



Breaking Promises

Violations of the Massachusetts Pregnancy Standards & Anti-Shackling Law

A report by

The Prison Birth Project and Prisoners' Legal Services of Massachusetts

BREAKING PROMISES: VIOLATIONS OF THE MASSACHUSETTS PREGNANCY
STANDARDS & ANTI-SHACKLING LAW

© May 2016 The Prison Birth Project and Prisoners' Legal Services of Massachusetts

Prison Birth Project

400 Dwight Street

Holyoke, MA 01040

collective@theprisonbirthproject.org

www.theprisonbirthproject.org

The Prison Birth Project is an organization focused on reproductive justice, working to provide support, advocacy and resources to people at the intersection of the criminal system and parenthood. Prison Birth Project provides continuous care through the full spectrum of pregnancy, birth and the postpartum process. We offer this in the form of childbirth education classes, one-on-one meeting time, open resource compilation and organizing with those most affected by the issues.

We believe that through supporting women and children during times of transition and change we can strengthen our families and our communities.

Prisoners' Legal Services of Massachusetts

10 Winthrop Square, 3rd Floor

Boston, MA 02110

617-482-2773

lpetit@plsma.org

www.plsma.org

Prisoners' Legal Services promotes the safe, humane and lawful treatment of Massachusetts prisoners through civil rights litigation, administrative advocacy, client counseling, and outreach to policy makers and the public.

This report was written by Rachel Roth, consultant, Lauren Petit, Staff Attorney, Prisoners' Legal Services of Massachusetts, and Marianne Bullock, Co-Director, Prison Birth Project. We are grateful to the National Institute for Reproductive Health for financial support and technical assistance, to our other donors, supporters, and allies, and to the women who entrusted their stories to us.

CONTENTS

Introduction	1
Key Findings	2
Prisons and Jails in Massachusetts	3
Why Massachusetts Limited the Use of Restraints	4
Methodology for this Report	5
Findings: State Department of Correction and County Jail Policies on Restraining Pregnant, Laboring, and Postpartum Women	6
State and County Compliance with the 2014 Anti-Shackling Law in Official Written Policies (chart)	10
Findings: Department of Correction's Mandate to Develop Statewide Standards for Pregnant and Postpartum Women	12
Recommendations: Realizing the Promise of the 2014 Law	14
Text of the 2014 Pregnancy Standards and Anti-Shackling Law	17
Endnotes	19

In 2015, a woman in Massachusetts gave birth by cesarean section. Exactly one week later, she was taken to court in the back of a van with no seatbelt; she was handcuffed, restrained at her ankles, and had a chain around her belly. She spent five hours in significant pain and discomfort as she was jostled around in the back of the van. To make matters worse, the sterile bandages holding the incision together from the cesarean surgery split open during the trip.

"My concerns prior to delivery were that she was going to be restrained during her way to the hospital, during delivery or postpartum or she would not make it to the hospital on time. My fears came true. She was handcuffed on her way to the hospital and arrived in a police vehicle at 2 AM. Approximately 9 minutes later she gave birth to her son. She was also shackled to the bed immediately after birth.

I am angered, appalled, and saddened that they shackled her. What my daughter faced is cruel and unusual punishment. It endangered my daughter's life, as well as her baby."

– The mother of an incarcerated woman

"It was really hard. I couldn't move like I needed to—couldn't hold my stomach or push up to move myself around. The metal would dig into me every time I did try to grab my stomach during a contraction. It was incredibly lonely going through that experience by myself."

– Her daughter, who was unlawfully handcuffed while in labor on the way to the hospital

INTRODUCTION

“All [people in prison] shall be treated with the respect due to their inherent dignity and value as human beings.”¹

In 2014, the Massachusetts legislature unanimously passed a groundbreaking bill to promote the health of pregnant women in prison and jail. Signed by the governor at a public ceremony, the law promotes women's health in two ways:

- by limiting the use of restraints on pregnant and postpartum women, and banning their use entirely during labor and childbirth, and
- by requiring minimum standards of medical care, nutrition, and other conditions of confinement during pregnancy and postpartum recovery.

The measure, often referred to as the “anti-shackling law,” took effect immediately.²

When Massachusetts enacted this law, it joined a growing number of states and federal agencies that have restricted shackling, reflecting the consensus among courts, medical societies, and human rights experts that restraining pregnant, laboring, and postpartum women needlessly risks the health of women and their fetuses.³

But the promise to respect the human rights of pregnant women in prison and jail has been broken. Implementation of this law has fallen short.

Far too often Massachusetts prisons and jails violate the law in both policy and practice, undermining the public will and subjecting pregnant women to illegal, unsafe, and degrading treatment.

