



Implementation of Laws Regarding Treatment of Pregnant Women in Texas County Jails: A Review of the Shackling Ban and Pregnant Inmate Care Standards

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Section I: Introduction

This report assesses the implementation of two laws passed during the 81st Texas legislature related to the care and treatment of pregnant inmates in Texas county jails. HB 3653 banned the use of restraints on pregnant inmates during childbirth, and HB 3654 required Texas county jails to write and implement procedures for the care of pregnant inmates. Both laws went into effect on September 1, 2009.

The ACLU of Texas and the Texas Jail Project (TJP) monitored the implementation of these laws in the six largest county jails in Texas: Dallas, Travis, Tarrant, Harris, El Paso, and Bexar. The ACLU of Texas and TJP visited facilities, interviewed medical and correctional staff, and collected policies, procedures, and inmate grievances to assess how the laws affected the treatment of pregnant inmates in these counties.¹

According to numbers reported by county jails to the Texas Commission on Jail Standards (TCJS), 554 pregnant inmates were held in jails on June 1, 2010, when this research was conducted.² Of these, 175, or slightly over 30 percent, were housed in the six largest jails.³ Our report therefore gives a clear picture of treatment received by nearly a third of the pregnant jail inmates in Texas and identifies problems that may be present in the other 239 facilities under the purview of TCJS.

We found strengths and weaknesses in the policies and practices used in these six county jails to implement the new laws. Taxpayers and policymakers need to know whether these laws have been successful and where there is room for

¹ For this report, the ACLU of Texas and TJP visited Dallas, Travis, Harris, and El Paso county jails, interviewed by phone the director of detention health services at Bexar County Jail, reviewed policies from Travis, Tarrant, Harris, El Paso and Bexar county jails, and reviewed inmate grievances from El Paso County Jail.

² Memorandum from the Texas Commission on Jail Standards to Matthew Simpson, Policy Strategist, ACLU of Texas (June 22, 2010) (on file with the ACLU of Texas).

³ *Id.*

improvement in the physical treatment of pregnant inmates to ensure the health of mothers and their newborn children. The report therefore describes problems with implementation, but also makes specific recommendations to ensure proper compliance.

Section II: Shackling Ban - Use of Restraints During Childbirth in County Jails

State law bans the use of restraints on a pregnant inmate during labor, delivery, and recovery from delivery. Under the law, a “county jail may not use restraints to control the movement of a pregnant woman...at any time during which the woman is in labor or delivery or recovering from delivery, unless...the use of restraints is necessary to: (1) ensure the safety and security of the woman or her infant, jail or medical personnel, or any member of the public; or (2) prevent a substantial risk that the woman will attempt escape.”⁴

Since it went into effect on September 1, 2009, the Shackling Ban seems to have eliminated or at least suppressed the most horrific uses of restraints on women in labor and delivery, including the practice of shackling together the legs of pregnant inmates or shackling their legs and/or arms to opposite bedposts. But, as detailed in this report, the new law has not completely eliminated shackling of pregnant inmates: for example, TJP continues to receive reports of shackling during labor in Dallas County Jail. The ongoing practice of shackling women during labor, delivery or recovery makes it more difficult for doctors to deliver medical care, putting the lives of both mother and child at risk.⁵

A. Problems in Implementation

Our investigation of the six largest jails uncovered a few common problems among these facilities, including an inability on the part of security personnel to

⁴ Tex. Loc. Gov't. Code Ann. § 361.082.

⁵ Amnesty Int'l, “Abuse of Women in Custody: Sexual Misconduct and the Shackling of Pregnant Women” 22 (2001), http://www.amnestyusa.org/women/custody/custody_all.pdf [hereinafter *Amnesty Int'l*].

determine whether inmates are genuinely in labor, which sometimes leads to the use of restraints on pregnant inmates. In addition, at least one facility seems to be interpreting the law incorrectly.⁶ Finally, exceptions for safety and security are being exercised and restraints are used on pregnant inmates without accountability for these decisions.

i. Recognizing When Restraints Are Prohibited

Both the routine assumption by security personnel that an inmate is faking when she claims she is in labor and the inability of security personnel to recognize when an inmate is in labor threaten the efficacy of the Shackling Ban. Security personnel often suspect that when an inmate makes a complaint, it must be a ruse. This attitude is dangerous in the context of determining whether an inmate claiming to be in labor should be restrained. As a result, security personnel may use restraints on a pregnant inmate who is genuinely in labor. At its most extreme, this line of thinking means only when an inmate arrives at the hospital and a physician makes a medical determination that the woman is actually in labor can security personnel be assured she is not lying.

Unfortunately, such attitudes on the part of security personnel can render the law largely ineffective from the time an inmate goes into labor until she arrives at the hospital or sees medical staff. For example, Dallas County Jail officials report that they automatically apply restraints during transportation to the hospital and immediately after delivery.⁷ This practice is directly contrary to the law, which prohibits shackles when an inmate is in labor and when recovering from delivery unless a security or safety issue exists.

⁶ Telephone Interview with Elisabeth Holland, Director, Project Matthew (July 25, 2010) [hereinafter *Holland Interview*].

⁷ Interview with Esmaeil Porsa, Medical Director, and Judy McDonald Pharr, Captain, Dallas County Jail, in Dallas, Texas (Aug. 11, 2011) [hereinafter *Dallas County Jail Interview*].

ii. Misinterpreting the Law

Confusion over what types of restraints state law covers also has created problems in implementation. Between March and May 2010, two inmates in Dallas County Jail reported to Elisabeth Holland, an advance practice nurse and director of Project Matthew, that while in labor, they were handcuffed on the way to the hospital. The women said that hospital staff had to ask jail staff to remove the handcuffs to draw blood and perform other routine medical procedures. When questioned, jail officials told Ms. Holland that they do not interpret the law to prohibit the use of handcuffs.⁸ However, the law clearly reads, “a municipal or county jail may not use restraints to control the movement of a pregnant woman in the custody of the jail at any time during which the woman is in labor or delivery or recovery from delivery.”⁹

Dallas County’s approach places both mother and child in unnecessary jeopardy. Handcuffs restrict a woman’s range of motion while in labor and make it difficult for doctors to deliver treatment.¹⁰ In emergencies, the time it takes for a guard to unlock and remove handcuffs could be the difference between life and death.¹¹ Because handcuffs pose many of the same dangers that other restraints do, they are not acceptable during labor, delivery, or recovery. In order to ensure that the law is properly interpreted, the word “restraint” should be defined in state law to include handcuffs.

iii. Using Exceptions to Create Loopholes

In practice, security personnel can abuse the narrow exceptions built into state law as excuses not to follow it. The Shackling Ban allows county jails to use restraints only when necessary either to “ensure the safety and

⁸ Holland Interview, *supra* note 6.

