

“At no time shall a woman who is in labor be shackled”

California Penal Code §6030(f)



STOP SHACKLING:

A report on the written policies of California’s counties on the
use of restraints on pregnant prisoners in labor

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TABLE OF CONTENTS

1. Introduction	1
2. California Penal Code sections 5007.7 and 6030(f)	2
3. Methodology.....	3
4. Main findings	4
5. Additional findings regarding shackling	5
6. Findings on other regulations about pregnant prisoners.....	6
7. Recommendations.....	7
8. Conclusion	9

APPENDIX 1: Spreadsheet of counties

APPENDIX 2: Sample language

1. Introduction.

Legal Services for Prisoners with Children (LSPC) is concerned with the welfare and rights of pregnant California prisoners. In 2005, LSPC worked with Assemblywoman Sally Lieber to enact legislation that prohibits the shackling of pregnant prisoners in labor, during childbirth and during recovery from childbirth. (California Penal Code sections 5007.7, 6030(f).) Shackling a prisoner in labor or childbirth subjects her to unnecessary pain and the risk of physical harm, discomfort and humiliation. Unless such a prisoner presents a security or flight risk, her shackling is a violation of the Eighth Amendment proscription against cruel and unusual punishment. (*Nelson v. Norris* (8th Cir. 2009) 583 F.3d 522.)¹

In 2007, LSPC contacted 55 county jails by telephone to determine whether they were aware of the new law and whether they were shackling pregnant women in labor. In 2008, LSPC mailed a written survey to California's jails to determine their use of shackling of pregnant women in labor and received 22 responses.

In 2009, LSPC embarked on a project to determine whether all 58 California counties have drafted written policies on the shackling of prisoners in labor, as mandated by that legislation. While many counties have, a surprisingly large number have not. Several counties wrote mandatory policies only in response to our inquiry. Other counties failed to reply to our requests.

This report explains the relevant statute and related regulations, describes our efforts to obtain documentation from the counties, outlines our findings, and sets forth our recommendations for additional legislation, regulation and research.

¹ Shackling women in labor and childbirth also contravenes broad protections afforded to pregnant and birthing women under international human rights law. (See Sichel, Dana L., "Giving Birth in Shackles: A Constitutional and Human Rights Violation," *Journal of Gender, Social Policy and the Law*, Vol. 16:2, at 223, 239-255 (2008).)

2. California Penal Code sections 5007.7 and 6030(f).

In 2005, AB 478 was enacted into law, codifying certain protections and legal rights for pregnant women incarcerated in state and county correctional facilities. The law (California Penal Code section 6030(f)) sets forth minimum standards which prohibit the shackling of women in labor. It provides that “at no time shall a woman who is in labor be shackled by the wrists, ankles, or both, including during transport to a hospital, during delivery, and while in recovery after giving birth,” subject to limited exceptions.²

AB 478 went into effect on January 1, 2006. Cal. Penal Code section 6030(a) mandated that the Correctional Standards Authority (hereinafter “CSA”) establish these standards for state prisons by January 1, 2007. That section also mandated that the CSA establish these standards for county jails, but did not set a time deadline.

The CSA wrote these minimum standards into Title 15 to apply to the state prisons. (Title 15, Division 3 (*Adult Institutions, Programs and Parole*), section 3268.2(b)(5).) However, instead of also writing these minimum standards into Title 15, Division 1 (*Minimum Standards for Local Detention Facilities*) to apply to county jails, the CSA instead directed each jail facility in each county to incorporate these minimum standards into their own facilities’ policies and procedures manuals.³ No time deadline was given for the counties to accomplish this directive.

² The exceptions are provided in California Penal Code section 5007.7 (a part of AB 478 addressing state *prisons*), which states: “Pregnant inmates temporarily taken to a hospital outside the prison for the purposes of childbirth shall be transported in *the least restrictive way possible, consistent with the legitimate security needs of each inmate*. Upon arrival at the hospital, once the inmate has been declared by the attending physician to be in active labor, the inmate shall not be shackled by the wrists, ankles or both, *unless deemed necessary for the safety and security of the inmate, the staff, and the public.*” [Emphasis added.]

³ The *Minimum Standards for Local Detention Facilities*, Title 15—Crime Prevention and Corrections, Division 1, Chapter 1, Subchapter 4, Section 1029, “Policy and Procedures Manual” provides:

Facility administrator(s) shall develop and publish a manual of policy and procedures for the facility. The policy and procedures manual shall address all applicable Title 15

Because LSPC is concerned that this anti-shackling law be implemented, we decided to find out whether its terms had been incorporated into the policies and procedures manual of each county.