This report is based on information from public records requests and communications with corrections officials, medical providers, and women who have been pregnant and incarcerated since the law took effect two years ago, and is a joint effort of Prisoners' Legal Services of Massachusetts and the Prison Birth Project.⁴

KEY FINDINGS

- Neither the state Department of Correction nor a single County Sheriff's Office fully complies with the law.
- Knowledge of the law varies not just from one prison or jail to another, but among corrections personnel who work for the same prison or jail.
- Women are being handcuffed in labor – in violation of the law.
- Women are being restrained to the hospital bed after they have their baby for no reason – in violation of the law.
- Postpartum women are being restrained with ankle shackles and waist chains – in violation of the law.
- Some pregnant women are taken to court or medical appointments in the back of vans that have no seatbelts, where they slide around dangerously – and other women are missing court dates altogether because of the failure to plan for a proper vehicle; both these situations violate the law.
- The law requires “a diet containing the nutrients necessary to maintain a healthy pregnancy,” but women either go hungry or make do without enough fruit, vegetables, or fiber.
- The law requires “appropriate clothing” but women are given standard-issue clothing that is too big or too small, rather than maternity clothes designed to fit their bodies; among other issues, pants that are too long put women at risk of tripping, falling, and hurting themselves or their fetuses.
- The law requires the development of statewide standards on health care, nutrition, clothing, and other conditions of confinement for every prison and jail to follow; the Department of Correction has yet to develop these standards.

PRISONS AND JAILS IN MASSACHUSETTS

In Massachusetts, the Department of Correction (DOC) operates the state prison system, which includes two prisons for women. At the local level, county sheriffs' offices operate jails for people waiting to go on trial or sentenced on misdemeanor charges.

Massachusetts is somewhat unusual because only a few counties incarcerate women in the local jail; other counties send women arrested in their jurisdiction to a state prison or a regional jail to wait for trial or serve their sentence.⁵

Where Women in Massachusetts are Incarcerated

Institution	Incarcerated Groups
Massachusetts Correctional Institution-Framingham (DOC)	Women sentenced to state prison (maximum and medium security); Women who are waiting to go on trial or serving a sentence for a misdemeanor in Essex, Middlesex, Norfolk and Plymouth Counties
South Middlesex Correctional Center (DOC)	Women sentenced to state prison (minimum security and pre-release)
Barnstable County Correctional Facility	Women who are waiting to go on trial or serving a sentence for a misdemeanor in Barnstable, Dukes and Nantucket Counties
Bristol County Sheriff's Office Women's Center	Women who are waiting to go on trial or serving a sentence for a misdemeanor in the county
Suffolk County South Bay House of Correction	Women who are waiting to go on trial or serving a sentence for a misdemeanor in the county
Hampden County Western Massachusetts Regional Women's Correctional Center	Women who are waiting to go on trial or serving a sentence for a misdemeanor in Berkshire, Franklin, Hampden, Hampshire, and Worcester Counties

As the table shows, four counties operate jails that incarcerate women: Barnstable, Bristol, Hampden, and Suffolk; the Hampden County jail is a large regional jail. Whether or not counties incarcerate women in their jails, every county sheriff is, at minimum, responsible for driving women who were arrested in their county to court and medical appointments. Because of this responsibility, they are all required to have a written policy that spells out how employees should comply with the 2014 law's restrictions on the use of restraints.

WHY MASSACHUSETTS LIMITED THE USE OF RESTRAINTS

“Health is a fundamental human right, especially for individuals held in the custody of the state.”⁶

Numerous medical authorities, including the American Congress of Obstetricians and Gynecologists and the American Medical Association, agree that restraining women during pregnancy and after childbirth is dangerous. Restraints impair women’s balance and limit their mobility, increasing the risk of tripping and falling and the risk of dangerous blood clots. Falling can result in injury to the pregnant woman, as well as harm to her fetus, including the separation of the placenta from the uterus (placental abruption), hemorrhage, and stillbirth. Restraints also interfere with health care providers’ ability to intervene in medical emergencies. The Massachusetts statute mandated comprehensive protection for pregnant and postpartum women in jail and prison in recognition of the full continuum of risks.⁷

However, women are not fully benefiting from these protections because of insufficient compliance. Successful implementation of the 2014 law requires both significant changes in official written policies and full compliance with those written policies in practice. And yet, there have been violations in practice even in jurisdictions in which a written policy complies with the law. Moreover, conduct among a jail or prison’s staff sometimes varies, with one shift following the law and the next shift violating the law. These violations show the need for training and education of all prison and jail employees who supervise women, with extra emphasis on the responsibilities of employees who supervise women in courthouses, hospitals, or other places outside of jail or prison, as well as administrative leadership at all levels to establish expectations that all staff will act in accordance with the law.

METHODOLOGY FOR THIS REPORT

The chart on page 10 and the analysis contained in this report are based on information obtained from public records requests about compliance with the anti-shackling provisions of the 2014 law by Prisoners' Legal Services. The DOC and counties provided excerpts of policies or copies of policies on the use of restraints, transportation, and/or in-hospital security.⁸ Prisoners' Legal Services analyzed these policies and provided written feedback to each prison or jail about problem areas.