⁹ Tex. Loc. Gov’t. Code § 361.082.

¹⁰ *Id.*

¹¹ Amnesty Int’l, *supra* note 5, at 23.

security of the woman or her infant, jail or medical personnel, or any member of the public,” or to “prevent a substantial risk that the woman will attempt escape.”¹² While these are valid exceptions to ensure public safety, there is a risk that jails will rely on the exceptions as an excuse to use restraints on an inmate who poses no actual threat. To remedy the potential abuse of these exemptions, jails must be required to document the use of restraints on inmates during labor, delivery, and recovery, including a detailed description of the reason for the restraint. As a result, accountability will increase and unnecessary threats to the safety of the mother and child will decrease.

B. Recommendations

1. Security personnel must be trained to recognize labor. Security personnel cannot be expected to have extensive medical knowledge. However, to avoid liability and keep inmates healthy, security personnel should be trained to recognize medical emergencies, including the onset of labor. Security personnel can be educated through the distribution of fact sheets with key information on how to recognize labor, workshops for security staff taught by medical staff, and inclusion of this information in the initial training for security personnel.¹³ In order to increase compliance with the law, TCJS should consider adopting this training as a best practice for all Texas jails.

The ACLU of Texas and TJP further propose that all medical decisions be left to licensed medical staff. In jails where medical staff is available around the clock, security personnel should be required to notify medical staff immediately of any problems experienced by a pregnant inmate so that medical staff can determine whether the inmate is in labor even before she is transported to the hospital. In

¹² Tex. Gov’t Code § 511.009(a).

¹³ Interview with Charles Guffey, Health Services Administrator, Maria McMurray, Nurse, Victoria White, Director of Nursing, and Wendy Wisneski, Commander, El Paso County Jail, in El Paso, Texas (July 1, 2010) [hereinafter *El Paso County Jail Interview*]. (El Paso County Jail distributes fact sheets and conducts workshops taught by medical staff on a variety of different medical topics, including pregnancy.)

all jails, but most importantly in those that do not have the resources to provide 24/7 medical staff, security personnel must be educated on how to recognize labor.

2. The definition of “restraint” should be clarified. In order to make the Shackling Ban successful, the word “restraint” must be defined in state law to include handcuffs, leg irons, belly chains, or other mechanical devices. Defining “restraint” will clear up ambiguity and stop county jails from making the dangerous and illegal mistake of using handcuffs during labor, delivery, and recovery.

3. Use of restraints on pregnant inmates must be documented. The Texas Commission on Jail Standards already requires jails to provide written documentation about the decision to use restraints to control an inmate who shows signs of being a danger to himself/herself or others.¹⁴ Similar documentation should be required when county jails use restraints on pregnant inmates during labor, delivery, or recovery, and the ACLU of Texas and the TJP are currently in the process of proposing such a standard to TCJS. Mirroring the documentation required under Texas Administrative Code, section 273.6, the standard will require documentation of the events leading up to the use of restraints, justification for their use, and observations of the inmate’s behavior and condition.

Although requiring documentation does not guarantee that county jails will not abuse the exceptions built into the Shackling Ban, it will provide a record that would make monitoring compliance feasible. The jail commission could review the documentation when inspecting jails and question jails that use the “exception” in many or all cases. Non-profits could request records and review the frequency of the use of the emergency exception. Finally, jail supervisors,

¹⁴ Tex. Admin. Code § 273.6.

the Sheriff, or County officials could review the documentation to ensure the exception is not being used inappropriately.

Texas taxpayers, lawmakers, families, mothers, and children deserve transparency and accountability in the implementation of this important state law.

Section III. Pregnant Inmate Care Standards: Requiring County Jails to Create Plans for Care of Pregnant Inmates

State law requires all Texas county jails to adopt internal policies for the care of pregnant inmates, ensuring appropriate medical care, mental health care, nutritional standards, and housing and work assignments.¹⁵ As the agency in charge of monitoring jails, the Texas Commission on Jail Standards reviews and approves these internal policies and medical plans.

A. Lack of Consistency, Specificity, and Expertise in Urban Jails

The ACLU of Texas and Texas Jail Project noted several disturbing trends in the Travis, Bexar, Dallas, Tarrant, El Paso, and Harris County jails. First, internal jail policies related to pregnant inmates and required by state law vary greatly from facility to facility. Second, many policies lack specific details and fail to provide guidance to security personnel working with pregnant inmates. Third, TCJS currently lacks the expertise to ensure internal policies are medically appropriate.

i. Uneven Access to Medical Care

Through visits to county jails and review of jail policies and procedures, we identified five areas of concern: screening for pregnancy; initial access to obstetric care; access to follow-up care; access to high-risk pregnancy care; and access to emergency pregnancy care.

¹⁵ Tex. Gov't Code § 511.009(a).

Screening for Pregnancy: Identifying pregnant inmates is the essential first step in providing appropriate care. And yet, pregnancy screening practices are uneven. Bexar and El Paso County Jails screen for pregnancy during an inmate's initial health screening.¹⁶ In Bexar County Jail, all women are screened for pregnancy with a urine test unless the inmate is clearly post-menopausal or completes a refusal form.¹⁷ In El Paso County Jail, pregnancy testing is also done routinely and staff indicates that nearly 100 percent of female inmates of child-bearing age are tested.¹⁸ Harris County Jail asks inmates if they are pregnant during intake, but only administers a urine test as part of the twelve-day health check.¹⁹ Thus, the lag time between intake and pregnancy screening for inmates unaware they are pregnant stretches to almost two weeks.

