

Pregnant Prisoners in Shackles

Lachelle Dufresne*

ABSTRACT

Shackling prisoners has been implemented as standard procedure when transporting prisoners in labor and during childbirth. This procedure ensures the protection of both the public and healthcare workers. However, the act of shackling pregnant prisoners violates the principles of ethics that physicians are supposed to uphold. This paper will explore how shackling pregnant prisoners violates the principle of justice and beneficence, making the practice unethical.

Keywords: Prisoners, Justice, Beneficence, Incarceration, Discrimination, Reproductive Healthcare

INTRODUCTION

Some states allow shackling of incarcerated pregnant women during transport and while in the hospital for labor and delivery. Currently, only 22 states have legislation prohibiting the shackling of pregnant women.¹ Although many states have anti-shackling laws prohibiting restraints, these laws also contain an “extraordinary circumstances” loophole.² Under this exception, officers shackle prisoners if they pose a flight risk, have any history of violence, and are a threat to themselves or others.³ Determining as to whether a prisoner is shackled is left solely to the correctional officer.⁴ Yet even state restrictions on shackling are often disregarded. In shackling pregnant prisoners during childbirth, officers and institutions are interfering with the ability of incarcerated women to have safe childbirth experiences and fair treatment. Moreover, physicians cannot exercise various ethical duties as the law constrains them. In this article, I will discuss the physical and mental harms that result from the use of restraints under the backdrop of slavery and discrimination against women of color particularly. I argue that stereotypes feed into the phenomenon of shackling pregnant women, especially pregnant women of color. I further assert that shackling makes it difficult for medical professionals to be beneficent and promote justice.

* Lachelle Dufresne, MBS Rowan Graduate School of Biomedical Science

BACKGROUND

Female incarceration rates in the United States have been fast growing since the 1980s.⁵ With a 498 percent increase in the female incarceration population between 1981 and 2021, the rates of pregnancy and childbirth by incarcerated people have also climbed.^{6,7} In 2021, over 1.2 million women were incarcerated in the United States.⁸ An estimated 55,000 pregnant women are admitted to jails each year.^{9,10} Many remain incarcerated throughout pregnancy and are transported to a hospital for labor and delivery. Although the exact number of restrained pregnant inmates is unclear, a study found that 83 percent of hospital prenatal nurses reported that their incarcerated patients were shackled.¹¹

I. Harms Caused by Shackling

Shackling has caused many instances of physical and psychological harm.

In the period before childbirth, shackled pregnant women are at high risk for falling.¹² The restraints shift pregnant women's center of gravity, and wrist restraints prevent them from breaking a fall, increasing the risk of falling on their stomach and harming the fetus.¹³ Another aspect inhibited by using restraints is testing and treating pregnancy complications. Delays in identifying and treating conditions such as hypertension, pre-eclampsia, appendicitis, kidney infection, preterm labor, and especially vaginal bleeding can threaten the lives of the mother and the fetus.¹⁴

During labor and delivery, shackling prevents methods of alleviating severe labor pains and giving birth.¹⁵ Usually, physicians recommend that women in labor walk or assume various positions to relieve labor pains and accelerate labor.¹⁶ However, shackling prevents both solutions.¹⁷ Shackling these women limits their mobility during labor, which may compromise the health of both the mother and the fetus.¹⁸ Tracy Edwards, a former prisoner who filed a lawsuit for unlawful use of restraints during her pregnancy, was in labor for twelve hours. She was unable to move or adjust her position to lessen the pain and discomfort of labor.¹⁹ The shackles also left the skin on her ankles red and bruised. Continued use of restraints also increases the risk of potentially life-threatening health issues associated with childbirth, such as blood clots.²⁰ It is imperative that pregnant women get treated rapidly, especially with the unpredictability of labor. Epidural administration can also become difficult, and in some cases, be denied due to the shackled woman's inability to assume the proper position.²¹ Time-sensitive medical care, including C-sections, could be delayed if permission from an officer is required, risking major health complications for both the fetus and the mother.²²

After childbirth, shackling impedes the recovery process. Shackling can result in post-delivery complications such as deep vein thrombosis.²³ Walking prevents such complications but is not an option for mothers shackled to their hospital beds.²⁴ Restraints also prevent bonding with the baby post-delivery and the safe handling of the baby while breast feeding.²⁵

