

Banning the Restraint of Pregnant Women in Custody

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Summary

Currently it is routine practice for officers in nearly half of U.S. corrections institutions to physically restrain pregnant and laboring women. Restraining pregnant women poses health and developmental risks to the mother and baby. Heeding these concerns, many states and federal agencies have passed policies limiting the use of restraints on this population. Federal legislation could ban the use of restraints on pregnant women in all corrections institutions, including jails, prisons, and detention centers, unless a legitimate safety or security concern exists.

Background

Women and girls represent the fastest growing incarcerated population in the country. It is estimated that over 231,000 women and girls are currently incarcerated in the United States.¹ The largest population of incarcerated women are held in local jails, followed by state prisons.² Most women are of reproductive age when they are incarcerated, and between four^{3,4,5} and ten^{6,7} percent of incarcerated women are estimated to be pregnant upon intake. While corrections institutions are not required to collect or report data on the number of pregnant women in their custody, it is safe to assume there are several thousand pregnant women behind bars in the United States today.⁸

Restraints are defined as any physical device that restricts the ability of an incarcerated person to move their body or limbs. According to the Bureau of Justice Assistance, allowable restraints include “flex cuffs, soft restraints, hard metal handcuffs, a ‘black box,’ club cuffs, ankle cuffs, belly chains, [a] security chain, or convex shield.”⁵ Restraints typically are applied to an incarcerated person any time corrections staff is transporting them outside of the facility, including when they are receiving medical treatment for prenatal care, labor, and delivery. The two main justifications given for the use of restraints are: 1. restraints prevent the incarcerated person from harming themselves or others, and 2. restraints prevent the incarcerated person from escaping.

Health professionals agree that use of restraint usage on pregnant women increases the risk of physical harm to the mother and fetus. The American College of Obstetrics and Gynecologists,⁹ a professional organization consisting of 58,000 women’s healthcare professionals, asserts that restraints increase pregnancy risk substantially by impeding a medical team’s ability to diagnose and treat dangerous conditions the mother or fetus may be experiencing. Being restrained while giving birth also is humiliating and can be traumatic. Furthermore, restraints prevent new mothers from bonding with their infants, which can have negative long-term developmental consequences for the child.¹⁰

Current policies and practices of U.S. corrections institutions were designed in the 1970s with male offenders in mind.¹¹ As a result, they do not account for the unique demographics, physical realities, and medical needs of pregnant women and fetuses.⁵ While it may be justified for safety or security reasons to restrain a male offender with a history of assault or escape attempts, these justifications do not apply to women with no such histories. Most women in correctional custody are non-violent offenders.¹¹ A woman who is enduring the arduous process of labor and delivery is unlikely to have the physical or mental capacity to attack staff or escape from the facility, especially given the presence of an accompanying corrections officer.¹⁰ In fact, there is no reported case of an unrestrained incarcerated woman attempting to escape during the childbirth process.⁶

Stakeholder Perspectives

Many stakeholders have publicly opposed the practice of restraining pregnant incarcerated women, especially during the third trimester, labor, delivery, and the post-partum period. These organizations represent a variety of interests, including those of medical providers, human rights advocates, and legal professionals. Despite the diversity of these professions, they are all in general agreement that restraining incarcerated pregnant women should either be banned outright or utilized in only the most extreme cases.

Health and medical organizations

All of the medical organizations listed in Table 1 agree that restraining pregnant incarcerated women during the third trimester, labor, delivery, and post-partum puts the mother and fetus at an increased risk of harm. Restraints increase the risk of complications associated with falling, lack of mobility during childbirth, delayed C-section, shoulder dystocia, cephalopelvic disproportion (CPD), deep vein thrombosis, aortocaval compression, preeclampsia, and hemorrhage.^{9,12}

Due to the health risks to the mother and fetus, the listed organizations recommend that the practice of restraining pregnant incarcerated women during labor, delivery, and the post-partum period is outright banned.