3. Methodology.

On July 22, 2009, LSPC mailed letters to all 58 counties, requesting a copy of their policies on the use of restraints on pregnant women. If a county did not have a written policy, we requested that it draft one. We also requested copies of “any written material on the regulations and rights of pregnant prisoners in your facility.” We provided the counties with the applicable Penal Code sections.

On September 15, 2009, we mailed a follow-up letter to the counties we had not heard from. We again requested their policy on the use of restraints on pregnant women and asked them to reply by October 9. We also repeated our request for written materials on pregnant prisoners generally. By October 6, we had received replies from 27 out of 58 counties.

Starting on October 12, we began phoning the Sheriff’s Departments of the remaining counties. By December 7, we had received replies from 46 counties.

and Title 24 regulations and shall be comprehensively reviewed and updated at least every two years. Such a manual shall be made available to all employees.

(a) The manual for Temporary Holding, Type I, II and III facilities shall provide for, but not be limited to, the following

.

(4) Policy on the use of restraint equipment, including the restraint of pregnant inmates as referenced in Penal Code Section 6030(f).

4. Main findings from this survey of 58 California counties.

We have reviewed all of the written policies and other communications we received from the various counties and found:

- **33 counties have a written policy addressing shackling of pregnant women in labor, childbirth or recovery**
- **13 counties have *no* written policy addressing these issues**
- **12 counties did not respond at all.**

We studied the written policies of the 33 counties which have them to determine whether or not they were in compliance with Penal Code section 6030(f). In our view, “compliance” means that all of the elements of that statute are present in the written regulation. In contrast, a county’s written policy is “not in total compliance” if one or more elements of the statute are missing or are stated inaccurately. We determined that:

- **17 counties’ written policies are *in compliance*.**
- **16 counties’ written policies are *not in total compliance*.**

Appendix 1, attached to this report, lists each county alphabetically and indicates which category it falls into.

Thus, on the basis of our survey, we can verify that only 17 of 58 counties (less than a third) are in compliance with section 6030(f) four years after it went into effect. These include San Bernardino, Alameda and Fresno counties. The 29 non-complying counties either have no written policy on shackling of pregnant women in labor (13 counties, including Los Angeles County) or their written policies do not comply with all of the specific terms of section 6030(f) (16 counties, including San Diego, Riverside and Santa Clara counties). For example, several counties list section 5007.7’s *exceptions* to section 6030’s prohibition on shackling prisoners in labor, without stating the prohibition itself, as explicitly mandated by section 6030(f) [“The standards shall provide that at no time shall a woman who is in labor be shackled . . . “]. Some counties fail to address the issue of shackling a woman while she is *in recovery* after giving birth.

Admittedly, it was sometimes difficult to make a judgment whether a county's regulations were in full or only partial compliance. At least 7 counties were in this "borderline" zone.

Seven counties are presently in the process of writing regulations based on Penal Code section 6030(f).⁴ However, if a county's draft regulations had not been approved at the time of this report, it was not considered to be in compliance.

Some counties simply quoted the relevant statutes verbatim. While we judged these counties to be in compliance, the statutory language is less readable and perhaps not the most effective way to draft a procedures manual. Other counties attempted to translate the statutory language into a more readable format. In doing so, however, they sometimes left out elements of the statute. Sometimes, a county's other regulations about shackling pregnant prisoners were inconsistent with the section 6030(f), which resulted in internally inconsistent regulations. (For example, some counties entirely prohibit leg shackling on pregnant prisoners, but 6030(f) permits it for a woman in labor under certain circumstances.) It is clear that, collectively, a lot of effort went into trying to draft language for the counties' procedures manuals, but with only limited success.

A final observation is that some counties placed these regulations in the *transportation* section of their manual, while others placed them in the *restraints* section, and a third group placed them in a section devoted to *pregnant prisoners*.

5. Additional findings regarding shackling.

In addition, we have found the following:

- **12 counties require that supervisory personnel be informed, or determine themselves, that shackles shall be used on a prisoner in labor.**⁵

⁴ Those counties are Kern, Los Angeles, Nevada, Placer, Plumas, Sonoma and Tulare.

⁵ These counties are Contra Costa, Eldorado, Madera, Mono, Monterey, San Benito,

- **8 counties require that whenever a pregnant woman in labor is shackled for security reasons an explanation of the reason be written.**⁶
- **13 counties developed a new policy based on Penal Code section 6030(f), or revised their existing policy, or are currently in the process of updating their policy, due to LSPC’s request for their written policy.**⁷

We appreciate the efforts of these counties who have clearly directed some additional attention to these issues.