The use of restraints can also result in psychological harm. Many prisoners feel as though care workers treat them like "animals," with some women having multiple restraints at once— including ankles, wrists, and even waist restraints.²⁶ Benidaly Rivera describes the feeling of embarrassment as she was walking while handcuffed, with nurses and patients looking on, "Being in shackles, that make you be in stress...I about to have this baby, and I'm going to go back to jail. So it's too much."²⁷ Depression among pregnant prisoners is highly prevalent. The stress of imprisonment and the anticipation of being separated from their child is often overwhelming for these mothers.²⁸ The inhumane action has the potential to add more stress,

anxiety, and sadness to the already emotionally demanding process of giving birth. Shackling pregnant prisoners displays indifference to the medical needs of the prisoner.²⁹

II. Safety as a Pretense

While public safety is an argument for using shackles, several factors make escape or violence extremely unlikely and even impossible.³⁰ For example, administering epidural anesthesia causes numbness and eliminates flight risk.³¹ Although cited as the main reason for using shackles, public safety is likely just an excuse and not the main motivator for shackling prisoners. I argue that underlying the shackling exemplifies the idea that these women should not have become pregnant. The shackling reflects a distinct discrimination: the lawmakers allowing it perhaps thought that people guilty of crimes would make bad mothers. Public safety is just a pretense.

The language used to justify the use of restraint of Shawanna Nelson, the plaintiff in *Nelson v. Correctional Medical Services*, discussed below, included the word “aggressive.”³² In her case, there was no evidence that she posed any danger or was objectively aggressive. Officer Turnesky, who supervised Nelson, testified that she never felt threatened by Nelson.³³ The lack of documented attempts of escape and violence from pregnant prisoners suggests that shackling for flight risk is a false pretense and perhaps merely based on stereotypes.³⁴ In 2011, an Amnesty International report noted that “Around the USA, it is common for restraints to be used on sick and pregnant incarcerated women when they are transported to and kept in hospital, regardless of whether they have a history of violence (which only a minority have) and regardless of whether they have ever absconded or attempted to escape (which few women have).”³⁵ In a 2020 survey of correctional officers in select midwestern prisons, 76 percent disagreed or strongly disagreed with restraining pregnant women during labor and delivery.³⁶ If a correctional officer shackles a pregnant prisoner, it is not because they pose a risk but because of a perception that they do. This mindset is attributed to select law enforcement, who have authority to use restraints.³⁷ In 2022, the Tennessee legislature passed a bill prohibiting the use of restraints on pregnant inmates. However, legislators amended the bill due to the Tennessee Sheriff Association’s belief that even pregnant inmates could pose a “threat.”³⁸ Subjecting all prisoners to the same “precautions” because a small percentage of individuals may pose such risks could reflect stereotyping or the assumption that all incarcerated people pose danger and flight risk. To quell the (unjustified) public safety concern, there are other options that do not cause physical or mental harm to pregnant women. For example, San Francisco General Hospital does not use shackles but has deputy sheriffs outside the pregnant women’s doors.³⁹

III. Historical Context and Race

A. Slavery and Post-Civil War

The treatment of female prisoners has striking similarities to that of enslaved women. Originally, shackling of female slaves was a mechanism of control and dehumanization.⁴⁰ This enabled physical and sexual abuses. During the process of intentionally dehumanizing slaves to facilitate subordination, slave owners stripped slave women of their feminine identity.⁴¹ Slave women were unable to exhibit the Victorian model of “good mothering” and people thought they lacked maternal feelings for their children.⁴² In turn, societal perception defeminized slave women, and barred them from utilizing the protections of womanhood and motherhood. During the post-Civil War era, black women were reversely depicted as sexually promiscuous and were arrested for prostitution more often than white women.⁴³ In turn, society excluded black women; they were seen as lacking what the “acceptable and good” women had.⁴⁴ Some argue that the historical

act of labeling black women sexually deviant influences today's perception of black women and may lead to labeling them bad mothers.⁴⁵

Over two-thirds of incarcerated women are women of color.⁴⁶ Many reports document sexual violence and misconduct against prisoners over the years.⁴⁷ Male guards have raped, sexually assaulted, and inappropriately touched female prisoners. Some attribute the physical abuse of black female prisoners to their being depicted or stereotyped as "aggressive, deviant, and domineering."⁴⁸ Some expect black women to express stoicism and if they do not, people label them as dangerous, irresponsible, and aggressive.⁴⁹ The treatment of these prisoners mirrors the historical oppression endured by black women during and following the era of slavery.

