

**SHACKLING PREGNANT PRISONERS:
CRUEL AND UNUSUAL OR JUSTIFIED AND NECESSARY?**

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INTRODUCTION

Childbirth can be one of the most painful experiences of a woman's life. Labor can last for several hours, and even with anesthetics and hospital amenities intended to make the mother more comfortable, the entire process is still draining and distressing. Giving birth as an incarcerated woman often deprives the mother of these basic benefits and worsens such suffering. Throughout the course of their pregnancies, most expecting mothers in prison are already experiencing higher risks due to stress and lack of adequate prenatal nutrition and care. To make matters worse, the delivery of the child—including transportation, labor, and recovery—will often involve the mother being restrained. Her legs may be bound together, her arms and feet may be shackled to a hospital bed, or her stomach may have a chain over it moments before birth or days after a Cesarean-section. It is difficult to imagine this kind of punishment as being commonplace, but in reality it has happened to thousands of women all over the country, despite being illegal in many states.

The current lack of overarching federal legislation banning such practices coupled with the weak enforcement of existing state laws and local policies leaves many pregnant inmates suffering unnecessarily, and arguably, unconstitutionally. Shackling may seem inhumane, but in some instances it may also seem necessary. Is the use of restraints on incarcerated pregnant women really unconstitutional, violating the Eighth Amendment and its protection against the infliction of “cruel and unusual punishments”?⁹³ Does constitutionality depend on the type of restraints and the circumstances under which they are used? Or are such practices actually

⁹³ U.S. Const. amend. VIII.

justified in order to prevent possible escape and to ensure that unrestrained prisoners do not harm themselves or others?

This paper will examine the use of restraints on incarcerated pregnant women and various cases and arguments regarding its constitutionality. The current legal position that many states take (or choose not to take) will be discussed first, along with these laws' effectiveness and the implications of states not having legislation on the matter. Then, the paper will look at the reasoning against shackling women before, during, or after labor, founded on case law that establishes when restraints and their resulting harm violate women's rights. Following the argument against restraints, this paper will weigh opposing arguments that claim restraints are justified and necessary, either under certain conditions or at all times. Finally, the paper will conclude with a consideration of the future problems that this controversial issue raises. Is the use of shackles on pregnant inmates truly cruel and unusual punishment, or is it the price that incarcerated women must pay for past actions and for present safety?

HISTORY

Eighteen states have laws prohibiting or restricting the shackling of pregnant prisoners, twenty-four states have enacted anti-shackling policies, and eight states have no regulations addressing the matter.⁹⁴ However, the states where there are laws and policies intended to prohibit or limit the use of restraints do not always fully implement or enforce such rules. Given the number of lawsuits brought against prison officials or correctional facilities by former inmates claiming to be unjustly restrained, even in states where shackling is illegal, it seems as if no state has 100% effective anti-shackling legislation. Mistreatment may be the worst in states with no legislation at all, with nothing in place to protect inmates' rights and wellbeing during

⁹⁴ Leonie Stoute, "Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates," 60 *Howard L.J.* 749, 759 (2017).

pregnancy and childbirth. Illinois became the first state to prohibit shackling in 2000, declaring that during transport “no handcuffs, shackles, or restraints of any kind may be used...[and] under no circumstances may leg irons or shackles or waist shackles be used on any pregnant prisoner who is in labor.”⁹⁵ New York⁹⁶ and California⁹⁷ also passed anti-shackling legislation, but these laws have exceptions that allow for the use of restraints at the discretion of prison officials if they identify undefined “risks.” These caveats allow for the possibility of subjectivity and human error in determining the appropriate times, if there are any, to use shackles and chains on pregnant women. Surveys show that even under circumstances where use of restraints would be prohibited, the laws are ignored. In New York, twenty-three out of twenty-seven women surveyed were shackled despite the law, and in California, only twenty-one out of the fifty-five counties were in compliance with the anti-shackling legislation that had been put in place.⁹⁸

In addition, the inconsistencies between policies in different towns and counties in the same state, the vagueness of the language used in laws, and the lack of effective enforcement in many prisons create confusion and noncompliance. Oftentimes both the officers and the prisoners do not entirely understand the full extent of the laws and policies in place. Despite the lack of uniform anti-shackling legislation that all states and their corrections departments must follow, some federal changes have been made in recent years. In 2007, the U.S. Marshals Services established policies and procedures stating that restraints should not be used when a woman is in labor, delivery, or recovery.⁹⁹ The following year, the Federal Bureau of Prisons ended the practice of shackling pregnant inmates in all federal correctional facilities, but this

⁹⁵ 730 Ill. Comp. Stat. § 5/3-6-7

⁹⁶ N.Y. Correct. Law § 611

⁹⁷ Cal. Penal Code § 6030

⁹⁸ Leonie Stoute, “Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates,” 60 *Howard L.J.* 749, 769-771 (2017).