They also recommend that pregnant women are only physically restrained in cases where there is a legitimate and documented safety or security risk and that the least restrictive restraints should be used.

Legal and human rights organizations

Legal organizations oppose the practice of restraining incarcerated pregnant women during labor and delivery as a violation of their 8th amendment right to be free from cruel and unusual punishment.²⁶ The ACLU reported that “[e]very court to consider the practice of shackling women during labor has found it unconstitutional. In 2009, the 8th Circuit Court of Appeals ruled that there is a clearly established right not to be shackled during labor.”⁸

Human rights organizations also strongly oppose the practice. Amnesty International “...considers the routine use of restraints on pregnant women, and particularly on women in labor, a cruel, inhumane and degrading practice in contravention of the Convention Against Torture (Article 16) and the ICCPR (article 7).” The UN Standard Minimum Rules for the Treatment of Prisoners²¹

Table 1. Selected Organizations Publicly Opposed to Restraining Pregnant Incarcerated Women

HEALTH & MEDICAL	LEGAL & HUMAN RIGHTS
American College of Nurse Midwives ¹³	American Bar Association ²⁵
American College of Obstetrics and Gynecologists ⁹	American Civil Liberties Union ⁶
American Correctional Health Services Association ¹⁴	Amnesty International ¹⁶
American Medical Association ¹⁷	National Women’s Law Center ¹⁸
American Public Health Association ¹⁹	Correctional Association of New York ²⁰
Association of Women’s Health, Obstetrics and Neonatal Nurses ²²	United Nations ²¹
National Commission on Correctional Health Care ²³	
World Health Organization ²⁴	

prohibits the use of restraints on pregnant prisoners. The United Nations has repeatedly condemned the treatment of women in custody in the United States and has called upon the U.S. government to comply with international human rights standards in their treatment of incarcerated women, including banning the use of physical restraints on pregnant women.²⁷

Prior policy efforts

Several institutions and states have proactively passed policies and laws that limit or ban the use of restraints on pregnant incarcerated women. The policies of several major federal institutions, as well as of three representative states are summarized below.

Institutional policies

The **U.S. Department of Justice Bureau of Justice Assistance (BJA)** is the leading public institution responsible for establishing best practices for corrections staff nationally. The BJA recommends that restraints be used only when absolutely necessary to prevent an imminent risk of escape or harm.⁵ They emphasize that all restraints should be banned during labor and delivery, and that abdominal, leg and ankle, wrist, and four-point restraints should never be used on pregnant women under any circumstances. The BJA recommends that all corrections staff receive training on how to transport and supervise pregnant women. They go on to state that, when restraints are used, documentation should include the rationale for restraint, who approved the request, the type of restraint used, how frequently restraint necessity was reevaluated, when the restraints were removed, and the total length of time the incarcerated person was restrained.

The **American Correctional Association (ACA)** is the largest association for corrections professionals, accrediting over 900 institutions and setting policy standards for corrections institutions nationally.

The ACA's policy²⁸ is in line with the recommendations of the BJA, stating that restraints should only be used on pregnant inmates if the chief administrator of the institution makes the determination that the incarcerated person poses a serious risk of escape or if the medical or corrections staff determine that restraints are necessary to ensure safety. The ACA also bans the use of certain types of restraints on pregnant women outright, including waist restraints, leg shackles, and electronic restraint devices.

Federal prisons & detention centers

Major institutions responsible for the incarceration of federal offenders and detainees, including the Federal Bureau of Prisons and Immigration and Customs Enforcement (ICE), also have internal policies limiting the use of restraint on pregnant incarcerated women. The Federal Bureau of Prisons, which incarcerates over 175,000 federal offenders, ended the routine use of restraints on pregnant women in all federal correctional facilities in 2008. Their current policy²⁹ states that restraints should not be used when the incarcerated person is in labor, delivering their baby, or immediately after childbirth. ICE reflects these standards and adds that only a supervisor or medical authority can make the determination to apply restraints to a pregnant detainee.²⁹

United States

To date, the District of Columbia and 28 U.S. states³¹ have laws prohibiting or limiting the use of restraints on pregnant incarcerated women.