The act of shackling incarcerated pregnant women extends the inhumane treatment of these women from the prison setting into the hospital. One prisoner stated that during her thirty-hour labor, while being shackled, she "felt like a farm animal."⁵⁰ Another pregnant prisoner describes her treatment by a guard stating:

*"a female guard grabbed me by the hair and was making me get up. She was screaming: 'B***h, get up.' Then she said, 'That is what happens when you are a f***ing junkie. You shouldn't be using drugs, or you wouldn't be in here.'"*⁵¹

Shackling goes beyond punishing by isolation from society – it is an additional punishment that is not justified.

B. Reproductive Rights and "Bad Mothers"

As with slaves not being seen as maternal, prisoners are not viewed as "real mothers." A female prison guard said the following:

*"I'm a mother of two and I know what that impulse, that instinct, that mothering instinct feels like. It just takes over, you would never put your kids in harm's way. . . . Women in here lack that. Something in their nature is not right, you know?"*⁵²

This comment implies that incarcerated women lack maternal instinct. They are not in line with the standards of what society accepts as a "woman" and "mother" and are thought to have abandoned their roles as caretakers in pursuit of deviant behaviors. Without consideration of racial discrimination, poverty issues, trauma, and restricted access to the child right after delivery, these women are stereotyped as bad mothers simply because they are in prison.

Reminiscent of the treatment of female black bodies post-civil war and the use of reproductive interventions (for example, Norplant and forced sterilization) in exchange for shorter sentences, I argue that shackles are a form of reproductive control. Justification for the use of shackles even includes their use as a "punitive instrument to remind the prisoner of their punishment."⁵³ However, a prisoner's pregnancy should have no relevance to their sentence.⁵⁴ Using shackles demonstrates to prisoners that society tolerates childbirth but does not support it.⁵⁵ The shackling is evidence that women are being punished "for bearing children, not for breaking the law."⁵⁶ Physicians and healthcare workers, as a result, are responsible for providing care for the delivery and rectifying any physical problems associated with the restraints. The issues that arise from the use of restraints place physicians in a position more complex than they experience with regular healthy pregnancies.

C. Discrimination

In the case of *Ferguson v. City of Charleston*, a medical university subjected black woman to involuntary drug testing during pregnancy. In doing so, medical professionals collaborated with law enforcement to penalize black women for their use of drugs during pregnancy.⁵⁷ The Court held the drug tests were an unreasonable search and violated the Fourth Amendment. *Ferguson v. City of Charleston* further reveals an unjustified assumption: the medical and legal community seemed suspicious of black women and had perhaps predetermined them more likely to use drugs while pregnant. Their fitness to become mothers needed to be proven, while wealthy, white women were presumed fit.⁵⁸

The correctional community similarly denies pregnant prisoners' medical attention. In the case of *Staten v. Lackawanna County*, an African American woman whose serious medical needs were treated indifferently by jail staff was forced to give birth in her cell.⁵⁹ This woman was punished for being pregnant in prison through the withholding of medical attention and empathy.

IV. Failure to Follow Anti-Shackling Laws

Despite 22 states having laws against shackling pregnant prisoners, officers do not always follow these laws. In 2015, the Correctional Association of New York reported that of the 27 women who gave birth under state custody, officers shackled 23 women in violation of the anti-shackling laws.⁶⁰ The lawyer of Tracy Edwards, an inmate who officers shackled unlawfully during her twelve-hour labor stated, "I don't think we can assume that just because there's a law passed, that's automatically going to trickle down to the prison."⁶¹ Even with more restrictions on shackling, it may still occur, partly due to the stereotype that incarcerated women are aggressive and dangerous.

V. Constitutionality

The Eighth Amendment protects people from cruel and unusual punishment. In *Brown vs. Plata*, the court stated, "Prisoners retain the essence of human dignity inherent in all persons."⁶² In several cases, the legal community has held shackling to be unconstitutional as it violates the Eighth Amendment unless specifically justified.

