



**Testimony for the House Judiciary Committee
January 28, 2014**

**HB 27
Correctional Services - Healthy Births for Incarcerated Women Act**

SUPPORT

AMERICAN CIVIL
LIBERTIES UNION
OF MARYLAND

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The American Civil Liberties Union of Maryland supports HB 27, which would ban the shackling of pregnant inmates and detainees during labor and delivery. The bill also bans the shackling of inmates and detainees known to be pregnant or in postpartum recovery, except where an individualized determination is made that a woman poses a risk to herself or others.

Shackling a Pregnant Woman is Dangerous and Inhumane

Here in Maryland, detained and incarcerated pregnant women are shackled. Shackling a pregnant woman can pose undue health risks for the woman and her fetus. Leg and wrist restraints increase the likelihood that a pregnant woman could trip, and they compromise her ability to brace against a fall, risking miscarriage and injury. Heavy belly or waist restraints can bruise a pregnant woman's abdomen and pose a risk to fetal health.

Freedom from shackling is especially critical during labor, delivery, and postpartum recovery. Women frequently need to move around during labor and recovery, particularly during the birthing process. Restraints during labor and delivery can cause serious, permanent injury.¹ The absence of physical restraints is essential so that medical staff can easily conduct any necessary emergency procedures. Following birth, it is critical for a woman to remain unshackled to prevent postpartum hemorrhage. Freedom from shackles after delivery also fosters postpartum bonding between a mother and her newborn, which is essential to the healthy development of the child.

This Law is Necessary

We understand that in 2012, the Department of Public Safety and Correctional Services (DPSCS) revised its internal directives to limit when pregnant women may be shackled in some instances. While we applaud DPSCS for doing this, it by no means negates the necessity for this law.

First, many women are held in over twenty local jails and detention centers across Maryland. Each facility adopts its own policies and practices, regardless of

¹ See, e.g., *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009)(shackling permanently injured and deformed woman's hips, caused torn stomach muscles, an umbilical hernia requiring surgical repair, damage to her sciatic nerve, extreme mental anguish and pain, inability to sleep or bear weight on her left side or sit or stand for extended periods.)

DPSCS policy. Second, just as the DPSCS policy was changed last year, so too could it be changed again—without notice. Maryland needs to codify a ban on the shackling of pregnant women to ensure that no Maryland woman ever undergoes this barbaric practice again.

Cruel and Unusual Punishment

Several courts have addressed the issue of shackling pregnant women during labor and delivery. Courts have consistently either held or recognized that shackling a pregnant woman during labor and delivery is a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. *See Brawley v. Washington*, 712 F.Supp.2d 1208 (W.D. Wash. 2010)(inmate showed that shackling of inmates while they were in labor was clearly established as a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment); *Nelson v. Correctional Medical Services*, 583 F.3d 522 (8th Cir. 2009)(inmate produced sufficient evidence to demonstrate officer violated her Eighth Amendment rights by shackling her during labor); *Women Prisoners of the D.C. Department of Corrections v. District of Columbia*, 877 F.Supp. 634, 668-69 (D.D.C 1994)(shackling a woman in third trimester and after delivery “poses a risk so serious that it violates contemporary standards of decency;” shackling a woman in labor and immediately thereafter “inhumane”). *See also, Villegas v. Metropolitan Gov’t of Davidson County*, 789 F.Supp.2d 895 (M.D. Tenn. 2011)(shackling detainee during labor and postpartum violated her due process rights under the Fourteenth Amendment, based upon opinions noted above discussing Eighth Amendment violations).

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The Major Medical and Correctional Organizations, and Many States, are Against Shackling Pregnant Women

Major national correctional and medical associations oppose the shackling of pregnant women. The American Correctional Association, the Bureau of Prisons, the United States Immigration and Customs Enforcement, the United States Marshals Service, the American Medical Association, the American Congress of Obstetricians and Gynecologists, the American Public Health Association, the American College of Nurse-Midwives, the Association of Women’s Health, Obstetric and Neonatal Nurses, the National Commission on Correctional Health Care, and the American Bar Association all have policies against the shackling of pregnant women.

To date, eighteen states have laws against shackling pregnant inmates: Arizona, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Louisiana, Nevada, New Mexico, New York, Pennsylvania, Rhode Island, Texas, Vermont, Washington and West Virginia.² Maryland needs to become the 19th.

For the foregoing reasons, the ACLU of Maryland supports HB 27.

² Litigation in Tennessee resulted in a settlement of over \$100,000 for a woman who was shackled during pregnancy. A similar lawsuit in Nevada is currently in the settlement process and will likely produce a similarly substantial settlement for the plaintiff. In Nevada, the Department of Corrections had an internal policy against shackling, as is the case in Maryland.