



**Women in Prison Committee Resolution to the Conference of Chief Justices to Support Opposition to Shackling Incarcerated Pregnant Women in Transportation, Childbirth and Labor
August 5, 2009**

RESOLUTION

WHEREAS, the Conference of Chief Justices was established in 1949 to, among other things, make recommendations and to bring about improvements concerning matters of importance in improving the administration of justice;

WHEREAS, the Conference of Chief Justices has established itself as the primary representative of the state courts, providing them national leadership and a national voice;

WHEREAS, through its Resolutions the Conference of Chief Justices has taken positions on policy matters of significance to the administration of justice and has made its views known, as appropriate, to the other branches of state and federal governments and to the general public on various subjects, including urging the establishment of commissions in each state to study gender bias and minority concerns in the courts;

WHEREAS, child birth is difficult and places a woman in a most vulnerable posture with little likelihood of flight, thus, by any measure, the arbitrary application of physical restraints on incarcerated women who will give birth near term or women in child birth is cruel and unusual punishment that lacks any rational basis¹;

WHEREAS, the American College of Obstetricians and Gynecologists, the American Public Health Association, the American Medical Women's Association and the American College of Nurse Midwives oppose shackling incarcerated women during labor;

WHEREAS, the Human Rights committee of the United Nations examining compliance of the member state with the Covenant on Civil and Political Rights reported on July 28, 2006, "The Committee also recommends the State party [United States] to prohibit the shackling of detained women during childbirth."²

¹ An estimated four percent of women in state prisons, three percent of women in federal prisons, and five percent of women in jail are pregnant at the time of their arrest. Jacquie Simone, "Unbinding Pregnant Inmates," posted in IndyBlog (July 9, 2009).

² [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/34d0a773a44de02bc125725a0034cbdf?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/34d0a773a44de02bc125725a0034cbdf?Opendocument)

WHEREAS, Amnesty International has criticized shackling practices by United States correctional authorities citing Rule 33 of the United Nations Standard Minimum Rules for the Treatment of Prisoners that provides:

Chains or irons shall not be used as restraints. Other instruments of restraints shall not be used except in the following circumstances:

- (a) as a precaution against escape during a transfer. . .
 - (b) on medical grounds by direction of the medical officer;
 - (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others from damaging property . . .
- (Instruments of restraint) must not be applied for any longer time than is strictly necessary.³

WHEREAS, the Federal Bureau of Prisons banned the shackling of pregnant women during transportation, labor, and delivery in 2008;

WHEREAS, in July 2009, many state or local jurisdictions have policies that allow incarcerated women to be placed in shackles while they are being transported to birthing facilities and the use of shackles and/or other restraints while incarcerated women are giving birth;

BE IT RESOLVED, that the Conference of Chief Justices in the interest of the administration of justice take whatever measures it deems appropriate to end such policies. These actions could include:

1. Passing a resolution stating that the Conference of Chief Justices opposes policies that result in the application of restraints to incarcerated pregnant women who are being transported to facilities to give birth and during labor and childbirth;
2. Publicizing its policy position on this subject through news releases to the national media and legal publications and through the publications of the National Council of State Government and the National Center of State Courts;
3. A survey by the Conference of Chief Justices to determine whether policies exist that allow the shackling of incarcerated pregnant women held in detention facilities in the fifty states and other jurisdictions represented on the Conference⁴;
4. That individual members of the Conference of Chief Justices use their judicial office to the extent they deem it appropriate to improve the administration of justice by ending the barbaric practice of imposing restraint on pregnant incarcerated women in transportation, labor, and childbirth.

³ United States of America: Rights for All, “Not Part of My Sentence” Violations of the Human Rights of Women in Custody 62 (Amnesty International March 1999)

⁴ Since 2000, four states – California, Illinois, New Mexico, and Vermont – have passed legislation restricting the unnecessary use of restraints on pregnant women in prison. (Our Time Press, Brooklyn, N.Y. (May 21-27, 2009)).