Prisoners' Legal Services also obtained additional documents from the DOC and the four counties that have jail facilities for women about the health-related provisions of the 2014 law. Some of these additional documents contain language about restraining pregnant women that violates the statute. In fact, the DOC and all four of these counties have written policies that violate aspects of the statute and, in some cases, contradict other written policies. For example, written procedures at the state prison in Framingham in effect as late as March 2016 state that pregnant women admitted to an outside hospital "shall be secured to the bed by one handcuff or leg iron," state that only women in "active" labor should not be restrained, and allow the use of waist chains on pregnant women.⁹ Similarly, Bristol County provided written material that clearly conflicts with the statute, specifying that women shall be handcuffed during delivery and shall be "placed in leg irons and/or handcuffs" after giving birth unless medically contraindicated, in which case "only handcuffs shall be applied."¹⁰ The information from these health-related policies is not included in the findings presented below; however, corrections staff are likely to be misdirected by these contradictory policies, undermining their ability to do their job.

FINDINGS: STATE DEPARTMENT OF CORRECTION AND COUNTY JAIL POLICIES ON RESTRAINING PREGNANT, LABORING, AND POSTPARTUM WOMEN

The Massachusetts anti-shackling bill became law on May 15, 2014, after being passed unanimously by the legislature and signed by the governor. Once this bill became law, the DOC and county sheriffs' offices were responsible for taking the specific requirements in the statute and turning them into everyday routines in official policies or procedures for employees to follow.

Neither the Department of Correction nor a single county has official written policies that comply fully with the law.

Jurisdictions' shortcomings range from failure to comply with one provision of the law to failure to comply with seven of eight key provisions. In certain cases, county policies ignore some requirements of the law altogether; this omission results in corrections officers defaulting to a general policy that violates the law on how to treat pregnant women.

The findings below outline lack of compliance with eight specific provisions of the law in official written policies. They also identify violations of the law in practice.

Ban on Restraints during Labor

The DOC and 10 counties have policies that comply with the ban on restraining women during labor and childbirth.

Some corrections staff have restrained women in labor, including several who insisted on handcuffing women until

they were deemed to be in "active labor" – a clear violation of the law, as well as the jail's own policies, both of which prohibit restraints during "any stage of labor."

"When the nurse left, the officer stood up and said that since I was not confirmed to be in 'active labor,' she would need to restrain me and that she was sorry, but those were the rules..."

It was really my worst nightmare, being told there was a law to prohibit this, but now here I was, experiencing it."

Four counties (Barnstable, Berkshire, Nantucket, and Suffolk) have policies that violate the ban on restraints during labor; two of these counties incarcerate women in their jails (Barnstable and Suffolk).

FINDINGS (cont'd)

Ban on Postpartum Restraints in the Hospital except in “Extraordinary Circumstances” as Defined by the Law and Accurate Definition of “Extraordinary Circumstances”

“I took a shower after the birth and they put me back in bed and shackled me to the bed by my left ankle. I said it was against the law, but the female C.O. said she had never heard of that. She called the jail and whoever she talked to also said they never heard of it. So I stayed shackled to the bed.”

In written policy, the DOC and all counties except for Bristol County comply with the ban on restraining women after they give birth and during their time in the hospital. The law and these policies require that women not be restrained unless there are “extraordinary circumstances” in which an individual “presents an immediate

and serious threat to herself or others” or “an immediate and credible risk of escape that cannot be curtailed by other reasonable means.” Even under such circumstances, only handcuffs may be used. The DOC and nine counties have policies that accurately define “extraordinary circumstances” that justify the use of restraints in accordance with the law.

In some cases, corrections staff have restrained women to the bed after they have given birth, in violation of the law and even in violation of their own agency’s policy, while in other cases women successfully advocated for their rights and prevented a corrections officer from restraining them when they were in the hospital. Although some women have been able to prevent their rights from being violated, no woman should be forced to engage in arguments with corrections staff to obtain her rights under the law.

Five counties have policies that violate the law by inaccurately defining “extraordinary circumstances” (Berkshire, Bristol, Middlesex, Norfolk, and Suffolk).

Ban on Postpartum Restraints during Transportation, Except in “Extraordinary Circumstances” as Defined by the Law

The DOC and 11 counties have policies that violate the ban on restraining women during the drive back to prison or jail after giving birth. The three counties that have policies that comply are Franklin, Hampden, and Norfolk. The statute states that in a woman’s second and third trimester as well as during post-delivery recuperation as determined by the attending physician, women “may only be restrained using handcuffs in front,” and that a woman “in post-delivery recuperation shall not be

FINDINGS (cont'd)

placed in restraints, except under extraordinary circumstances.” Eight of the 11 policies that violate this provision of the law do so by mandating the use of handcuffs and also by misapplying the “extraordinary circumstances” exception to permit the use of additional restraints, contrary to the law.¹¹

The DOC and 11 counties have policies that violate the ban on restraining women during the drive back to prison or jail after giving birth.