The type of immediate screening conducted by Bexar and El Paso County Jails should be implemented state-wide. All Texas jails should conduct pregnancy testing on all female inmates of child-bearing age during intake, unless the inmate signs a refusal form. For the safety of the mother and the child, early identification and appropriate care should start as soon as practical.

Inmates also should have the opportunity to request pregnancy screening during incarceration. El Paso and Harris County Jails currently report offering pregnancy tests when requested.²⁰ This practice should be expanded across Texas.

¹⁶ Texas Public Information Act response from Bexar County Jail Medical Department to ACLU of Texas 1 (June 30, 2010) (on file with ACLU of Texas) [hereinafter *Bexar Public Information*]; Texas Public Information Act response from El Paso County Attorney to ACLU of Texas 13 (July 12, 2010) (on file with ACLU of Texas) [hereinafter *El Paso Public Information*].

¹⁷ Bexar Public Information, *supra* note 16, at 1.

¹⁸ El Paso Public Information, *supra* note 16, at 13; El Paso County Jail Interview, *supra* note 13.

¹⁹ Interview with Michael Seale, Medical Director, Harris County Jail in, Houston, Texas (July 17, 2010) [hereinafter *Harris County Jail Interview*].

²⁰ El Paso County Jail Interview, *supra* note 13; Harris County Jail Interview, *supra* note 19.

Initial Access to Obstetric Care: Because incarceration is stressful, it is especially important that pregnant inmates receive routine prenatal care from staff with sufficient expertise to identify and treat any complications that might pose a risk to the health of mother or child. Each of the six jails provide access to appropriate medical care, though the length of time inmates must wait for initial consultation with a doctor varies.

Travis, El Paso, Tarrant, and Dallas County Jails have established protocols to ensure that medical staff see pregnant inmates within a specific time period. Travis County schedules an appointment for pregnant inmates within seven days of intake.²¹ El Paso uses expedited sick call procedures to ensure a doctor visit within five days.²² Tarrant County generally provides for an obstetrical/gynecological visit within a week, but also has provisions allowing for medical care more quickly if complications arise.²³ Pregnant inmates in Dallas County Jail are seen by medical staff within 24 hours and are seen by an obstetrician/gynecologist within seven days.²⁴

However, Harris and Bexar County Jails have failed to establish procedures to ensure that pregnant inmates are examined by medical staff as soon as pregnancy is discovered. Although Harris County Jail has an obstetrical clinic that is open three days a week, there is no formal timeline for visits. Instead, all obstetrical care is determined on an individual basis.²⁵ Bexar County Jail has an even more vague policy: “Patients who are pregnant will be referred to the Obstetrical clinic and other relevant

²¹ Texas Public Information Act response from Travis County Sheriff to ACLU of Texas 2 (July 15, 2010) (on file with ACLU of Texas) [hereinafter *Travis Public Information*].

²² El Paso Public Information, *supra* note 16, at 34.

²³ Texas Public Information Act response from Assistant District Attorney Ashley D. Fourt to ACLU of Texas 23 (July 7, 2010) (on file with ACLU of Texas) [hereinafter *Tarrant Public Information*].

²⁴ Dallas County Jail Interview, *supra* note 7.

²⁵ Harris County Jail Interview, *supra* note 19.

agencies as early in the pregnancy as possible.”²⁶ Both policies would be strengthened by adding specific time frames for initial medical consultation.

All Texas jails should adopt policies that provide for pregnant inmates to be examined by medical staff with experience in obstetrics within the first week in jail. Proper care should begin as soon as possible to reduce the likelihood of costly complications and better ensure the safety and health of the mother and her child.

Access to Follow-Up Prenatal Care: Although the jails we reviewed had various policies related to initial health assessments for pregnant inmates, few jails had specific policies related to follow-up prenatal care during the course of the inmate’s pregnancy. Travis, Bexar, and Tarrant County Jails have no policies related to follow-up care.²⁷ El Paso and Harris County jails report that follow-up care is determined on a case-by-case basis by the treating doctor.²⁸ El Paso states in its policy that pregnant inmates will receive routine prenatal care.²⁹

Care for pregnant inmates in all of these jails could be improved by implementing more specific policies regarding follow-up prenatal care. All Texas jails should adopt policies that set out a schedule of minimum frequency for prenatal care visits in line with the American College of Obstetricians and Gynecologists (ACOG) guidelines. ACOG recommends prenatal visits once a month from the first prenatal visit until 29 weeks of

²⁶ Bexar Public Information, *supra* note 16, at 17.

²⁷ Bexar Public Information, *supra* note 16; Tarrant Public Information, *supra* note 23; Travis Public Information, *supra* note 21.

²⁸ El Paso County Jail Interview, *supra* note 13; Harris County Jail Interview, *supra* note 19.

²⁹ El Paso Public Information, *supra* note 16, at 13.

pregnancy, visits every two to three weeks from 29 to 36 weeks of pregnancy and visits once a week from 36 weeks of pregnancy onward.³⁰

High-Risk Pregnancy Care: Although prenatal follow-up care is particularly critical when a pregnancy is high risk, the jails we surveyed had widely varying approaches to treating women with high-risk pregnancies. El Paso County Jail has policies establishing appropriate services will be provided for high-risk pregnancies, including protocols for treatment of pregnant inmates with chemical addiction.³¹ At Harris County Jail, the obstetrician determines whether a pregnant inmate will be housed in the infirmary or sent to a hospital for treatment.³² Additionally, Harris County Jail provides methadone for pregnant inmates addicted to opiates or on methadone maintenance because outright disruption of methadone/opiates can cause miscarriage.³³ Bexar County Jail's Obstetrical and Specialty Clinic plans and coordinates prenatal care, relevant patient education, and anticipated delivery, along with coordinating with existing support services.³⁴ Dallas County Jail sends inmates with high-risk pregnancies to Parkland Hospital's High Risk Clinic.³⁵

However Tarrant and Travis County jails do not have specific policies related to high-risk care.³⁶ High-risk pregnancies are serious matters and specific policies clarify for medical staff and security personnel the expectations for these cases.

