

Ending the Shackling of Florida's Incarcerated Pregnant Women & Girls: A Legislative Reform Approach

From Invisibility To Reality :: Reproductive Justice For Current and
Formerly Incarcerated Women and Girls
SPARK Reproductive Justice NOW Webinar



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2011 ACLU of Florida Legislative Priorities

Enact Anti-Shackling Legislation

- In most state prisons and local jails, restraints are routinely used on pregnant women inmates when they are transported; when they are in labor; during delivery; and after they have given birth
- Only six states have statutes regulating the use of restraints on pregnant women: California, Illinois, New Mexico, New York, Texas, and Vermont
- In Florida, no such law exists, although the Department of Corrections regulations limit the use of shackling at the discretion of DOC personnel
- This routine use of restraints on pregnant women, particularly those who are in labor and giving birth, poses unique health risks to the woman and her pregnancy
- Moreover, it constitutes a cruel, inhumane and degrading practice that is not justified by blanket assertions of security concerns
- **Legislative Goal:** Schedule a hearing this year on legislation that will prohibit the shackling of female prisoners during labor and delivery

Florida Anti-Shackling Legislation

- In November 2010, ACLU-FL Staff testified around the state at County Legislative Delegation hearings highlighting our 2011 Legislative Priorities
- At the Duval County Legislative Delegation hearing in Jacksonville, Florida State Senator Anthony Hill (D-1) took an immediate interest to carrying this legislation
- In December, 2011 - a model legislation bill was sent to he and his staff for consideration
- Myself and our Legislative/Public Policy Staff worked closely with Senator Hill to refine, draft and prepare the legislation for the 2011 Legislative Session, which would begin in March 2012

Does Shackling Occur In Florida?

- Florida is among the states that do not legally prohibit or restrict the use of shackles in state prisons during the third trimester, labor, and post-partum recovery
- Although Florida's corrections policy places minimal restrictions on shackling a woman during labor, it does not go far enough to protect incarcerated women and their pregnancies, and most of all does not bear the force of law
- The shackling of pregnant inmates takes place at one facility (Broward) in the Florida Department of Corrections; until just recently Lowell Correctional facility did as well

Florida Anti-Shackling Legislation

Testimonials:

Jane Doe 1, an inmate at the Collier County Jail, wrote that when she was transported from the jail to the Naples Birth Center to give birth, the Corrections Officer first “only handcuffed my right foot to the bed rail. In the process of inducing my labor there was a shift change and two C.O. [Corrections Officer] ladies came and they cuffed my hand and my foot to rails on the hospital bed. *When my contractions started to set in the nurse requested that they remove my handcuffs completely. Instead they cuffed both my hands to the bed rail. When the doctor told me to pull up on my legs to push the baby out and I said I couldn’t and held my hands out as [sic] far as I could. The C.O.’s did nothing. I also was not allowed to hold my baby for a while after he was born because I was to be handcuffed at all times. . . I cried... I wasn’t able to hold [my son] until 2 hours later when I was in the wheel chair being transported to the post partum floor. I was handcuffed to the wheelchair and my two feet for the journey...There was never a time when I wasn’t cuffed. I talked the C.O.s into just letting my feet be cuffed in the bed and when I showered. I felt bad for the nurse changing my undies and pads because the C.O.s wouldn’t uncuff me.”*

Florida Anti-Shackling Legislation

Testimonials:

- **Jane Doe 2, an inmate at the Hillsborough County Jail, wrote that her “mucus plug broke and water broke 1 wk before they would take me to the doctor. I had a dry birth and hemorrhaged [sic] after the birth, almost lost my baby. I asked for an epidural and they hit my spine and retried it – it did not work.”** Jane Doe 2 wrote that she was *“shackled and handcuffed all during labor and delivery.”*
- **Jane Doe 3, an inmate at the Lake County Jail, writes that she “was bleeding in my cell for 3 days they would not let me see a doctor. . . . When they finally got me to a hospital [Florida Hospital Waterman] a hospital midwives [sic] delivered my son moments later.”** Jane Doe 3 wrote that she was shackled *“the whole time – during transport, labor, delivery and afterwards.”*

Proposed FL Legislation

SB 1086 (Hill) and HB 779 (Reed) entitled the “Healthy Pregnancies for Incarcerated Women Act.” related to the Shackling of incarcerated women

- The bill proposed the following:
 - (a) A corrections official may not use restraints on a prisoner known to be pregnant, including during labor, transport to a medical facility, delivery, and postpartum recovery, unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance,. except that:
 - 1. If the doctor, nurse, or other health care professional treating the prisoner requests that restraints not be used, the corrections official accompanying the prisoner shall immediately remove all restraints; and
 - 2. Under no circumstances shall leg or waist restraints be used on any prisoner who is in labor or delivery.

Proposed FL Legislation

- (b) If restraints are used on a prisoner pursuant to paragraph (a):
 - 1. The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and
 - 2. The corrections official shall make written findings within 10 days as to the extraordinary circumstance that dictated the use of the restraints.
- These findings shall be kept on file by the correctional institution for at least 5 years and be made available for public inspection, except that the identifying information of a prisoner may not be made public without the prisoner's prior written consent.

Proposed FL Legislation

Our legislation also contained several other important components:

- Applied to city and county jail facilities
- Included juvenile detention facilities*
- Included immigrant women*

*Each of these provisions were amended out as the bill progressed through the Senate

Florida Anti-Shackling Legislation

Legislative Strategy:

- Identify bill authors and sponsors
- Provide draft/model legislation (bill text)
- Draft talking points for Legislators to use at committee hearings
- Lobby other committees members and their leadership for support of the bill
- Present testimonials from current and formerly incarcerated women
- Secure credible medical and correctional experts to testify in support
- Obtain a favorable hearing on this legislative proposal

Florida Anti-Shackling Legislation



Legislative Process/Achievements:

- SB1086 - Anthony “Tony” Hill (D-1/Jacksonville)
- Championed by a Minority Democrat Whip, about to tenure out of the FL Legislature; stalwart advocate on felon re-enfranchisement
- Introduced February 15, 2011; First Action on March 8, 2011
- Literally sailed through the State Senate
- Passed through all four (4) committees with unanimous support
- No real opposition; whispers of behind the scenes opposition by the FL Department of Corrections
- Passed Senate April 29, 2011; Sent To Messages in House

Florida Anti-Shackling Legislation

Legislative Process/Achievements/Struggles:



- HB 779 – Betty Reed (D-59/Tampa)
- Introduced February 16, 2011; First Action on March 2, 2011
- Championed by a long-time advocate for civil rights and felon re-enfranchisement
- Made admirable progress throughout the House
- Initially struggled to get a hearing, but passed all committees in House
- Faced some “alleged” private opposition by the Department of Corrections, but DOC never testified in committee against the bill
- The bill never got the special order for a second reading, and therefore never made it to the floor for consideration
- Died on Second Reading Calendar on May 7, 2011

Progress Made

The ACLU of Florida successfully initiated a legislative effort to ban the shackling or restraint incarcerated woman and girls during childbirth and for related medical care

- This bill won unanimous support in the Florida Senate
- This bill passed each of its House Committees
- This is a major accomplishment since it usually takes three to five years to pass a new law

Next Steps:

- Representative Reed's office was contacted by the DOC and *told* that the internal DOC policy now prohibits the use of shackling and restraints for pregnant incarcerated women
- We would like to see this prohibition placed in statute and that it apply to city/county jails as well as juvenile detention facilities
- We plan to reintroduce these bills in 2012

Acknowledgements

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- Dr. Danielle Prendergast, Public Policy Director
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Conclusion

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