Ban on Leg and Waist Restraints throughout Pregnancy and Postpartum

In a related problem, 11 counties have policies that violate the statute’s unequivocal statement that, “Leg or waist restraints shall not be used on a pregnant or postpartum [woman].” Only the DOC and Essex, Hampshire, and Plymouth Counties have policies that correctly restate this prohibition in the law. Notably, however, these four jurisdictions specifically define or treat the postpartum recovery period as only the time before a woman is released from the hospital, rather than the commonly accepted medical definition of “postpartum” as the six weeks following birth or longer as determined by a woman’s physician.¹²

The DOC alone has policy language that specifically defines the ban on leg irons and waist chains for a postpartum period to be determined by the treating physician. Given the internal conflicts in county policies, it is likely that only the DOC policy complies with the law’s provisions in this area. These policies increase the likelihood that women will be shackled at the ankles and chained at the waist despite the prohibition in the law.

In fact, women have been restrained with leg irons and waist chains on the way back from the hospital. When one woman questioned the corrections officer who shackled her at the ankles, he replied, “You’re not pregnant anymore” — completely ignoring the ban on leg restraints on postpartum women. Other women, including women who have delivered their babies by cesarean section, have reported being restrained in waist chains and leg irons on trips to court and medical appointments shortly after giving birth.

Eleven counties have policies that violate the statute’s unequivocal statement that, “Leg or waist restraints shall not be used on a pregnant or postpartum [woman].”

FINDINGS (cont'd)

Allow Doctor or Nurse to Order the Removal of Restraints

The DOC and 11 counties have policies that follow the law in allowing medical providers to order the removal of restraints from a patient in their care. The other three simply ignore this requirement.

Three counties have policies that violate the authority of medical providers to order the removal of restraints (Berkshire, Bristol, and Suffolk).

Officer in Room Should Be Female and Respect Privacy

The DOC and 10 counties have policies that comply with the provision of the law stating that if a corrections staff person is in the hospital room during physical exams, labor, or childbirth, that staff person should be female and should be positioned in a way to respect the birthing woman's privacy, if possible.

Four counties have policies that violate either the law's preference for female officers or respect for the woman's privacy (Berkshire, Bristol, Norfolk, and Suffolk).

Require Seatbelts in Second and Third Trimesters and Postpartum

The DOC and four counties have policies that fail to require seatbelts or scale back the requirement to use vehicles with seatbelts when driving women in the second and third trimesters of pregnancy and postpartum. In some cases, corrections' employees still drive pregnant women to court or medical appointments in vans without seatbelts, putting women at risk of injury from bouncing and sliding across the open benches while restrained by handcuffs. In other cases, corrections staff cause women to miss their court dates or medical appointments by failing to plan for an appropriate vehicle. This failure can result in needlessly extending a woman's imprisonment when the judge might have released her from custody at the hearing.

"I should have had a hearing two weeks ago, but when I got down for transport, they never sent a van with a seatbelt. A white shirt was there and told us 'pregnant girls can't go today.'"

The DOC and four counties have policies that fail to require seatbelts or scale back the requirement to use vehicles with seatbelts when driving women in the second and third trimesters of pregnancy and postpartum (Berkshire, Bristol, Essex, and Suffolk).

State and County Compliance with the 2014 Anti-Shackling Law in Official Written Policies

	Bans restraints during labor	Bans post-partum restraints in hospital*	Bans post-partum restraints in transportation*	Bans leg and waist restraints	Accurately defines "extraordinary circumstances"	MD or nurse can order removal of restraints	Officer in room should be female and respect privacy	Requires seatbelts
MA Dept. of Correction	✓	✓	X ¹	✓	✓	✓	✓	X
Barnstable	X ^{2,11}	✓	X ³	X	✓	✓	✓	✓
Berkshire	X ⁴	✓	X ³	X	X ⁵	X ⁸	X ⁹	X ⁸
Bristol	✓	X ⁸	X ⁸	X	X ^{5,6,7}	X ⁸	X ⁸	X ¹⁰
Dukes	✓	✓	X ³	X	✓	✓	✓	✓
Essex	✓	✓	X ³	✓	✓	✓	✓	X ⁸
Franklin	✓	✓	✓	X ¹¹	✓	✓	✓	✓
Hampden	✓	✓	✓	X	✓	✓	✓	✓
Hampshire	✓	✓	X ³	✓	✓	✓	✓	✓
Middlesex	✓	✓	X ¹	X	X ⁵	✓	✓	✓
Nantucket ¹²	X ^{2,11}	✓	X ³	X	✓	✓	✓	✓
Norfolk	✓	✓	✓	X ¹¹	X ⁵	✓	X ^{9,11}	✓
Plymouth	✓	✓	X ¹³	✓	✓	✓	✓	✓
Suffolk	X ⁴	✓	X ³	X	X ⁵	X ⁸	X ⁹	X ⁸
Worcester	✓	✓	X ³	X ¹¹	✓	✓	✓	✓