Attached in Appendix 2 is some draft language taken from these policy manuals, which could be used by other counties in modifying their own policies.

6. Findings on other regulations about pregnant prisoners.

AB 478 also added Penal Code section 6030(e), subdivisions (1), (2) and (3) regarding pregnant prisoners in county jails. Under those provisions, the CSA is required to establish minimum standards for local correctional facilities mandating that pregnant women shall receive “a balanced and nutritious diet approved by a doctor; prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor; [and] information pertaining to childbirth education and infant care.”

San Bernardino, San Luis Obispo, Santa Clara, Sutter, Yolo and Yuba.

⁶ These counties are Calaveras, Eldorado, Kern, Monterey, San Benito, San Diego, San Luis Obispo and Solano.

⁷ These counties are Contra Costa, Kern, Lake, Los Angeles, Nevada, Placer, Plumas, Sacramento San Bernardino, Santa Cruz, Sonoma, Tulare and Yuba.

As in the shackling area, the CSA has delegated the drafting of these standards to the individual counties for inclusion in their Health Care Procedures Manual, except the prenatal diet requirement.⁸ A review of the materials sent to us by the counties shows that:

- **12 counties have sent us their written policy on some or all of the matters in Penal Code section 6030(e), subdivisions (1), (2) or (3).**

We cannot state definitively that no other counties have written policies on diet, vitamins, health care, and the provision of prenatal, postpartum, childbirth and infant care information to pregnant prisoners. However, the low return rate for the adoption of these mandatory regulations suggests that these important services are not being uniformly provided throughout California.

7. Recommendations.

Based on the foregoing survey results and the specific regulations we received, LSPC makes the following recommendations:

- **Legislation should not permit the CSA to delegate the regulation-writing obligation to the individual counties.**

⁸ Title 15: The Minimum Standards for Local Detention Facilities: Crime Prevention and Corrections Division 1, Chapter 1, Subchapter 4 -- 2008 regulations -- provides in section 1206 (Health Care Procedures Manual):

“The health authority shall, in cooperation with the facility administrator, set forth in writing, policies and procedures in conformance with applicable state and federal law, which are reviewed and updated at least annually and include but are not limited to: (f) provision for screening and care of pregnant and lactating women, including prenatal and postpartum information and health care, including but not limited to access to necessary vitamins as recommended by a doctor, information pertaining to childbirth education and infant care, and other services mandated by statute[.]”

With regard to Medical Diets, section 1248 provides, in part: “Pregnant women shall be provided a balanced, nutritious diet approved by a doctor. ”

- **If regulation-writing is delegated to the individual counties, the CSA should provide the counties with draft language, set a compliance deadline, require counties to provide proof of compliance, and assign a staff person to monitor this compliance.**
- **The CSA or other authority should also monitor whether or not the regulation is being complied with. Are pregnant women still being shackled while in labor? Are they receiving an adequate diet, vitamins and adequate health care? Are they being provided with the required childbirth-related information? We recommend that an investigation of these questions be launched immediately.**
- **Regulations concerning shackling during labor, childbirth and recovery should be expanded to place the determination on the need for shackling on a physician or other qualified medical personnel once the prisoner has reached the hospital. The determination of the period of time required for recovery should also be made by medical personnel.**
- **Regulations concerning shackling during labor, childbirth and recovery should be amplified to require that a written record be made of the reasons for shackling whenever it is determined that restraints are necessary.**
- **Broader legislation should be enacted to limit the shackling of pregnant women prisoners in general.**

8. Conclusion.

We at LSPC were proud of our efforts to successfully achieve the passage of AB 478. We are disheartened to discover that so many counties have failed to implement this law in the four years since its passage. We are concerned that it has been the initiative of our non-profit organization to uncover this non-compliance, rather than the state agency charged with overseeing county jails. We are available to explain our findings to any county which may dispute our assessment of its regulations.

However, we were pleased with the responsiveness of the counties who wrote or modified their regulations when prodded by our inquiries. We appreciate those counties who have gone beyond the bare minimum standards outlined in Penal Code section 6030(f) to incorporate greater protections for pregnant prisoners.

We urge the CSA and all California counties to:

- **ensure that incarcerated pregnant women receive adequate nutrition, competent prenatal care and necessary information**
- **eliminate the use of restraints on pregnant women who go into labor and give birth while incarcerated**
- **create and support alternatives to incarceration for pregnant prisoners.**

LSPC was founded in 1978, motivated by the belief that the unique needs of women prisoners are often overlooked by custodial institutions. One of our first activities was to look into the needs of incarcerated pregnant women. This survey demonstrates that these women's needs are still being slighted and that our work is unfinished.