⁹⁹ U.S. Marshals Service, Restraining Devices § 9.1(D)(3)(e) (2010)

does not pertain to state and local prisons.¹⁰⁰ These federal measures acknowledge shackling's potential to violate constitutional rights, but still do not address the discrepancies between different states' laws and the lack of accountability for officers who allow harmful restraints to be used without just cause. There are undoubtedly many more instances of illegal or unjust shackling in prisons that have not been and may never be brought to light in lawsuits.

ANALYSIS

The constitutionality of shackling has come into question before. In *Hope v. Pelzer*, the Supreme Court ruled that the unnecessary and wanton infliction of pain constitutes cruel and unusual punishment forbidden by the Eighth Amendment.¹⁰¹ In this case, a man was shackled to a hitching post on two occasions for several hours without water, access to a bathroom, or protection from the sun. Despite a lack of emergency or potential threat, officers still subjected him to a substantial risk of physical harm, unwarranted pain caused by the cuffs and confinement, and discomfort and humiliation. Because the officers clearly disregarded Hope's safety and knowingly inflicted unnecessary and gratuitous pain on him, the Supreme Court decided that this was an obvious violation of Hope's constitutional right to protection from cruel and unusual punishment. Any reasonable person would not see this kind of treatment as deserved unless there was valid penological justification, but there was no excuse in this case. The risk of harm was deemed to be obvious, and this case and its ruling established the "deliberate indifference" standard that was later applied to cases specifically pertaining to pregnant inmates.

Years after *Hope v. Pelzer* was decided, a woman named Shawanna Nelson filed a lawsuit against the Arkansas prison where she was incarcerated for a nonviolent offense when

¹⁰⁰ U.S. Dep't of Just., *Escorted Trips* § 570.40 (2008)

¹⁰¹ *Hope v. Pelzer*, 536 U.S. 730, 731 (2002)

she was pregnant with her second child. She claimed that she was shackled to her hospital bed during the final stages of labor, thus violating her Eighth Amendment rights. The Eighth Amendment standard for conditions of confinement and medical care asks, did the defendant act with “deliberate indifference” by disregarding risk and inflicting unnecessary and wanton pain? Defined in *Hope v. Pelzer*, this definition was reiterated and revised in *Nelson v. Corr. Med. Servs.* A prison official is deliberately indifferent if he or she knows of and disregards a serious medical need or a substantial risk to an inmate’s health or safety.¹⁰² If a risk is obvious and an official imposes physical restraints that perpetuate this risk and cause further harm, then there is a clear constitutional violation.

In this case, Officer Turensky witnessed Nelson’s severe contractions even before reaching the hospital, disregarded orders from her boss not to handcuff the prisoner, and ignored medical personnel’s requests that restraints be removed. Nelson was clearly in pain, which was only exacerbated by the shackles, and was in no condition to flee, so therefore she was not an escape risk. In fact, Officer Turensky testified that the nonviolent offender never did anything to suggest that she was a flight risk or presented any other threat, yet Nelson was still shackled until moments before entering the delivery room.¹⁰³ Nelson’s inability to move, stretch, or change positions during labor caused mental anguish, permanent hip injury and deformity, torn stomach muscles, an umbilical hernia, sciatic nerve damage, and lifelong physical suffering that subsequently prevented her from sitting or standing for extended periods of time, engaging in everyday activities without pain, and having additional children. The court decided, based on case law and the “deliberate indifference” standard, that there is substantial evidence of Officer Turensky’s general awareness of the risk of harm associated with shackling and the unnecessary

¹⁰² *Nelson v. Corr. Med. Servs.*, 583 F.3d 522, 525 (8th cir. 2009)

¹⁰³ *Id.* at 526

suffering, discomfort, and humiliation that she caused to Nelson. Turensky knew that restraints would interfere with medical care and aggravate pain, and there was no threat, emergency situation, or penological justification that warranted such treatment. Therefore, the use of restraints on Nelson was a violation of her Eighth Amendment rights and an example of cruel and unusual punishment.

