

Support SB 393 - Stop Shackling Pregnant People who are Incarcerated

Bill Summary: SB 393 would limit the types of restraints used on pregnant people who are incarcerated and virtually eliminate the practice of shackling people during transportation to medical appointments and during labor, childbirth, and postpartum recovery, except when there is individualized evidence of imminent risk of escape or harm to the pregnant person or others. The legislation applies to pregnant people who are in state or county correctional custody. Additionally, SB 393 would establish a reporting requirement for occurrences of shackling.

Shackling pregnant and birthing people is dangerous and inhumane and poses an unacceptable risk to both parent and child. Restraining incarcerated pregnant people at any time increases their potential for physical harm from an accidental trip or fall, posing a serious risk to the fetus, including the potential for miscarriage. During labor, delivery, and postpartum recovery, shackling can also interfere with the medical staff's ability to appropriately assist or conduct sudden emergency procedures.ⁱ People need to move around during labor, delivery, and recovery, including moving their legs as part of the birthing process. Limited mobility makes it impossible to adequately shift positions to manage the extreme pain of labor and childbirth. In addition to causing severe cuts on a person's ankles because of the strains associated with childbirth,ⁱⁱ shackles may prevent effective healing, breast-feeding, and initial bonding.ⁱⁱⁱ

National correctional and medical associations oppose the shackling of pregnant people. The nation's leading expert in maternal, fetal, and child health care, the American Congress of Obstetricians and Gynecologists (ACOG), opposes the practice of shackling. According to ACOG, shackling interferes with the ability of physicians to safely practice medicine and is "demeaning and unnecessary."^{iv} The American Medical Association adopted a resolution supporting restrictions on the use of restraints of any kind on a person in labor, delivering a baby, or recuperating from delivery unless they are an immediate and serious threat or a substantial flight risk.^v The American Public Health Association recommends that people "must never be shackled during labor and delivery."^{vi} The Federal Bureau of Prisons,^{vii} U.S. Immigration and Customs Enforcement,^{viii} and the American Correctional Association^{ix} have all adopted policies to limit the use of shackles on pregnant people who are incarcerated

Limiting the shackling of incarcerated pregnant people does not jeopardize the safety of correctional or medical staff. In states that have restricted shackling of incarcerated pregnant people, there are no documented instances of incarcerated pregnant people escaping because they were not shackled. As the American Medical Association has noted, "[w]hile states justify using restraints to prevent escapes, no women in labor have ever attempted escape. [And,] ... states prohibiting the practice of shackling – have not experienced increased security issues or flight attempts."^x

This legislation would bring New Hampshire into alignment with federal law. In 2018, then President Trump signed the First Step Act into law, marking a major milestone in criminal justice reform. In addition to enacting other improvements to the federal criminal legal system, the legislation prohibits shackling pregnant people in federal custody except when it's necessary to prevent serious harm or escape, in which case the least restrictive restraints are permitted. Additionally, the First Step Act established a stringent reporting process that includes privacy protections for incarcerated people and prohibits shackling during a "postpartum recovery" period of twelve weeks after giving birth.^{xi} Although narrower in scope, SB 393 would create alignment between New Hampshire law and federal law.

Shackling pregnant and birthing people is a violation of the US Constitution and international human rights law. Shackling a person during labor demonstrates deliberate indifference to their serious medical needs, which multiple federal courts have found to be a violation of incarcerated people's 8th Amendment right to be free from cruel and unusual punishment.^{xii} International treaties, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Standard Minimum Rule for the Treatment of Prisoners prohibit the practice of shackling pregnant incarcerated people.^{xiii} The United Nations' Human Rights Committee and the Committee Against Torture,^{xiv} as well as and the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,^{xv} have all called for an end to shackling during pregnancy and postpartum recovery.

Support SB 393 - New Hampshire must prioritize the well-being of pregnant incarcerated people in its care by abolishing the practice of shackling and expanding protections for people who are pregnant, in labor, giving birth, and recovering from childbirth.

ⁱ American College of Obstetricians and Gynecologists, 2011 Committee Opinion on Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, reaffirmed 2019.

ⁱⁱ Dana L. Sichel, Giving Birth in Shackles: A Constitutional and Human Rights Violation, *American University Journal of Gender Social Policy and the Law*, 2007.

ⁱⁱⁱ Amnesty International, Abuse of Women in Custody: Sexual Misconduct and the Shackling of Pregnant Women, 2001; see also American Medical Association, Advocacy Resource Center, *An "Act to prohibit the shackling of pregnant prisoners" model state legislation*, 2015, available at <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/specialty%20group/arc/shackling-pregnant-prisoners-issue-brief.pdf>.

^{iv} American Committee of Obstetricians and Gynecologists Committee on Healthcare for Underserved Women, Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, 2011

^v American Medical Association, House of Delegates Resolution 203 (A-10) Shackling of Pregnant Women in Labor, 2010.

^{vi} American Public Health Association, Standards for Health Services in Correctional Institutions, 2003.

^{vii} U.S. Department of Justice Federal Bureau of Prisons, Program Statement on Escorted Trips, 2014

^{viii} U.S. Immigrations and Customs Enforcement, Performance Based National Detention Standards, 2011.

^{ix} American Correctional Association, Adult Correctional Institutions Standards, 2010.

^x American Medical Association, Advocacy Resource Center, *An "Act to prohibit the shackling of pregnant prisoners" model state legislation*, 2015, p. 3, available at <https://www.ama-assn.org/sites/ama-assn.org/files/corp/media-browser/specialty%20group/arc/shackling-pregnant-prisoners-issue-brief.pdf>.

^{xi} 115th U.S. Congress, First Step Act, 2018, available at <https://www.congress.gov/bill/115th-congress/senate-bill/3747/text>.

^{xii} Nationwide ACLU Legal Analysis: The Supreme Court held thirty years ago that prison officials violate the Eighth Amendment when they act with deliberate indifference to prisoner's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). Moreover, federal courts have expressly condemned the practice of shackling pregnant women in labor as a violation of the Eighth Amendment. *Nelson v. Correctional Medical Services*, 583 F.3d 522, 533 (8th Cir. 2009) (denying summary judgment for officer because shackling pregnant prisoner during labor clearly established as a violation of the Eighth Amendment); *Women Prisoners of D.C. v. District of Columbia*, 93 F.3d 910, 918, 936 (D.C. Cir. 1996) (recognizing that correctional authorities cannot use "restraints on any woman in labor, during delivery, or in recovery immediately after delivery" and noting prison did not challenge district court's finding that "use of physical restraints on pregnant women . . . violate[s] the Eighth Amendment"); *Brawley v. State of Washington*, 712 F.Supp.2d 1208, 1221 (W.D. Wash 2010) (denying summary judgment because shackling a prisoner in labor clearly established as a violation of the Eighth Amendment); and *Villegas v. Metropolitan Government of Davidson County*, 789 F.Supp.2d 895, 919 (M.D. TN 2011) (holding that the "shackling of a pregnant detainee in the final stages of labor shortly before birth and during the post-partum recovery and denying breast-pump post-partum", violates the Eighth Amendment); see also *Woman Shackled During Labor Awarded Damages From Deputies*, USA Today, August 18, 2011, available at http://www.usatoday.com/news/nation/2011-08-19-tennessee-woman-shackled-labor-damages_n.htm (reporting jury awarded Villegas \$200,000 in damages).

^{xiii} United Nations, Standard Minimum Rules for the Treatment of Prisoners, 1977.

^{xiv} Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, article 16, 1984

^{xv} Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Women in Prison Fact Sheet, 2018, available at <https://rm.coe.int/168077ff14>.