³⁰ Blue Cross Blue Shield of Texas, *Prenatal Care Guidelines: Subsequent Antepartum Care* (2009), <http://www.bcbstx.com/health/guidelines/prenatalwell/subsequent.htm>.

³¹ El Paso Public Information, *supra* note 16, at 13.

³² Harris County Jail Interview, *supra* note 19.

³³ *Id.*

³⁴ Bexar Public Information, *supra* note 16, at 17.

³⁵ Dallas County Jail Interview, *supra* note 7.

³⁶ Tarrant Public Information, *supra* note 23; Travis Public Information, *supra* note 21.

Emergency Pregnancy Care: El Paso County Jail has a few simple measures in place for handling emergencies such as precipitous birth or other obstetric emergencies. First, the El Paso Jail policy requires staff to monitor inmates for symptoms of toxemia, a potentially serious complication.³⁷ Second, emergency supplies (including a stretcher) and instructions (including what to do in the case of an obstetric emergency or precipitous birth) are kept in the facility, easily accessible should an emergency arise.³⁸

Along with the measures taken by the El Paso County Jail, all jails in Texas should train staff to handle emergency situations related to pregnancy. Security personnel should be empowered to assist in emergencies, along with ensuring proper medical care is available in such situations.

ii. Failure to Address Mental Health Needs

Along with policies outlining appropriate medical care for pregnant inmates, Texas jails also should have policies addressing appropriate mental health care for pregnant inmates. During our visits, jail officials reported that pregnant inmates sometimes suffer from pre-existing mental health conditions and/or post-partum depression. From our interviews of jail officials and review of jail policies, we learned that general procedures related to all inmates with mental health issues are applied to pregnant inmates.³⁹

Beyond standard care, some jails also provide care specifically tailored to pregnant inmates. El Paso and Travis County jail policies require notification of a magistrate upon identification of pregnant inmates with mental health issues to facilitate placement of the individual in a more

³⁷ El Paso Public Information, *supra* note 16, at 34.

³⁸ El Paso County Jail Interview, *supra* note 13.

³⁹ See e.g., El Paso County Jail Interview, *supra* note 13.

appropriate facility.⁴⁰ In Harris County Jail, the obstetrics and mental health clinics coordinate care, including prioritizing care and determining housing assignment.⁴¹ Bexar and Tarrant counties have no additional policies or procedures related to identification of and care for pregnant inmates with mental health issues.⁴²

For inmates with post-partum depression, urban jails in Texas follow different procedures. Harris County Jail provides for a post-partum check up at the obstetrics clinic following birth or termination of pregnancy.⁴³ El Paso County Jail staff visits all inmates every 24 hours, meaning inmates with post-partum depression would receive at least minimal checks.⁴⁴ Other counties do not have written policies related to monitoring inmates suffering from post-partum depression.

Pre-existing mental health issues are common among inmates in Texas jails, and post-partum depression is a very serious mental health issue that can impact the physical health and safety of both mother and child. County jails should therefore move toward specific and prevention-oriented policies ensuring appropriate mental health care for pregnant inmates.

iii. Widely Varying Standards for Prenatal Nutrition

Each of the large jails has a specific policy related to the diet of pregnant inmates. However, the standards vary greatly.

⁴⁰ El Paso Public Information, *supra* note 16, at 2; Travis Public Information, *supra* note 21, at 2.

⁴¹ Harris County Jail Interview, *supra* note 19

⁴² Bexar Public Information, *supra* note 16; Tarrant Public Information, *supra* note 23.

⁴³ Harris County Jail Interview, *supra* note 19.

⁴⁴ El Paso County Jail Interview, *supra* note 13.

Facility	Caloric Intake	Other Relevant Policy
El Paso County Jail ⁴⁵	4,000 calories a day	N/A
Harris County Jail ⁴⁶	2,400 calories a day	Dietician on staff for special dietary accommodations
Other County Jails	Do not specify caloric intake	Dietician approved diet or a diet consistent with “national nutritional standards”

While El Paso County Jail's 4,000-calorie diet gives pregnant inmates more calories than the standard inmate diet,⁴⁷ Harris County Jail's 2,400 calorie diet for pregnant inmates is the same as its diet for all other inmates.⁴⁸

Aside from specifying caloric intake, many of the large county jails have practices addressing the diet of pregnant inmates. El Paso County Jail reported providing pregnant inmates with prenatal vitamins.⁴⁹ Travis County Jail reported placing pregnant inmates on a special pregnancy diet. The pregnancy diet includes an evening snack and double portions of foods such as fruits, vegetables, and milk with a focus on ensuring that pregnant inmates receive sufficient fruits, vegetables, protein, and calcium. Travis County also reported giving pregnant inmates vitamins when necessary.⁵⁰ However, Travis County's written policies remain vague, calling only for a “special diet, specifically prepared to provide the

⁴⁵ El Paso Public Information, *supra* note 16 at, 38-41.

⁴⁶ Harris County Jail Interview, *supra* note 19.

⁴⁷ El Paso County Jail Interview, *supra* note 13.

⁴⁸ Harris County Jail Interview, *supra* note 19.

⁴⁹ El Paso County Jail Interview, *supra* note 13.

⁵⁰ Interview with Cindi Sassmanhausen, Lieutenant, Scott Dillon, Lieutenant, and Kathlyn Gieger, Nurse, Travis County Jail, in Del Valle, Texas (July 28, 2010) [hereinafter *Travis County Jail Interview*].

necessary and required nutritional and caloric requirements.”⁵¹ Bexar County did not report any special dietary provisions for pregnant inmates other than providing a special diet when ordered by a doctor.⁵² Tarrant County Jail policies state that pregnant inmates will be placed on a pregnancy diet and given prenatal vitamins without ever specifying what the pregnancy diet consists of.⁵³ All county jails should, in written policy, specify a diet for pregnant inmates in accordance with nationally recognized dietary standards for pregnant women.

iv. Inattention to Special Housing Needs

The county jails we surveyed use a variety of approaches for assuring appropriate housing assignments for pregnant inmates. El Paso’s policy provides that pregnant inmates should be assigned to housing appropriate to their needs.⁵⁴ Tarrant County Jail requires special housing be ordered by the obstetrician, but all pregnant inmates are housed on bottom bunks.⁵⁵ In Dallas, pregnant inmates also get assigned to a bottom bunk.⁵⁶ Harris County Jail has no formal requirement that pregnant inmates receive consideration in housing assignment.⁵⁷ Housing assignments related to medical or mental health needs are done by medical staff in Bexar, Dallas, Harris, and Travis County Jails, including assignments for pregnant inmates.⁵⁸ Bexar County Jail officials coordinate between medical and detention staff in such cases.⁵⁹ County jails should take pregnancy into consideration when making housing assignments and adopt policies to assign all pregnant inmates to a bottom bunk.

