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Title: Oppose Shackling of Incarcerated Women During Labor

Introduced by: Brent Oldham for the Medical Student Section

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Referred to: Reference Committee A

House Action: **APPROVED AS AMENDED**

Whereas, 111,495 of the 1.5 million prisoners under federal and state correctional authorities are women, and an estimated six to 10 percent of these women are pregnant while incarcerated¹, and

Whereas, the Federal Bureau of Prisons banned correctional officers from shackling pregnant women during labor, delivery, or postpartum care unless there is reasonable belief that the inmate poses an imminent threat to herself or others with no other option to subdue her², and

Whereas, the main justifications for shackling are maintaining security and decreasing flight risks, but there is no data to support this reasoning^{3,4}, and

Whereas, there have been no successful escapes by pregnant incarcerated women who were not shackled during birth due to the constant presence of a correctional officer^{3,4}, and

Whereas, 63 percent of incarcerated women at the state level and 96 percent of incarcerated women at the federal level in 2016 were nonviolent offenders and not considered flight risks², and

Whereas, shackling policies that consider the differences between men and women recognize that the shackling of female inmates is less necessary³, and

Whereas, pregnant women who are restrained during birth have an increased risk of falls, hemorrhage, and placental abruption that may result in consequences to themselves and their fetus^{5,6}, and

Whereas, shackling women while giving birth can limit movement leading to increased discomfort, longer and more painful labor, and delay of lifesaving medical measures⁷, and

Whereas, approximately three quarters of incarcerated women have psychiatric illnesses, including depression and posttraumatic stress disorder, with the act of shackling exacerbating these and other disorders⁸, and

Whereas, Amnesty International states that the use of restraints with pregnant incarcerated women is a cruel and inhumane practice⁸, and

Whereas, the American College of Obstetricians and Gynecologists supports policies that limit the use of restraints during labor and delivery as well as policies that give physicians the authority to remove restraints as needed to ensure patient safety⁹, and

Whereas, 22 states in the United States have already adopted policy to prohibit shackling of pregnant women⁸, and

54 Whereas, during the 2017-2018 session, federal legislation (S.3225 - Stop Shackling and Detaining
55 Pregnant Women Act) was introduced to "ensure the humane treatment of pregnant women by reinstating
56 the presumption of release and prohibiting shackling, restraining, and other inhumane treatment of
57 pregnant detainees"¹⁰; therefore be it
58

59 RESOLVED: That MSMS supports the least restrictive restraints necessary when a correctional facility,
60 detention center, or jail has actual or constructive knowledge that an inmate is in the second or third
61 trimester of pregnancy. MSMS opposes the use of restraints on an inmate who is in labor, delivering her
62 baby, or recuperating from the immediate delivery unless there are compelling grounds to believe the
63 inmate presents:

- 64 1. An immediate and serious threat of harm to herself, staff or others; or
- 65 2. A substantial flight risk and cannot be reasonably contained by other means.

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67 If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints
68 necessary to ensure safety and security shall be used.
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71 WAYS AND MEANS COMMITTEE FISCAL NOTE: \$1,000 or more for costs related to the adoption of new or
72 revised MSMS or AMA policy.

Relevant MSMS Policy: None

Relevant AMA Policy:

Shackling of Pregnant Women in Labor H-420.957

1. Our AMA supports language recently adopted by the New Mexico legislature that "an adult or juvenile correctional facility, detention center or local jail shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the 2nd or 3rd trimester of pregnancy. No restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents:

- An immediate and serious threat of harm to herself, staff or others; or
- A substantial flight risk and cannot be reasonably contained by other means.

If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints necessary to ensure safety and security shall be used."

2. Our AMA will develop model state legislation prohibiting the use of shackles on pregnant women unless flight or safety concerns exist.

¹ Glenn A. Shackling women during labor: a closer look at the inhumane practice still occurring in our prisons. *Hastings Women's Law Journal*. 2018;29(2):199-222.

² King, L. Labor in chains: the shackling of pregnant inmates. *Policy Perspectives*. 2018;25:55-68.

³ Griggs CL. Birthing barbarism: the unconstitutionality of shackling pregnant prisoners. *Journal of Gender, Social Policy, and the Law*. 2011;20(1):248-271.

⁴ Feinauer E, Lee A, Park J, Walker T. The shackling of incarcerated pregnant women: a human rights violation committed regularly in the united states. Chicago, IL: International Human Rights Clinic. 2013.

⁵ Sufrin C. Pregnancy and postpartum care in correctional settings. *National Commission on Correctional Health Care*. 2014;1-9.

⁶ Clarke JG, Simon RE. Shackling and separation: motherhood in prison. *AMA Journal of Ethics*. 2013;15(9):779-785.

⁷ Committee Opinion No. 511: health care for pregnant and postpartum incarcerated women and adolescent females. *Obstetrics and Gynecology*. 2011;118(5):1198-1202.

⁸ Ferszt GG, Palmer M, McGrane C. Where does your state stand on shackling of pregnant incarcerated women? *Nursing for Women's Health*. 2018;22(1):17-23.

⁹ American College of Obstetricians and Gynecologists. Incarcerated women.

¹⁰ Stop shackling and detaining pregnant women act. S.3225, 115th Congress. 2018.