* Except in extraordinary circumstances

KEY	
✓ Complies	X Violates

Explanations

- DOC and Middlesex County policy define post-delivery recuperation as the period of hospitalization and allow handcuffing postpartum women on the trip back from the hospital. DOC policy creates a second category called "postpartum recuperation," defined as "determined by a licensed health care professional" during which leg and waist restraints cannot be used.
- Barnstable County policy only prohibits restraint in "active labor," contrary to the law, in one of its three relevant policies.
- The policy requires handcuffing postpartum women in transportation and also allows for additional restraint in "extraordinary circumstances," contrary to the law.
- The policy prohibits restraint of women in labor in a hospital but not during transportation to the hospital, contrary to the law.
- The policy does not comply with the law's requirements for documentation of the reason for restraining a woman under "extraordinary circumstances."
- The policy does not require the approval of the Superintendent to restrain a woman under "extraordinary circumstances," contrary to the law.
- The policy does not define "extraordinary circumstances" warranting postpartum restraint consistent with the law.
- The policy does not address this provision at all. Failure to address this provision in the policy results in officers defaulting to a general policy that violates the law on restraint of pregnant women.
- The policy does not specify that any officer in the hospital room should be female.
- Bristol County policy limits seatbelts to scheduled, non-emergency medical trips, leaving out all court trips and any unscheduled trips.
- The policy contains contradictory provisions on this point, some in compliance with and some in violation of the law.
- Nantucket County has no policy and states that it will follow Barnstable County's policy.
- Plymouth County policy defines "post-delivery recuperation" as the period of hospitalization and does not address restraints on the trip back from the hospital.

FINDINGS: DEPARTMENT OF CORRECTION'S MANDATE TO DEVELOP STATEWIDE STANDARDS FOR PREGNANT AND POSTPARTUM WOMEN

The law requires the Department of Correction to consult with the Department of Public Health and the Massachusetts Sheriffs' Association to develop minimum standards of pregnancy-related care for every prison and jail to follow. The purpose of this requirement is to replace the current patchwork of local policies with one uniform standard ensuring that women will receive appropriate prenatal and postpartum care and nutrition wherever they are incarcerated. More than one year after the law took effect, the DOC had not begun the process of developing these statewide standards, and the DOC has never indicated any progress on this responsibility under the law.

Requires Prisons and Jails to Provide Pregnancy-Related Medical Care

The quality and consistency of prenatal care is an area of considerable concern. Although the statute requires at least one staff person to be trained in pregnancy-related care, including nutrition, drug use, and other topics, it is not clear that every jurisdiction is meeting this requirement. Two counties did not address this matter at all in their response to the public records request. The DOC provided a list of all staff positions but did not identify the particular staff member(s) with this training. One county indicated that all but one member of the licensed medical staff have had this training, including seven Licensed Practical Nurses; however, this expertise goes beyond the scope of practice of Licensed Practical Nurses. As the story below shows, at least some women do not appear to be receiving appropriate medical care.

Despite coming into jail with a diagnosed high-risk pregnancy, one woman did not see an obstetrician for approximately two months. She nearly gave birth to her son in a jail cell because jail medical staff dismissed her symptoms of labor and repeated requests for help. The evening she went into labor, one of the nurses on duty expressed concern over her blood pressure, but the other nurses insisted she could wait to go to the hospital the next day. After giving birth, this woman had a postpartum seizure requiring hospitalization; this may have been prevented with better medical care. High blood pressure and its consequences are among the most common pregnancy complications, for which any prison or jail should be prepared.

FINDINGS (cont'd)

Requires Prisons and Jails to Meet Pregnancy-Specific Needs

In addition to medical care, the law addresses other issues of daily importance, and requires prisons and jails to meet the pregnancy-specific nutritional and clothing needs of any pregnant woman in their custody. However, women consistently say they either do not get enough food and feel hungry or they get too many empty calories and not enough fruit, vegetables, and fiber.

“It’s like that show ‘Punk’d’ on TV, they put up signs in the kitchen about how many fresh fruits and vegetables we should eat every day... then serve us food that doesn’t have any of that!”

Women also report being given extra large sizes of standard-issue clothing no matter how tall they are or what size clothing they wear. Such clothing is not appropriate because it does not accommodate an individual’s changing body. Pants that are too long put pregnant women at risk of tripping, falling, and injuring themselves and injuring their fetus. In addition, women can be disciplined for wearing pants that slip down and are not allowed to use a belt to keep them up, putting them in a no-win situation.

“The worst part of my entire experience was being hungry. I was so hungry the entire time I was locked up. The [supplemental] pregnancy meal that is provided is a piece of cheese on two pieces of white bread and a carton of milk. Even if I could stomach that every day, it didn’t cut it. I needed fruit. Vegetables.”

RECOMMENDATIONS: REALIZING THE PROMISE OF THE 2014 LAW

Restraining people who are being taken outside of prison or jail has long been the norm; however, Massachusetts policymakers have now universally recognized that restraining pregnant and postpartum women is medically risky, unnecessary, and inhumane. While implementing new policies in large institutions is often challenging, the Massachusetts legislature enacted this law precisely in order to bring about a change in the way that women are treated when they are pregnant and recovering from childbirth, and corrections officials are required to comply.