⁵¹ Travis Public Information, *supra* note 21, at 2, 3.

⁵² Bexar County Jail Interview, *supra* note 16.

⁵³ Tarrant Public Information, *supra* note 23, at 22, 23, 29.

⁵⁴ El Paso Public Information, *supra* note 13, at 30.

⁵⁵ Tarrant Public Information, *supra* note 23, at 29.

⁵⁶ Dallas County Jail Interview, *supra* note 7.

⁵⁷ Harris County Jail Interview, *supra* note 19.

⁵⁸ Bexar Public Information, *supra* note 16, at 30; Dallas County Jail Interview, *supra* note 7; Harris County Jail Interview, *supra* note 19; Travis Public Information, *supra* note 21, at 2.

⁵⁹ Bexar Public Information, *supra* note 16, at 30.

v. Lack of Clarity Regarding Work Assignments

Only El Paso and Travis County jails specifically list pregnancy in their policies as a consideration in assigning work.⁶⁰ The other jails we examined do not have policies addressing this factor specifically. At best, general policies requiring coordination between medical and security personnel might address aspects of ensuring proper work assignment for pregnant inmates. More specific policies regarding work assignments are needed to provide guidance to jail staff about how to ensure pregnant inmates are healthy.

B. Recommendations

1. Ensure consistent, proper care for all pregnant inmates incarcerated in county jails with standardized and specific policies.
2. Empower the Texas Commission on Jail Standards fully to review medical plans, speak with pregnant inmates, and generally ensure medical care is sufficient.
3. Ensure appropriate medical care for pregnant inmates by establishing policies with timelines for initial screenings, provisions for ongoing and follow-up care, and measures to address high-risk pregnancies and obstetric emergencies.
4. Ensure appropriate mental health care for pregnant inmates, including addressing existing mental health issues and monitoring inmates for post-partum depression.
5. Standardize nutritional, housing and work assignment policies to ensure the health of fetuses and newly-born children across the state,

⁶⁰ El Paso Public Information, *supra* note 16, at 19; Travis Public Information, *supra* note 21, at 3.

Section IV: Conclusion

Our review of the six largest jails brought into sharp focus the uneven implementation of the Shackling Ban and the Pregnant Inmate Care Standards. It is clear that the state of Texas has more work to do to protect the health and safety of pregnant inmates and their children.

Ensuring the safety of incarcerated mothers and their children is a task Texas should be proud to engage in. The first steps toward strong protections were taken by the authors and sponsors of HB 3653 and 3654 during the 81st Legislative Session. Now, the legislature, the Texas Commission on Jail Standards, individual county officials, and advocates must work toward proper implementation of these laws. The safety and well-being of pregnant inmates and their children requires nothing less.

Appendix A

ACLU of Texas & Texas Jail Project proposed jail standards
submitted to TCJS on Nov. 4, 2010



www.texasjailproject.org

TEXAS JAIL PROJECT

Changing Texas Jails One County at a Time



ACLU

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Proposals for Minimum Jail Standards

Petitioners: Texas Jail Project and the ACLU of Texas

Date of Submission: November 4, 2010

Proposed Rule: *RESTRAINT OF PREGNANT INMATE*

(1) Restraints, including belly chains, leg irons and handcuffs, may not be used to control the movement of a pregnant woman in the custody of the jail at any time during which the woman is in labor or delivery or recovering from delivery, unless the sheriff or another person with supervisory authority over the jail determines that the use of restraints is necessary to:

(a) ensure the safety and security of the woman or her infant, jail or medical personnel, or any member of the public; or

(b) prevent a substantial risk that the woman will attempt escape.

(2) If a determination to use restraints is made under Subsection (1):

(a) the type of restraint used and the manner in which the restraint is used must be the least restrictive available under the circumstances to ensure safety and security or to prevent escape.¹

(b) A documented observation of the inmate shall be conducted every 15 minutes, at a minimum. The observations should include an assessment of the security of the restraints and the circulation to the extremities.

(c) Documentation of use of restraints shall include, but not be limited to the following: the events leading up to the need for restraints, the time the restraints were applied, the justification for their use, the name of the individual who authorized the restraint, the name of the individual who applied the restraints, observations of the inmate's behavior and condition, the 15-minutes checks and the time the restraints were removed.

(d) Restraints shall be removed from an inmate at the earliest possible time that the inmate no longer exhibits behavior necessitating restraint. In no case shall an inmate be kept in restraints longer than 24 hours.²

Need & Purpose:

- Texas law bans the use of restraints on pregnant inmates during labor, delivery and recovery from delivery unless necessary to protect safety and security.³ Creating a

¹ Language from Tex. Local Gov't Code §361.082. Available at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.361.htm>

² Language from Tex. Admin. Code §273.6(3), (5), and (6). Available at [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=2&p_dir=&p_rloc=79309&p_tloc=&p_ploc=&pg=1&p_tac=79309&ti=37&pt=9&ch=273&rl=6&dt=&z_chk=&z_contains=](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=2&p_dir=&p_rloc=79309&p_tloc=&p_ploc=&pg=1&p_tac=79309&ti=37&pt=9&ch=273&rl=6&dt=&z_chk=&z_contains=)

standard that mirrors the law will increase awareness and compliance in Texas county jails.