In the case of *Nelson v. Correctional Medical Services*, a pregnant woman was shackled for 12 hours of labor with a brief respite while she pushed, then re-shackled. The shackling caused her physical and emotional pain, including intense cramping that could not be relieved due to positioning and her inability to get up to use a toilet.⁶³ The court held that a clear security concern must justify shackling. The court cited a similar DC case and various precedents for using the Eighth Amendment to hold correctional facilities and hospitals accountable.⁶⁴ An Arkansas law similarly states that shackling must be justified by safety or risk of escape.⁶⁵

If the Thirteenth Amendment applied to those convicted of crimes, shackling pregnant incarcerated people would be unconstitutional under that amendment as well as the Eighth. In the *Civil Rights Cases*, Congress upheld the right "to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents."⁶⁶ Section two of the Thirteenth Amendment condemns any trace or acts comparable to that of slavery. Shackling pregnant prisoners, stripping them of their dignity, and justification based on stereotypes all have origins in the treatment of black female slaves. Viewed through the lens of the Thirteenth Amendment, the act of shackling would be unconstitutional. Nonetheless, the Thirteenth Amendment explicitly excludes people convicted of a crime.

VI. Justice

As a result of the unconstitutional nature of shackling, physicians should have a legal obligation, in addition to their ethical duty, to protect their patients. The principle of justice requires physicians to take a stand against the discriminatory treatment of their patients, even under the eye of law enforcement.^{67, 68} However, “badge and gun intimidation,” threats of noncompliance, and the fear of losing one’s license can impede a physician’s willingness to advocate for their patients. The American College of Obstetricians and Gynecologists (ACOG) finds the use of physical restraints interferes with the ability of clinicians to practice medicine safely.⁶⁹ ACOG, The American Medical Association, the National Commission on Correctional Health Care, and other organizations oppose using restraints on pregnant incarcerated people.⁷⁰ Yet, legislators can adopt shackling laws without consultation with physicians. The ACOG argues that “State legislators are taking it upon themselves to define complex medical concepts without reference to medical evidence. Some of the penalties [faced by OBGYNs] for violating these vague, unscientific laws include criminal sentences.”⁷¹ Legislation that does not consider medical implications or discourages physicians’ input altogether is unjust. In nullifying the voice of a physician in matters pertaining to the patient’s treatment, physicians are prevented from fulfilling the principle of justice, making the act of shackling patients unethical.

VII. Principle of Beneficence

The principle of beneficence requires the prevention of harm, the removal of harm, and the promotion of good.⁷² Beneficence demands the physician not only avoid harm but benefit patients and promote their welfare.⁷³ The American Board of Internal Medicine Foundation states that physicians must work with other professionals to increase patient safety and improve the quality of care.⁷⁴ In doing so, physicians can adequately treat patients with the goal of prevention and healing. It is difficult to do good when law enforcement imposes on doctors to work around shackles during labor and delivery. Law enforcement leaves physicians and healthcare workers responsible not only to provide care for the delivery, but also rectify any ailments associated with the restraints. The issues arising from using restraints place physicians in a position more complex than they experience with other pregnancies. Doctors cannot prevent the application of the shackles and can only *request* officers to take them off the patient.⁷⁵

Physicians who simply go along with shackling are arguably violating the principle of beneficence. However, for most, rather than violating the principle of beneficence overtly, physicians may simply have to compromise. Given the intricate nature of the situation, physicians are tasked with minimizing potential harm to the best of their abilities while adhering to legal obligations.⁷⁶ It is difficult to pin an ethics violation on the ones who do not like the shackles but are powerless to remove them. Some do argue that this inability causes physicians to violate the principle of beneficence.⁷⁷ However, promoting the well-being of their patients within the boundaries of the law limits their ability to exercise beneficence. For physicians to fulfill the principle of beneficence to the fullest capacity, they must have an influence on law. Protocols and assessments on flight risks made solely by the officers and law enforcement currently undermine the physician’s expertise. These decisions do not consider the health and well-being of the pregnant woman. As a result, law supersedes the influence of medicine and health care.

CONCLUSION

People expect physicians to uphold the four major principles of bioethics. However, their inability to override restraints compromises their ability to exercise beneficence. Although pledging to enforce these ethical principles, physicians have little opportunity to influence anti-shackling legislation. Instead of being

included in conversations regarding medical complexities, legislation silences their voices. Policies must include the physician's voice as they affect their ability to treat patients. Officers should not dismiss a physician's request to remove shackles from a woman if they are causing health complications. A woman's labor should not harm her or her fetus because the officer will not remove her shackles.⁷⁸

A federal law could end shackling pregnant incarcerated people. Because other options are available to ensure the safety of the public and the prisoner, there is no ethical justification for shackling pregnant prisoners. An incarcerated person is a human being and must be treated with dignity and respect. To safeguard the well-being of incarcerated women and the public, it is essential for advocates of individual rights to join forces with medical professionals to establish an all-encompassing solution.

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