Indeed, in response to inquiries from Prisoners' Legal Services, the DOC and some counties made changes to their policies.¹³ In an example of successful advocacy and collaboration, the superintendent in one county where a woman had been unlawfully restrained subsequently implemented new procedures and additional training for officers in order to achieve better compliance with the law. Other counties declined to take such steps.

As this report shows, in order to fully comply with the 2014 law, the DOC and each county must undertake a thorough review of all of their policies and procedures, including those relating to the movement and treatment of women inside of prison or jail, and ensure that all policies and procedures reflect the statutory limits on the use of restraints.

Massachusetts is a national leader in providing health care to all residents. But health reform in the state and at the federal level hasn't resulted in better medical care in prison. This law begins to correct for that omission where pregnant and postpartum women are concerned – but only if every prison and jail follows it.

The recommendations on the following pages would enhance the law's focus on safeguarding women's health and also improve compliance with the law. These recommendations can be achieved through regulation and oversight by the relevant government agencies, actions of prison and jail administrators, or additional legislation.

Massachusetts took an important step by passing the landmark 2014 law. It is time to make good on the promise of that law and ensure that the state fulfills its responsibility to give every woman in prison and jail the best possible chance for a healthy pregnancy and birth.

RECOMMENDATIONS

The recommendations listed here would enhance the law's focus on safeguarding women's health and improve compliance with the law. These recommendations can be achieved through regulation and oversight by the relevant government agencies, actions of prison and jail administrators, or additional legislation.

- The statutory ban on restraints during any stage of labor or childbirth must be fully enforced.
- The statutory ban on leg and waist restraints throughout pregnancy must be fully enforced.
- Postpartum recovery should be explicitly defined as six weeks, or longer if considered necessary by a health care professional in the hospital where a woman delivers her baby, and the statutory limits on handcuffs and ban on leg and waist restraints must be fully enforced throughout this period. This six-week time frame is the standard in the community. Women who give birth while incarcerated experience the same physiological changes as other women and have the same needs for time to recover from giving birth. Indeed, healing is more challenging in prison and jail without even basic comforts, the ability to rest when needed, or the caring attention of friends and family.
- The law mandates the development of statewide standards for pregnancy and postpartum recovery, including health care, nutrition, and other conditions of confinement. These standards should reflect best practices in the community. Adherence to the standards should be monitored in every prison and jail in which women are incarcerated.
- Emergency medical personnel should have the authority to determine that a woman is in labor, so that emergency personnel who respond to calls from prisons or jails can protect patients in their care from being restrained when they are in labor and need to go to the hospital.
- All prison and jail staff who supervise women or drive women to court or medical facilities should be trained on the law governing the use of restraints on an ongoing basis. Corrections personnel cannot be expected to comply with the law if they have not been trained on what the law requires and how to do their jobs in a manner that upholds the law.

RECOMMENDATIONS

- All instances in which corrections staff restrain pregnant or postpartum women must be documented in writing. The law currently requires documentation of the type of restraints used and the reasons why they were deemed necessary when a corrections officer restrains a woman under the exception allowed by the law. These reports, which are now internal documents, should be promptly submitted to the Secretary of Public Safety for review. The Secretary of Public Safety should issue an annual report compiling information about these incidents (without naming the individuals involved). This regular accounting will allow policymakers and the public to see how the law is working and what problem areas may need to be addressed.
- Data collection systems to keep track of the numbers of pregnant women in prison and jail and the outcomes of their pregnancies should be developed and implemented, and the information should be made accessible to the public.
- Every woman who is incarcerated while pregnant or in postpartum recovery must be informed of her rights under the law.
- Alternatives to incarceration should be developed and implemented. Pregnant women are safer when they can freely seek medical attention for signs of complications or labor and when they can give birth free of restraints and with the support of family and friends. While the stakes for pregnant women are especially high because of the risks that prison and jail conditions pose to their health and the health of their fetuses, many individuals, families, and communities would benefit from alternatives to incarceration, for example, people too poor to pay bail while waiting to go on trial and people who come into contact with the criminal justice system because of an underlying mental health challenge, including drug or alcohol use. Taxpayers would also benefit from policies that reserve the use of incarceration for people who pose a serious threat to the community and reinvest public resources from incarceration to health care and social services that give people a chance to lead healthy lives.¹⁴

TEXT OF THE 2014 PREGNANCY STANDARDS AND ANTI-SHACKLING LAW

Massachusetts General Laws chapter 127 § 118

Pregnant and postpartum inmates; standards of care; use of restraints

Effective: May 15, 2014

(a) Upon admission to a correctional facility, while awaiting trial or after sentencing, a female inmate shall be screened and assessed for pregnancy by a licensed health care professional; provided, however, that the inmate shall be informed of any necessary medical tests connected with the pregnancy screening prior to the administration of such tests. A pregnant inmate shall receive nondirective counseling and written material, in a form the inmate can understand, on pregnancy options and correctional facility policies and practices regarding care and labor for pregnant inmates. Correctional facilities housing female inmates shall ensure that at least 1 member of the correctional facility's medical staff is trained in pregnancy-related care, which shall include knowledge of prenatal nutrition, high-risk pregnancy, addiction and substance abuse during pregnancy and childbirth education.