- Although HB 3653, banning the shackling of pregnant inmates, went into effect on September 1, 2009, the Texas Jail Project has since then received reports of inmates being shackled while in labor in Dallas County Jail.
- Shackling of pregnant inmates is recognized by medical associations and the federal government as a practice that endangers the health of women and children:
 - The Federal Bureau of Prisons has adopted standards banning shackling during labor and delivery, with exceptions for extreme situations.⁴
 - In 2007, the American College of Obstetricians and Gynecologists stated in a letter supporting a federal ban on shackling: “[p]hysical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be,” thus gravely endangering women and their pregnancies.⁵
 - In June 2010, the American Medical Association adopted a resolution opposing the use of restraints on pregnant inmates during childbirth unless necessary to protect safety or security.⁶
- The shackling of a pregnant woman during labor and delivery poses a serious risk to the life of the fetus. Shackles severely limit a physician’s ability to respond quickly during the final stages of labor to avoid potentially life-threatening emergencies for both the woman and the fetus. For example, when an emergency C-section is necessary, a delay of only five minutes can cause permanent brain damage to the child.⁷

Existing Rules Amended: This text would be an addition to Rule §273.6 of the Tex. Admin. Code, entitled restraints.

Petitioner: Texas Jail Project and ACLU of Texas

Date of Submission: November 4, 2010

Proposed Rule: *Procedures for pregnant inmates must include an initial prenatal examination and consultation with one of the following health professionals: Obstetrician/Gynecologist, Family Physician with experience in Obstetrics, Obstetrics Registered Nurse or a Certified Nurse Midwife. The initial consultation must occur within one month of identifying the pregnancy. Procedures must also include at minimum monthly follow-up throughout the duration of the pregnancy.*⁸

Need & Purpose:

- In a 2006 investigation of Dallas County Jail, the Department of Justice reported the story of a pregnant inmate who arrived at the jail three weeks pregnant and bleeding. Medical

³ Tex. Local Gov’t Code §361.082.

⁴ “Bureau of Prisons Revises Policy on Shackling of Pregnant Inmates” on ACLU Blog of Rights. Available at <http://www.aclu.org/2008/10/20/bureau-of-prisons-revises-policy-on-shackling-of-pregnant-inmates/>

⁵ Letter from Ralph Hale, Am. Coll. Obstetricians & Gynecologists, to Malika Saada Saar, The Rebecca Project (June 12, 2007) Available at http://miwww.acog.org/departments/dept_notice.cfm?recno=18&bulletin=4631

⁶ AMA-YPS Handbook Review: HOD Reference Committee B (legislation), 1. Available at <http://www.ama-assn.org/ama1/pub/upload/mm/17/grid-b.pdf>

⁷ Dr. Patricia Garcia, Statement of Chi. Legal Aid to Incarcerated Mothers (Dec., 1998) in Amnesty Int’l, Abuse of Women in Custody: Sexual Misconduct and the Shackling of Pregnant Women 23 (2001). Available at http://www.amnestyusa.org/women/custody/custody_all.pdf

⁸ See New York State Commission of Correction, *Chairman’s Memorandum No. 2-2008 March 3, 2008*, (2008).

staff did not evaluate her for at least two months.⁹ This story illustrates the importance of creating statewide standards ensuring that pregnant inmates receive regular medical attention.

- There is an average of 501 pregnant inmates in Texas county jails every month.¹⁰ To protect the health of these women and to help ensure that they give birth to healthy babies it is critical that pregnant inmates receive prenatal care from a health professional trained in obstetrics.
- The American Public Health Association recommends that medical professionals with training and experience in obstetrics begin providing prenatal care to inmates as soon as pregnancy is identified.¹¹
- According to the American College of Obstetricians and Gynecologists, pregnant inmates are at a higher risk for poor pregnancy outcomes than women in the free world. Studies show that by providing adequate prenatal care for pregnant inmates jails can improve birth outcomes.¹²
- Medical books agree that regular prenatal care visits should be conducted once every 4 weeks during the first 28 weeks of pregnancy, once every two weeks in weeks 28-36 of pregnancy and once a week after week 36 of the pregnancy.¹³

Existing Rules Amended: To be listed under Rule §273.2(5).

Petitioner: Texas Jail Project and ACLU of Texas

Date of Submission: November 4, 2010

Proposed Rule: *High-risk pregnancies must be identified & referred to an obstetrician trained in high-risk care, sometimes called a specialist in maternal fetal medicine.*

Need & Purpose:

- According to the American College of Obstetricians and Gynecologists, pregnant inmates are at higher risk for poor pregnancy outcomes than women in the free world.
- There are many factors that often contribute to and complicate high-risk pregnancies among incarcerated women. Among these factors are a history of abusive relationships, economically disadvantaged backgrounds, substance abuse, unhealthy lifestyles prior to incarceration, tobacco use, lack of prenatal care prior to incarceration, HIV, sexually transmitted diseases, malnutrition, obesity, and increased stress, anxiety and depression due to incarceration¹⁴

Existing Rules Amended: To be listed under Rule §273.2(5).

⁹ Dallas County Jail Findings Letter 12/8/06, 16. Available at http://www.justice.gov/crt/split/documents/dallas_county_findlet_12-8-06.pdf

¹⁰ See *Pregnant Females* created by the Texas Commission on Jail Standards

¹¹ American Public Health Association (APHA), *Standards for Health Services in Correctional Institutions*, Health Services for Women (2003), 108.

¹² American College of Obstetricians & Gynecologists (ACOG), *Special Issues in Women's Health* (2005), 92, 94.

¹³ *Merck Manual of Diagnosis and Therapy*, 18th Edition, 2006. See also Lange, *2007 Current Medical Diagnosis and Treatment*, 46th Edition, Stephen J. McPhee, Maxine A Papdkis, Lawrence M. Tierney.

¹⁴ See ACOG, 92. See also APHA, 107. See also National Commission on Correctional Health Care (NCCHC), *Standards for Health Services in Jails* (2008) 106.