California

California's legislation³² represents the essential elements of most state laws nationally, stating that any inmates "known to be pregnant shall not be shackled by the wrists, ankles, around the abdomen, or to another person, unless deemed necessary for...safety and security." The law also specifies that when restraints are necessary, the least restrictive should be used, and medical professionals have the authority to request that the restraints be removed at any time.

Washington

Washington state³³ reflects the essential elements of California's law, with the addition of some crucial components. In Washington, all restraints are banned during the third trimester, labor, delivery, and the post-partum period. When an officer uses restraints on a pregnant inmate, they must document the justification for their use, including "the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances." The law also states that corrections personnel may not be in the treatment room during labor or delivery unless the medical provider specifically requests the staff's presence.

Oklahoma

Oklahoma's legislation³⁴ is arguably the strictest in the country, banning all use of restraint on pregnant inmates during all stages of known pregnancy except for medically approved handcuffs in front of the body. The law also bans all restraints during labor, delivery and the postpartum period. Similar to Washington's law, Oklahoma requires the accompanying officer to remain directly outside of the room during labor and delivery. The incarcerated woman can instead choose a friend or family member, member of the clergy, or doula to be inside the room during delivery. Notably, illegally restraining a pregnant woman is punishable by one year in jail or a \$1,000 fine or both. Oklahoma is the only state in the nation to impose a criminal penalty on violators.

Recommendations

As outlined above, physical restraints increase the risk of harm to women and their unborn children and violate incarcerated women's 8th amendment rights. Despite these concerns, many states and institutions have not yet adopted these widely accepted best practices. A federal law regulating the use of restraints nationwide is a logical next step that would ensure a national standard of care and decency for pregnant women in custody.

Federal legislation could ban the use of restraints on pregnant women in all corrections institutions, including jails, prisons, detention centers, and private corrections institutions, unless a substantial security or safety concern exists.³⁵ Following are a list of specific recommendations drawn from successful state legislation, institutional policies, and stakeholder perspectives:

- 1) Corrections institutions can administer pregnancy tests for all women and trans men at intake and periodically after admission. Pregnancy status can be recorded in the inmate's file.
- 2) Corrections institutions can collaborate with medical professionals to develop trainings to teach officers how to treat pregnant incarcerated women.
- 3) In cases in which the Chief administrator of the jail, prison, or detention center identifies that restraints are necessary for safety or security, the least restrictive restraints should be used.
- 4) Restraints should never be applied around the waist, legs, or to another person, and a woman's hands should never be restrained behind her back, even when safety and security concerns exist.
- 5) Restraints should never be applied during active labor or delivery.
- 6) Medical providers should have the authority to ask the accompanying officer to remove restraints at any time and to request that the officer locate themselves outside the treatment room for privacy.
- 7) A report detailing instances of restraint use should be submitted to the Director of the Bureau of Prisons or of the United States Marshals Service, as applicable, within 30 days.
- 8) Criminal penalty can be associated with violating any part of this law.

Conclusion

The use of restraints on pregnant women in custody poses serious physical and psychological harm to the mother and baby. Medical professionals, legal organizations, international human rights agencies, and corrections associations agree that restraints should only be used in the most extraordinary cases when safety and security cannot be reasonably assured by other means. In these cases, the restraints used must be the least restrictive possible.

Twenty-eight U.S. states and the District Columbia have proactively enacted measures limiting or prohibiting the use of restraints on pregnant incarcerated women. Federal legislation should be passed to ensure that women in the rest of the country are also protected from the unconstitutional, undignified, and harmful practice of restraint during pregnancy, labor, delivery, and post-partum recovery.

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- ²⁵ See *Farmer v. Brennan, Brown v. Plata, Women Prisoners of District of Columbia Department of Corrections v. District of Columbia, Nelson v. Correctional Medical Services, Estelle v. Gamble, and Villegas v. Metropolitan Government of Davidson County*
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