A pregnant and postpartum inmate shall be provided regular prenatal and postpartum medical care at the correctional facility in which she is housed, including: periodic health monitoring and evaluation during pregnancy; the opportunity for a minimum of 1 hour of ambulatory movement each day; a diet containing the nutrients necessary to maintain a healthy pregnancy, including prenatal vitamins and supplements; postpartum screening for depression; and written information regarding prenatal nutrition, maintaining a healthy pregnancy and childbirth. Pregnant and postpartum inmates shall be provided appropriate clothing, undergarments and sanitary materials.

The department of correction shall, in consultation with the department of public health and the Massachusetts Sheriffs Association, Inc., develop appropriate standards of care for pregnant and postpartum inmates, which shall include, at a minimum, the standards for health services set forth by the National Commission on Correctional Health Care. If a pregnant inmate requires medically necessary, specialized care that is unavailable at the correctional facility, the pregnant inmate shall have access to such care at a supporting medical facility with appropriate expertise.

If a licensed health care professional determines that an inmate is suffering from postpartum depression, she shall have regular access to a mental health clinician. A postpartum inmate shall not be subject to isolation absent an individualized, documented determination that the inmate poses a serious risk of harm to herself or others.

Prior to release, correctional facility medical staff shall provide a pregnant inmate with counseling and discharge planning in order to ensure continuity of pregnancy-related care, including uninterrupted substance abuse treatment.

TEXT OF THE 2014 LAW (cont'd)

(b) During the second and third trimesters of pregnancy or during post-delivery recuperation, as determined by the attending physician, an inmate shall be transported to and from visits to medical providers and court proceedings in a vehicle with seatbelts and may only be restrained using handcuffs in front.

A pregnant inmate shall receive labor and delivery care in an accredited hospital and shall not be removed to another penal institution for the purpose of giving birth. An inmate who is in any stage of labor or delivery, as determined by a licensed health care professional, shall not be placed in restraints at any time, including during transportation. If a correction officer is present in the room during the pregnant inmate's physical examinations, labor or childbirth, the officer shall, if possible, be female. Whenever possible, the correction officer shall be positioned in a location in the room that will ensure, to the extent possible, patient privacy.

During post-delivery recuperation, an inmate shall remain in the hospital until the attending physician certifies that she may be safely discharged and transferred back to the correctional facility. An inmate in post-delivery recuperation shall not be placed in restraints, except under extraordinary circumstances.

For the purposes of this section, "extraordinary circumstances" shall mean a situation in which a correction officer determines that the specific inmate presents an immediate and serious threat to herself or others or in which the inmate presents an immediate and credible risk of escape that cannot be curtailed by other reasonable means. If an inmate is restrained, the restraints shall be the least restrictive available and the most reasonable under the circumstances. Leg or waist restraints shall not be used on a pregnant or postpartum inmate. In the event the correction officer determines that extraordinary circumstances exist and restraints are used, the correction officer shall fully document, in writing, the reasons that the officer determined such extraordinary circumstances existed, the kind of restraints used and the reasons those restraints were considered the least restrictive available and the most reasonable under the circumstances. A superintendent shall approve the use of any restraints used due to extraordinary circumstances either before the officer makes the determination or after the correction officer submits documentation detailing the reasons restraints were required. If the attending physician or nurse treating the pregnant inmate requests that restraints be removed for medical reasons, the correction officer shall immediately remove all restraints.

(c) Nothing in this section shall prohibit the use of hospital restraints requested by a treating physician for the medical safety of a patient.

ENDNOTES

¹ *Basic Principles for the Treatment of Prisoners*, adopted and proclaimed by the United Nations General Assembly resolution 45/111 (14 December 1990), available online.

² Massachusetts General Laws chapter 127, § 118, effective immediately, May 15, 2014. See page 17-18 of this report for the full text of the statute. (Once a bill is passed and codified, it can be referred to as a law or as a statute.)

³ Massachusetts was the 21st state to adopt a statute limiting the use of restraints on pregnant women. For more information on the issue nationally, see University of Chicago Law School International Human Rights Clinic, et al., *CAT Shadow Report: The Shackling of Incarcerated Pregnant Women* (Submitted to the United Nations in 2014), available online.

⁴ The law's protections should apply to any person who is pregnant and incarcerated, including transgender people. Because all of the information we have about people's experiences is from individuals who identify as women, we use the term "pregnant woman" to refer to any person who is pregnant and incarcerated in this report. While we believe that the state Department of Correction and county jails typically assign individuals to prison and jail based on their genitalia rather than each individual's preference, we do not have definitive information on policies and practices for every jurisdiction in the state. We are also aware that some transgender and gender-nonconforming people hide their identity while they are incarcerated, in order to protect themselves from harassment and abuse. Transgender and gender-nonconforming people face significant barriers to health care in prison and jail in addition to the barriers that all incarcerated people routinely confront. We support all individuals' access to the health care they need.