Petitioners: Texas Jail Project and the ACLU of Texas

Date of Submission: November 4, 2010

Proposed Rule: *Jails must have procedures to identify pregnant inmates currently on methadone treatment during the initial intake process. When a pregnant inmate is found to be on methadone treatment the inmate must immediately be placed on physician supervised methadone treatment.*

Need & Purpose:

- Many female inmates use drugs extensively prior to incarceration.¹⁵
- Withdrawal from opioids, such as heroine, can cause uterine contraction, miscarriage or early labor, endangering both the pregnant woman and the fetus.¹⁶
- Methadone treatment protects woman and child from these dangerous withdrawal symptoms and improves health and birth outcomes.¹⁷
- Methadone treatment during pregnancy does not harm the development of a baby.¹⁸
- The U.S. Department of Health and Human Services wrote in a brochure entitled *Methadone Treatment for Pregnant Women* that “[methadone maintenance] is safe for the baby [and] keeps you free from withdrawal.”¹⁹

Existing Rules Amended: To be listed under Rule §273.2(5).

¹⁵ NCCHC, 106.

¹⁶ National Advocates for Pregnant Women (NAPW), *Frequently Asked Questions about Methadone and Pregnancy*, 1. Available at http://advocatesforpregnantwomen.org/main/publications/fact_sheets/frequently_asked_questions_faq_about_methadone_and_pregnancy.php

¹⁷ Ibid. 2.

¹⁸ Ibid. 2.

¹⁹ U.S. Department of Health and Human Services. Substance Abuse and Mental Health Services Administration. *Methadone Treatment for Pregnant Women*. Publication number SMA 06-4124. 2006. Available at <http://csat.samhsa.gov/publications.aspx>

Appendix B

ACLU of Texas proposed best practices related to pregnant inmates



www.texasjailproject.org

TEXAS JAIL PROJECT

Changing Texas Jails One County at a Time



ACLU

AMERICAN CIVIL LIBERTIES UNION
of TEXAS

Best Practices Recommendations

The ACLU of Texas and the Texas Jail Project recommend that the Texas Commission on Jail Standards develop best practices in the following four areas:

- 1. Continuity of Care:** The ACLU of Texas and the Texas Jail Project often receive complaints from inmates or concerned relatives regarding continuity of care issues. Often these complaints regard the discontinuation or change of treatment prescribed by the inmate's healthcare provider before incarceration or by a doctor during a hospital visit or other offsite treatment during incarceration. When inmates receive offsite treatment, such treatment is rendered ineffective and needlessly costly if the treatment and medications prescribed are not administered or administered incorrectly. Listed below are potential continuity of care best practices:

- A record keeping system to accurately and adequately document inmate receipt of treatment and medication.¹
- Communication between an inmate's prior healthcare provider and jail medical staff.
- Distribution of medication conducted by appropriately trained medical staff.
- Routine follow-up to monitor the effectiveness and appropriateness of treatment when an inmate is placed on new medications, taken off of medications, or when treatment is changed.²
- Inmates must receive clinician ordered treatment and tests in a timely manner.³

- 2. Access to Health Care:** County jails can avoid deaths, expensive treatment for medical complications and costly litigation by providing adequate and timely treatment in response to sick calls and medical emergencies. Furthermore, the National Commission on Correctional Health Care requires that inmates have access to care for their serious medical, dental and mental health needs." NCCHC requires that this access care be timely and free from unreasonable barriers. Listed below are potential access to health care best practices:

¹ Dallas County Jail Findings Letter 12/8/06. pg. 39. Available at http://www.justice.gov/crt/split/documents/dallas_county_findlet_12-8-06.pdf

² Dallas County Jail Findings Letter 12/8/06. pg. 39.

³ National Commission on Correctional Health Care (NCCHC), *Standards for Health Services in Jails*.

- Sufficient (will depend on the size of the jail) qualified medical staff to handle medical and mental health care.⁴
- Medical decisions, including whether an inmate presents a genuine medical issue, should always be made by medical staff.⁵
- A record keeping system to document and track sick call requests.⁶
- Policies and procedures on how to triage sick calls so that they are prioritized based on the seriousness of the medical issue.⁷
- All triaging of sick calls conducted by appropriately trained medical staff.⁸
- Inmates are given regular opportunities to request health care directly from medical staff without having to communicate through guards or other jail staff.⁹
- Jail staff trained to recognize serious medical emergencies.
- Inmates with chronic conditions are seen on a routine basis to monitor their health, effectiveness of treatment, and effects of treatment.¹⁰
- Inmates are provided with information, in a format and language that they understand, about how to access health care services upon arrival at the jail.¹¹

3. Reproductive Health Care: According to the American College of Obstetricians and Gynecologists most incarcerated women are of reproductive age.¹² In order to address the needs of this population the Texas Commission on Jail Standards should adopt reproductive health care best practices. Listed below are potential reproductive health care best practices:

- Regular reproductive system evaluations for female inmates.¹³
- Access to family planning services (ex. abortion) for female inmates.¹⁴
- Adequate and appropriate screening for pregnancy during the intake of female inmates.
- Access to pregnancy tests for female inmates during incarceration.

⁴ Harris County Jail Findings Letter 6/4/2009. pg. 21. Available at http://www.justice.gov/crt/split/documents/harris_county_jail_findlet_060409.pdf.

⁵ NCCHC.

⁶ Harris County Jail Findings Letter 6/4/2009. pg. 21. See also NCCHC.

⁷ Harris County Jail Findings Letter 6/4/2009. pg. 21. See also Dallas County Jail Findings Letter 12/8/06. pg. 38. See also NCCHC, 71.

⁸ Sick calls at El Paso county jail are triaged by an RN or LVN. Based on El Paso county jail visit 7/1/10.

⁹ NCCHC requires that “all inmates have the opportunity daily to request health care.” Additionally, Harris county jail provides inmates with daily access to a locked box where they can submit written sick calls and grievances. Guards do not have access to the locked box thereby eliminating potential interference from security staff in requesting medical care. Pg.71.

¹⁰ Dallas County Jail Findings Letter 12/8/06. Available at http://www.justice.gov/crt/split/documents/dallas_county_findlet_12-8-06.pdf. pg. 37

¹¹ NCCHC requires that “information about the availability access to health care services be communicated orally and in writing to inmates on their arrival..., in a form and language they understand.” pg. 59.

