had continued to express doubt about the bill using the same arguments as WASPC, arrived at his desk from the wings. Upon being recognized to speak by the President of the Senate, he stated that he now supported the bill. This was quite a surprise to Senator Fraser. Following his remarks in support, one of the Republicans who had spoken in opposition stated he changed his mind and would be not supporting it. On final passage, ESHB 2747 passed the Senate unanimously (with three excused members) and was returned to the House for its concurrence with the Senate Amendment. On March 6th, the House concurred with only Representative Lynn Kessler dissenting. She was unable to be reached as to why she voted nay. On March 10th Speaker of the House Frank Chopp signed the bill. Later that day, President of the Senate Brad Owen signed the bill. These two segments attest the measure passed the Legislature and will be sent to the Governor for her action.

On March 11, 2010, ESHB 2747 made it to the Governor Christine Gregoire's desk to be signed. On March 23rd, Governor Gregoire signed ESHB 2747 into law. In attendance at the signing was Senator Fraser, Representative Darnielle, Casandra Brawley, Kimberly Mays, Sara Ainsworth, Pam Crone, and several other people who were directly involved in the shaping of the bill. The room was full of smiles and applause as Governor Gregoire signed the paper. As Senator Fraser wrote to Governor Gregoire in a letter urging her signature, "the incarcerated

woman is sentenced to serving time, not being physically harmed or having her infant harmed by the use of unsafe practices by corrections staff.”⁴⁴

Proposed Pennsylvania Anti-Shackling Legislation

Washington is not the only state that took action against the practice of shackling pregnant women this legislative session. Pennsylvania Senate SB 1074, the Healthy Birth for Incarcerated Women Act, has been introduced.⁴⁵ Senator Daylin Leach, its Prime Sponsor, has the support of a wide variety of both co-sponsors and advocates, from the Maternity Care Coalition to the Pennsylvania Catholic Conference.⁴⁶ The bill was referred to the Senate Judiciary Committee, and was voted out without opposition. On March 17th, 2010 the Senate unanimously passed the bill and sent it to the House. The last action that has been taken on this bill was on April 21st, 2010, when it was re-referred to the Appropriations Committee.⁴⁷

Personal Policy Recommendation

My policy recommendation does not differ significantly from that of the policy passed by the Washington State Legislature. I do propose a few small alterations, however. Though it would be much to the dismay of WASPC and some police stations, my recommendation is that there should be an outright ban on shackling incarcerated women during the second as well as the third trimester except in extraordinary circumstances, which should be well-documented and made available for review. The measure that passed the Washington State Legislature, however, is an amazing start on outlawing these practices.

Though a woman is incarcerated for a crime, the punishment should not be taken out on her unborn child in the form of mistreatment or danger. Shackling pregnant women even before

⁴⁴ Karen Fraser. Letter to Governor Christine Gregoire, 11 Mar. 2010.

⁴⁵ ACLU of Pennsylvania, “PA Senate Committee Passes Bill to Ban Shackling of Pregnant Inmates in Labor,” American Civil Liberties Union, 26 Jan. 2010.

⁴⁶ Ibid.

⁴⁷ Pennsylvania General Assembly website, History, SB 1074. 4 May 2010.

they go into labor creates dangerous risks of falls. Obviously if their legs are shackled, the likelihood of tripping is raised. If their hands are shackled and they trip, they are obviously unable to break their fall and could land on their stomach or back with major physical consequences. The practice of restraining pregnant women to their wheelchairs during the later months of the pregnancy is also unsafe, as the woman is then trapped to and entangled in the wheelchair in the event of the chair tipping over. Also, the use of “belly chains” on pregnant women to restrain them to wheel chairs is an obvious safety risk to both the mother and the child. Restraints also restrict movement during labor, which is necessary to ease the pains of labor and postpartum recovery. Aside from physical risks, shackling women who are in labor, giving birth, or in postpartum recovery creates a negative, uncomfortable environment between the staff and mother-to-be. Shackling can create a negative psychological and emotional environment that leads to poor care, even subconsciously, by corrections and medical staff. As seen in Kimberly May’s case, she was treated significantly differently than an unshackled woman would have been treated by staff. In fact, she had been treated much better at the same hospital when she gave birth twice before as a normal, non-incarcerated patient.

I believe the Legislature did an admirable amount of policy change while still receiving support from almost all stakeholders. The final language of ESHB 2747 very clearly prohibits the use of restraints during labor and childbirth unless requested by medical staff. The bill also very clearly prohibits restraints for transportation during the third trimester except in extraordinary circumstances, which must be documented and well-explained. Though I would have liked to have seen a ban on shackling that covered more than just the very end of pregnancy, it is a good step in the right direction for written policy to stop virtually all the

practice. I feel it will open discussion for future legislative sessions on whether the mandates are working and how they can be strengthened if necessary.

Conclusion

Washington is the 7th state to establish anti-shackling policy by statute. It is amazing how the bill was introduced in 18 pages, and in only four added pages the legislation was dramatically altered throughout the few months it was debated on. It was incredibly exciting to be a part of the action of this bill, figuring out details and researching it for Senator Fraser. It was an honor when Senator Fraser asked for my opinions on recommendations on an amendment draft, and when she asked me to improve a draft letter to the Governor, urging her to sign ESHB 2747. At the bill signing I also met Casandra Brawley, at a bit of a moment of awe. As Sara Ainsworth, Senior Legal and Legislative Council to Legal Voice said, “It defies common sense to risk a pregnant woman’s health, safety and dignity by shackling her while she’s in the process of giving birth.”⁴⁸ Washington State will no longer in defiance of these fundamental human rights (as of June 10th, 2010) thanks to the countless effort of many different stakeholders to ensure that though a woman is incarcerated, the birth of her child can still be a positive, remarkable experience.



⁴⁸ Amie Newman, “A Lack of Restraints: Washington’s Anti-Shackling Efforts,” 2 Feb. 2010, RH Reality Check.

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