⁵ We use the term "jail" as shorthand for county jails and county Houses of Correction throughout the report. The DOC and/or Sheriffs may make other arrangements for the incarceration of women, depending on whether any given jail or prison is at or over capacity. In addition, some counties may have a few cells reserved for women who are, for example, arrested over the weekend and will not see a judge until Monday. By and large, the table reflects the current arrangement for the incarceration of women throughout the state.

⁶ *Kyiv Declaration on Women's Health in Prison*, p. v, adopted by the World Health Organization Regional Office for Europe in 2008, available online.

⁷ American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females, Committee Opinion No. 511* (2011), pp. 2-3, available online; C. Sufrin, A. Kolbi-Molinas, and R. Roth. "Reproductive Justice, Health Disparities and Incarcerated Women in the United States," *Perspectives on Sexual and Reproductive Health* vol. 47, no. 4 (2015), p. 216.

⁸ Nantucket County has not created a policy in response to the law. Their stated intent is to follow the Barnstable County policy on transportation of pregnant women.

⁹ MCI-Framingham 620(II)(10) and (11), "Special Health Care Practices/Programs for Pregnant Inmates," dated November 2014 and provided as current policy in March 2016. In response to advocacy from Prisoners' Legal Services, the DOC revised the policy to comply with the law; the new policy is dated April 2016.

¹⁰ Bristol County Sheriff's Office procedures on "Management of Pregnant Inmates," section 12.12.09, and "Hospital Room Security Procedures," (p. 10), dated 08/22/11. This document pre-dates the 2014 law. Because the sheriff's counsel supplied this document on July 28, 2015 in response to a request for records relating to the treatment of pregnant women, it appears that the sheriff's office considers it an active policy.

¹¹ These interpretations appear to rest on the statute's use of the phrase "post-delivery recuperation," which the policies generally equate with the time a woman is in the hospital. Such an interpretation requires assuming that during their hospitalization immediately after giving birth, women are being brought to court and to appointments with

medical providers that require transportation in a vehicle – contrary to common sense and practice. Instead, the plain wording of the law requires that women NOT be restrained during the drive back to the jail or prison after childbirth or during the remainder of their postpartum recovery unless extraordinary circumstances require it. In that circumstance, the only permissible restraints would be handcuffs in front. Essentially, these non-compliant policies limit an incarcerated woman’s postpartum recovery to only a day or two, after which time, on the way back to prison or jail, she is automatically handcuffed and, by most policies, can be subjected to additional restraints. The medical understanding of postpartum recovery is six weeks for an uncomplicated delivery, and the aim of the law is clearly to protect women’s health and safety throughout this period.

An additional problem exists in the state’s regulations on the use of restraints. In February 2014, then-Governor Deval Patrick issued emergency regulations to curtail county sheriffs’ use of restraints on pregnant women. The DOC, which is responsible for writing regulations that apply to the counties, later issued permanent regulations that fall short of the statute, despite the comments submitted by Prisoners’ Legal Services, the ACLU, NARAL Pro-Choice Massachusetts, and other advocacy groups in a statewide coalition advocating for the pregnancy standards law. This appears to explain why some counties have policies that mirror the regulations but violate the law, including the widespread violations of the provision on restraints during transportation back from the hospital. These regulations must be changed. 103 CMR 924.17, published in July 2014.

¹² World Health Organization, *Technical Consultation on Postpartum and Postnatal Care*, (2010). available online.

¹³ For example, prior to September 2015, DOC policy violated, ignored, or had a mixed record on almost all of the provisions dealing with the use of restraints. In response to advocacy from Prisoners’ Legal Services, the DOC substantially revised its policy so that it complies with six of eight key provisions.

¹⁴ In 2014, public opinion research found that people in Massachusetts favor prevention and rehabilitation over the “tough-on-crime” policies they supported in the past. Two-thirds of respondents support changing the criminal justice system to send fewer people to prison instead of building new prisons. S. Koczela, R. Parr, B. Forman, *Ready for Reform? Public Opinion on Criminal Justice in Massachusetts* (MassINC, 2014), p. 11. Estimated costs to incarcerate one person for one year in a county jail or a state prison range from \$37,000 to \$45,500. B. Forman and J. Larivee, *Crime, Cost, and Consequences: Is It Time to Get Smart on Crime?* (MassINC, 2013), p. 12. Both reports are available online.

“I’ve never been so uncomfortable in my life... It’s just the reality that you have to push for everything, all these things that are so basic...

I shouldn’t have to struggle to pull up my pants each day or get shoes that fit me. Yeah, it’s jail, but I am sick of that excuse. **I am a human being.”**



PRISONERS' LEGAL SERVICES
OF MASSACHUSETTS