¹² American College of Obstetricians & Gynecologists, *Guidelines for Women’s Health Care* (3d ed. 2007). pg. 92.

¹³ American Public Health Association, *Standards for Health Services in Correctional Institutions*, Health Services for Women (2003). pg. 107.

¹⁴ See American Public Health Association, pg. 108.

- 4. Mental Health Care for Female Inmates Postpartum:** Pregnancy presents unique challenges in providing mental health care to inmates. According to the NCCHC, due to incarceration and the immediate separation of the female inmate from her newborn child, postpartum depression may manifest itself in a variety of ways and warrants special attention from county jails housing female inmates. In order to guide county jails in dealing with these unique challenges the Texas Commission on Jail Standards should adopt best practices regarding mental health care for female inmates postpartum. Listed below are potential mental health care for female inmates postpartum best practices:
- Monitoring of inmates who have returned to county jail after giving birth for postpartum depression.
 - Access to mental health services and counseling for inmates who have returned to county jail after giving birth.

Appendix C

Sample TCJS monthly count of pregnant inmates, by county

Pregnant Females Booked In Texas County Jails for 7/1/2011

Month Total: 509

Anderson	2	Deaf Smith	1	Hutchinson	1	Motley	0	Upshur	2
Andrews	0	Delta	0	Irion	0	Nacogdoches	2	Upton	0
Angelina	1	Denton	0	Jack	0	Navarro	4	Uvalde	2
Angelina (P)	0	DeWitt	2	Jackson	0	Newton	0	Val Verde (P)	1
Aransas	2	Dickens	0	Jasper	2	Newton (P)	0	Van Zandt	0
Archer	0	Dickens (P)	0	Jeff Davis	0	Nolan	1	Victoria	2
Armstrong	0	Dimmit	0	Jefferson	2	Nueces	6	Walker	6
Atascosa	1	Donley	0	Jefferson (P)	0	Nueces (P)	1	Waller	3
Austin	0	Duval	0	Jim Hogg	0	Ochiltree	0	Ward	0
Bailey	0	Eastland	1	Jim Wells	0	Oldham	0	Washington	0
Bandera	0	Ector	13	Johnson	2	Orange	2	Webb	2
Bastrop	0	Edwards	0	Jones	1	Palo Pinto	1	Wharton	1
Baylor	0	El Paso	13	Karnes	0	Panola	0	Wheeler	0
Bee	0	Ellis	1	Kaufman	2	Parker	1	Wichita	4
Bell	22	Erath	0	Kendall	0	Parmer	0	Wilbarger	0
Bexar	19	Falls	0	Kenedy	0	Pecos	0	Willacy	0
Blanco	0	Fannin 1(P)	2	Kent	0	Polk	1	Williamson	21
Borden	0	Fannin 2(P)	0	Kerr	5	Polk (P)	0	Wilson	0
Bosque	0	Fayette	0	Kimble	0	Potter	5	Winkler	0
Bowie (P)	7	Fisher	0	King	0	Presidio	0	Wise	0
Brazoria	14	Floyd	0	Kinney	0	Rains	0	Wood	1
Brazos	4	Foard	0	Kleberg	1	Randall	14	Yoakum	0
Brewster	0	Fort Bend	8	Knox	0	Reagan	0	Young	0
Briscoe	0	Franklin	0	La Salle	0	Real	0	Zapata	0
Brooks	0	Freestone	0	Lamar	3	Red River	1	Zavala	0
Brooks (P)	1	Frio (P)	0	Lamb	0	Reeves	0	Zavala (P)	0
Brown	7	Gaines	1	Lampasas	0	Refugio	1		
Burleson	1	Galveston	8	Lavaca	0	Roberts	0		
Burnet 1(P)	5	Garza	0	Lee	0	Robertson	0		
Caldwell	0	Gillespie	0	Leon	1	Rockwall	0		
Calhoun	0	Glasscock	0	Liberty (P)	0	Runnels	0		
Callahan	0	Goliad	0	Limestone	4	Rusk	0		
Cameron	1	Gonzales	1	Limestone (P)	0	Sabine	1		
Camp	1	Gray	1	Lipscomb	0	San Augustine	0		
Carson	1	Grayson	6	Live Oak	1	San Jacinto	0		
Cass	0	Gregg	8	Llano	0	San Patricio	0		
Castro	0	Grimes	0	Loving	0	San Saba	0		
Chambers	3	Guadalupe	1	Lubbock	13	Schleicher	0		
Cherokee	0	Hale	1	Lynn	0	Scurry	2		
Childress	1	Hall	0	Madison	3	Shackelford	0		
Clay	1	Hamilton	1	Marion	0	Shelby	0		
Cochran	0	Hansford	0	Martin	0	Sherman	0		
Coke	0	Hardeman	0	Mason	0	Smith	8		
Coleman	0	Hardin	2	Matagorda	0	Somervell	4		
Collin	9	Harris	37	Maverick	1	Starr	0		
Collingsworth	0	Harrison	1	McCulloch	0	Stephens	3		
Colorado	0	Haskell (P)	0	McLennan	12	Sterling	0		
Comal	0	Hays	8	McLennan 1(P)	0	Stonewall	0		
Comanche	0	Hemphill	0	McLennan 2(P)	5	Sutton	0		
Concho	0	Henderson	8	McMullen	0	Swisher	0		
Cooke	2	Hidalgo	15	Medina	0	Tarrant	17		
Coryell	1	Hidalgo (P)	0	Menard	0	Taylor	9		
Cottle	0	Hill	0	Midland	1	Terrell	0		
Crane	0	Hockley	1	Milam	2	Terry	1		
Crockett	0	Hood	4	Mills	0	Throckmorton	0		
Crosby	0	Hopkins	0	Mitchell	0	Titus	5		
Culberson	0	Houston	0	Montague	0	Tom Green	0		
Dallam	0	Howard	0	Montgomery	14	Travis	29		
Dallas	16	Hudspeth	0	Moore	0	Trinity	0		
Dawson	0	Hunt	0	Morris	1	Tyler	1		