APPENDIX 1:

Overview of the written policies of California's 58 counties

County	Counties that did not reply to our requests	Counties that have no written policy on shackling of women in labor per P.C. section 6030(f)	Counties whose written policy on shackling of women in labor is <i>not</i> in total compliance with section 6030(f)	Counties whose written policy on shackling women in labor is <i>in compliance</i> with section 6030(f)
Alameda				x
Alpine		x		
Amador			x	
Butte	x			
Calaveras				x
Colusa				x
Contra Costa			x	
Del Norte	x			
El Dorado		x		
Fresno				x
Glenn	x			
Humboldt				x
Imperial	x			
Inyo	x			
Kern		x		
Kings		x		
Lake			x	
Lassen	x			
Los Angeles		x		
Madera				x
Marin			x	
Mariposa				x
Mendocino				x
Merced	x			
Modoc	x			
Mono				x
Monterey			x	
Napa	x			
Nevada		x		
Orange	x			
Placer		x		
Plumas		x		
Riverside			x	
Sacramento			x	
San Benito				x
San Bernardino				x
San Diego			x	
San Francisco			x	
San Joaquin			x	
San Luis Obispo				x
San Mateo		x		
Santa Barbara			x	
Santa Clara			x	
Santa Cruz			x	
Shasta				x
Sierra	x			
Siskiyou	x			
Solano			x	
Sonoma		x		
Stanislaus				x
Sutter				x
Tehama		x		
Trinity			x	
Tulare		x		
Tuolumne				x
Ventura		x		
Yolo				x
Yuba			x	
	12	13	16	17

APPENDIX 2: Examples of well-written regulations

1. Calaveras County:

G.3. Pregnant inmates being transported outside the facility shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each inmate. An inmate who is in labor shall at no time be shackled by the wrist[s] or ankles or both. This shall include transport to a hospital, during delivery, and while in recovery after giving birth, except when deemed necessary for the safety and security of the inmate, the staff, and the public. All exceptions will need to be articulated in writing.

NOTE: While we have serious reservations about handcuffing pregnant women at any time, we are presenting the following counties' regulations because they have other language which we think is useful.

2. Plumas (Excerpts from Draft "Transportation and Shackling of Pregnant Prisoners"):

When using handcuffs, place them in the front. (This will allow the inmate to catch herself should she fall.)

Women in labor need to be mobile so that they can assume various positions as needed and so they can quickly be moved to an operating room. Having the woman in shackles compromises the ability to manipulate her legs into the proper position for treatment. The mother and baby's health could be compromised if there were complications during delivery such as hemorrhage or decrease in fetal heart beat. If there were a need for a C Section, the mother needs to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage to the baby.

3. San Bernardino:

17/800.00: RESTRAINT OF PREGNANT INMATES: Handcuffs shall be the only restraints used on pregnant inmates. Handcuffs shall be secured with the inmate's arms in front of the inmate's body.

Generally, restraints shall not be used on pregnant inmates in labor, during delivery, or in post partum recovery for a period determined by a physician.

Exception: Employees may use restraints on inmates during labor only if a shift supervisor deems it is necessary for the safety and security of the inmate, staff, and the public. The shift supervisor shall make his determination based on circumstances particular to that specific inmate. Employees shall not apply restraints to a pregnant inmate without approval from a shift supervisor. (Refer to Penal Code sections 5007.7 and 6030.)

4. Sutter:

J104.20 APPLYING RESTRAINTS TO PREGNANT INMATES

[1] Pregnant inmates may only be restrained with handcuffs.

[2] Pregnant inmates must be handcuffed in the front so that if they fall, they will be able to break the fall with their hands.

[3] Pregnant inmates are not to be restrained by chaining them to other inmates.

[4] Pregnant inmates are not to be restrained with leg irons.

[5] Escort officers may take other precautions, such as the use of a wheelchair, to ensure the safety of the pregnant inmate while under escort in restraints.

[6] Any pregnant inmate during any phase of labor, or while in recovery after giving birth, shall not be secured in any type of restraint unless deemed *absolutely* necessary for the safety and security of the inmate, the medical staff, and the public. If a pregnant inmate in labor is secured with any type of restraint, the Jail Commander is to be notified at the earliest opportunity.

OUR MISSION

The mission of Legal Services for Prisoners with Children is to advocate for the civil rights and empowerment of incarcerated parents, children, family members and people at risk for incarceration through responding to requests for information, trainings, technical assistance, litigation, community activism and the development of more advocates. Our focus is on women prisoners and their families, and we emphasize that issues of race are central to any discussion of incarceration.

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