There are many lawmakers and citizens who argue that the use of restraints on pregnant inmates is not unconstitutional and should be either allowed or at least unregulated. Some claim that shackling is necessary to ensure that incarcerated women do not try to escape during labor. As an act of desperation, some women may take advantage of this opportunity to flee when they are not physically in a prison or under restraints. Furthermore, proponents of shackling contend that the practice is needed to prevent incarcerated women from hurting themselves, the officers, or the other patients around them. While statistics show that the majority of female prisoners are nonviolent offenders and no escape attempts have been reported among pregnant inmates who were not shackled during childbirth (most likely because they are in too much pain to move or flee), people still have concerns about safety and security.¹⁰⁴

CONCLUSION AND PERSONAL STATEMENT

Some people may be able to justify these beliefs, but they are predominantly unfounded and perpetuate the harmful stigmas around incarcerated women. Simply put, restraints on women during labor do more harm than they could ever do good, serving no legitimate purpose and causing undue pain and suffering. Handcuffs, leg shackles, and belly chains prevent both mothers and children from getting proper medical care, and deliberate indifference that leads to deprivation of such care is unconstitutional. Tests to check for life-threatening conditions during

¹⁰⁴ Leonie Stoute, "Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates," 60 *Howard L.J.* 749, 758 (2017).

pregnancy cannot be properly administered; immobility prohibits sufficient pain management, successful cervical dilation, and an overall successful vaginal delivery; the risk of falling is increased; and recovery exercises are significantly limited.¹⁰⁵ This practice is demeaning, unnecessary, and harmful. There is still not enough legislation or enforcement, although over the past two decades anti-shackling laws have slowly become more numerous and more extensive. In September 2018, a bipartisan group of Congresswomen introduced a bill in the House of Representatives that codifies the current Federal Bureau of Prisons policy, outlawing the shackling of pregnant women in federal prisons and banning restraints during the pregnancy and in the weeks after birth.¹⁰⁶ The First Step Act, introduced in the Senate in November 2018, also bans the shackling of pregnant inmates, forbidding restraints around the ankles, legs, or waist even if the circumstances warrant an exception in which restraints must be used for safety.¹⁰⁷ Judges, lawmakers, and prison officials have a duty to respect and protect the unalienable constitutional rights of inmates. *Nelson v. Corr. Med. Servs.* laid the foundation for future progress by expanding on the precedent set in *Hope v. Pelzer* and ruling that shackling during labor and delivery violates the Eighth Amendment when officers act with indifference, interfere with care, or inflict unnecessary suffering.

Mistreatment occurs far too often as the laws and policies that do exist are rarely followed as they should be. Thus, both state and federal lawmakers must continue to use precedent to actively create strong, clear legislation that strictly prohibits these practices before more women and their unborn children are put at risk. It does not depend on the type of

¹⁰⁵ Leonie Stoute, "Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates," 60 *Howard L.J.* 749, 753-754 (2017).

¹⁰⁶ Jouvenal, Justin. "Bipartisan Bill Would Outlaw Shackling of Pregnant Inmates in Federal Prisons." *The Washington Post*, WP Company, 13 Sept. 2018.

¹⁰⁷ United States, Cong. Senate. *First Step Act of 2018*. 115th Cong., 2nd sess. S. 3649. § 4322.

restraints, the point at which shackles are used, or an individual officer's discretion. Based on the risks to human life and unnecessary harm associated with the practice, the careless and unjustified shackling of pregnant prisoners is unconstitutionally cruel and unusual punishment.

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730 Ill. Comp. Stat. § 5/3-6-7

Cal. Penal Code § 6030

Hope v. Pelzer, 536 U.S. 730 (2002)

Jouvenal, Justin. “Bipartisan Bill Would Outlaw Shackling of Pregnant Inmates in Federal Prisons.” *The Washington Post*, WP Company, 13 Sept. 2018.

Leonie Stoute, “Break Every Chain: Bringing an End to the Unconstitutional Shackling of Pregnant Inmates,” 60 *Howard L.J.* 749 (2017)

Nelson v. Corr. Med. Servs., 583 F.3d 522 (8th cir. 2009)

N.Y. Correct. Law § 611

U.S. Const. amend. VIII.

U.S. Dep't of Just., Escorted Trips § 570.40 (2008)

U.S. Marshals Service, Restraining Devices § 9.1(D)(3)(e) (2010)

United States, Cong. Senate. *First Step Act of 2018*. 115th Cong., 2nd sess. S. 3649. § 4322