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PREGNANCY RISK FACTORS IN PRISON

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As the population of women's prisons rise by 1.6% each year, women have increasingly disclosed the horrific treatment and conditions while incarcerated. Incarcerated women not only face their sentenced punishment but also the hidden conditions within the institutions, such as pregnancy-risk.¹ It is the responsibility and duty of the government to ensure safe treatment for incarcerated women. However, the government has not only been negligent but also continues to fail at ensuring just treatment, regarding in providing adequate health treatment to pregnant women. Incarceration should not strip women of basic life's necessities or rights; yet, prisons allow for women to be continuously denied adequate health care designed for

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TUMCA Law & Policy Review is a platform for current undergraduate moot court participants and TUMCA (Texas Undergraduate Moot Court Association) Alumni to engage in legal scholarship. Each issue centers on a topic that article submissions must discuss in some form. The topic of this issue concerned any legal issues that arise due to prison conditions.

¹ Victoria Law, *U.S. Prisons and Jails Are Threatening the Lives of Pregnant Women and Babies* (Sept.28 2015)

pregnancies risks. Statistically, 6%-10% of women entering prison are pregnant and are faced with the risk of losing their child due to inadequate health care.²

Furthermore, women experience physical strain on the body derived from the shackles placed on their ankles, wrists, and belly. The shackling of pregnant women does not allow for physicians to adequately assess the mother nor the unborn child.³ The shackles poses threats of falling, inadequate recovery from labor, inability to move in emergency situations, and limiting their mobility all together⁴ rendering them defenseless. The shackles also limit the testing needed to determine whether inmates are experiencing pregnancy complications such as kidney infections or whether they are going into preterm labor.⁵ 28 states do not have anti-shackling policies helping pregnant women, or medical staff that is trained to determine when the restraints are necessary.⁶

The justification for the shackling of pregnant women is to ensure the safety among other inmates and themselves, to prevent attempts of escape, and to maintain equal treatment among all inmates.⁷ For instance, if there is a pregnant woman not being shackled even though she committed a serious crime while, at the same time, having a woman who is shackled but only committed a minor crime, it promotes the idea of inequality among the treatment of other women.

Pregnancy in prison has always been handled poorly such as in the case of Melissa Hall. In February 2013, Melisa Hall was pregnant, and was shackled before, during and after her pregnancy. During her checkups and child birth, even while using the restroom she had shackles on her ankles and a belly chain attached to wrist chains.⁸ The shackles left Melissa with marks and bruises, even when medical professionals ask to take the shackles off for child birth, deputies refused as it is “procedural”.⁹ A class action suit was filed with the Milwaukee County in March 2017 with 40 women who

² Barbara A. Hotelling, *Perinatal Needs of Pregnant, Incarcerated Women*, V.17(2): 37-44 J Perinat Educ. (2008)

³ Evan Feinauer et al. *THE SHACKLING OF INCARCERATED PREGNANT WOMEN: A HUMAN RIGHTS VIOLATION COMMITTED REGULARLY IN THE UNITED STATES* P.4, international Human Rights Clinic University of Chicago Law School (Aug. 2013)

⁴ Ibid.

⁵ The American College of Obstetricians and Gynecologist, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, (Nov. 2011)

⁶ American Medical Association, *An “Act to prohibit the shackling of pregnant prisoners” model state legislation*, Advocacy Resource Center (2015)

⁷ Feinauer, note 3

⁸ *Hall v. County of Milwaukee*, 2:17-cv-00379 (Mar.14.2017)

⁹ Ibid

have also been affected. Jenifer Jonson, being one of those women, joined the class action in December 2016. Jonson was pregnant to a healthy baby before being incarcerated. During her time in prison, she was refused proper medication and provided with Tylenol even when pleading about extreme cramps and contractions. In December of 2016, she went into labor giving birth to a still born child after spending only a week in jail.¹⁰ The class action consists of plaintiffs from as far back as 2011.¹¹

The recent disclosure of inadequate health treatment to pregnant women has been such an uproar that states are now looking into prison conditions for women.¹² New policies are being implemented to ensure the safety and health of inmates. Change can be seen in shackling policies in North Carolina as they have recently prohibited the shackling of women during childbirth on March 26, 2018.¹³ While this is a great step forward, there are still 28 states that do not have legislation against the shackling of pregnant women. Nonetheless, this demonstrates a trend moving away from this demeaning practice.¹⁴

The Dignity for Incarcerated Women Act was introduced by Senator Booker, Cory A. [D-NJ]¹⁵ to Congress on July 11, 2017, which would put a federal ban on shackling pregnant women. This bill also mandates that proper nutrition must be provided to pregnant women as well.¹⁶ While it is still under review, this is the type of legislation needed to get the shackling of women to stop. There are six co-sponsor senators supporting this bill: Warren, Elizabeth [D-MA], Durbin, Richard J. [D-IL], Harris, Kamala D. [D-CA], Duckworth, Tammy [D-IL], Hassan, Margaret Wood [D-NH], and Gillibrand, Kirsten E. [D-NY]. Passing this Bill would be a substantial gain in the prevention of women losing their child and prevention of harm. A petition has been made to push forward the progress of this bill with over 120,000 signatures pushing for the change of prison policies.¹⁷

Likewise, with pregnancies in prison, woman suffer from policies denying them mobility and health care.¹⁸ Shackling is policy, but legislators must acknowledge that

¹⁰ Cleve R. Wootson Jr, *jailed while pregnant: A woman claims guards ignored her pleas and killed her unborn baby*, The Washington Post (Apr. 14, 2017)

¹¹ Hall, note 8

¹² ACOG, note 5

¹³ Dan Moshenberg, *North Carolina Stops Shackling Women (Prisoners) in Childbirth*, (Mar. 27, 2018)

¹⁴ Ibid

¹⁵ 115th Congress, S.1524 - *Dignity Act* (Jul. 17th, 2017)

¹⁶ Ibid.

¹⁷ Pamela Winn, *Pass the Dignity for Incarcerated Women Act*, (Aug. 15th, 2017)

¹⁸ Feinauer, 3

shackling policies are not necessary and cause more harm than they prevent. Refusing the woman and her child the proper nutrition and medication can lead to serious affects which are preventable by simply providing adequate prenatal care and sufficient nutrition needed for both the mother and child.¹⁹

Ensuring that prisoners even while having committed serious crimes, still have basic human rights is important because being sentenced does not make women any less dignified. Submitting women to these types of conditions while they are pregnant is not necessary. Women losing their child in prison are preventable. These are the horrific conditions women submit to at trial. It is our duty as advocates not only to ensure justice happens in court, but to ensure injustice does not happen in prison.

¹⁹ ACOG, note 5