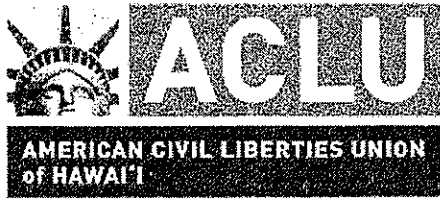


LATE TESTIMONY



Committee: Committees on Public Safety, Government Operations and Military Affairs and Health
Hearing Date/Time: Tuesday, February 8, 2011, 2:45 p.m.
Place: Conference Room 224
Re: Testimony of the ACLU of Hawaii in Support of S.B. 219, Relating to Corrections

Dear Chairs Espero and Green and Members of the Committees on Public Safety, Government Operations and Military Affairs and Health:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") urges you to support S.B. 219, which prohibits physically restraining pregnant inmates, unless extraordinary circumstances exist.

S.B. 219 protects some of Hawaii's most vulnerable women from being unnecessarily shackled when they are pregnant and in labor—a practice that not only violates a woman's dignity, but can detrimentally affect her health and the health of her pregnancy.

Preventing shackling of pregnant women is sound public health policy

Restraining a woman who is pregnant can pose unique health risks to the woman and her pregnancy. Prisoners and detainees who are restrained face an increased potential for physical harm from an accidental trip or fall, which can be harmful to the health of the woman and her pregnancy.

Unrestrained movement is especially critical during labor, delivery, and the postpartum recovery. Women often need to move around during labor and recovery, including moving their legs as part of the birthing process, and restraining a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth. In other states, women who were shackled during pregnancy were subjected to unnecessary trauma and stress during child birth. A woman imprisoned in Illinois for shoplifting recounted her experience giving birth while incarcerated:

Because I was shackled to the bed, they couldn't remove the lower part of the bed for the delivery, and they couldn't put my feet in the stirrups. My feet were still shackled together, and I couldn't get my legs apart. The doctor called for the officer, but the officer had

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Chairs Espero and Green
and Committee members
February 8, 2011
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gone down the hall. No one else could unlock the shackles, and my baby was coming but I couldn't open my legs.¹

In Wisconsin, a woman reported that while in labor she was "kept in shackles, leaving 18 inches between her ankles, and told to pace the hallway for several hours."²

Major national correctional and medical associations oppose the shackling of pregnant women. The Federal Bureau of Prisons, the U.S. Marshal Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, the American Medical Association, and the American Public Health Association have all recognized that shackling women during labor, delivery, and postpartum recovery is unnecessary and dangerous to a woman's health and well being.

Preventing shackling is a sound legal policy for Hawaii

It is cruel and unusual punishment—in violation of the Hawaii and federal constitutions—to shackle a pregnant woman during labor and delivery. Applying such restraints demonstrates a deliberate indifference to a prisoner's serious medical needs, and runs counter to long-established Supreme Court precedent protecting prisoners' 8th Amendments rights.

Furthermore, the vast majority of female prisoners in Hawaii are non-violent offenders who pose a low security risk, particularly during labor and postpartum recovery. There are no documented instances of women in labor or during delivery escaping or causing harm to themselves, security guards or medical staff.³

Shackling Pregnant Women Violates International Human Rights Law

The United Nations Human Rights Committee and the Committee Against Torture have held that shackling women during pregnancy violates the United States' obligations under international

¹ Amnesty Int'l, *Not Part of My Sentence—Violations of the Human Rights of Women in Custody*, at <http://www.amnestyusa.org/document.php?lang=e&id=D1F037D8618F4F6D8025690000692F87>.

² Press Release, Amnesty Int'l, *States' Policies Fail to Protect Women From Sexual Misconduct in Prison, Allow Shackling During Pregnancy & Labor, Amnesty International Finds* (Mar. 1, 2006) at <http://www.amnestynusa.org/document.php?lang=e&id=cngusa20060301001>

³ Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, NEW YORK TIMES, Mar. 2, 2006 at http://www.nytimes.com/2006/03/02/national/02shackles.html?_r=2&pagewanted=print&oref=slogin&oref=slogin.

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treaties ratified by the United States.⁴ The practice also violates the U.N. Standard Minimum Rules for the Treatment of Prisoners.⁵ The potential health risks associated with the practice pose serious human rights concerns. In addition, shackling pregnant women in U.S. prisons and jails marks a sharp departure from the practices of other nations.⁶

S.B. 219 presents Hawaii with an opportunity to become a national leader in supporting pregnant women. This bill demonstrates our state's commitment to supporting healthy pregnancies for all of Hawaii's women and we strongly urge your support.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney
ACLU of Hawaii

⁴ Concluding Observations of the Human Rights Committee: United States of America, 87th Sess., ¶ 33, U.N. Doc. CCPR/C/USA/CO/3/Rev. 1 (2006); U.N. Human Rights Comm., *Conclusions and Recommendations of the Committee against Torture*, ¶ 33 CAT/C/USA/CO/2 (July 23, 2006).

⁵ Standard Minimum Rules for the Treatment of Prisoners, U.N. Doc. A/CONF/1 Annex 1, E.S.C. res. 663C, U.N. ESCOR, 24th Sess., Supp. No. 1, U.N. Doc. E/3048, Rule 33(c) (July 31, 1957).

⁶ Article 3 of the European Convention on Human Rights has been interpreted by the European Court of Human Rights to proscribe the use of shackles during the hospitalization of all prisoners unless there exists a serious risk to security. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221; *see Hentaf v. France*, App. No. 65436/01 (ECHR Feb. 27, 2004); *Avci and Others v. Turkey*, App. No. 77191/01 (ECHR Apr. 16, 2007).

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LATE TESTIMONY



A sister organization of the Drug Policy Forum of Hawai'i
PO Box 61233, Honolulu, HI 96839 ~ (808) 988-4386

Dedicated to safe, responsible, and effective drug policies since 1993

TO: Senate Committees on Health & Public Safety, Government Operations,
and Military Affairs

FROM: Pamela Lichty, MPH
President

DATE: February 8, 2011, 2:45 p.m., room 224

RE: S.B. 219 RELATING TO CORRECTIONS – **IN STRONG SUPPORT**

Aloha Senators Green, Espero and members of the Committees. My name is Pam Lichty and I'm testifying in support of this measure on behalf of the Drug Policy Action Group.

I have little to say on this measure except that it should be the very epitome of a no brainer to pass this.

It's shocking and appalling that a bill to prohibit shaking pregnant woman

The bill under consideration today, which would transfer the administration of the Medical Cannabis program from the Narcotics Enforcement Division (NED) of the Department of Public Safety to the Department of Health was one of the top four priorities for the Working Group. All of the stakeholders from patients to caregivers to physicians who were surveyed believed that it was imperative to address this critical problem with Hawaii's medical marijuana program.

The program, as you are aware, has been in place since 2000, but has never been updated. In the meantime many other states plus the District of Columbia have implemented programs (fifteen in total). Only in Hawai'i and in Vermont is the program placed in a law enforcement agency. All of the other states and jurisdictions which have a registry system have it placed within their Department of Health.

Simply put, it is inappropriate that the Narcotics Enforcement Division (NED) of the Department of Public Safety remains in charge of this public health program. The mission of NED is antithetical to the aims of the program; the compassionate goals of the program, to address the suffering of people with serious medical conditions, are far more compatible with those of the Department of Health.

Moreover, the hostility of NED to the program it administers has become common knowledge among patients, physicians and caregivers alike, and their poor program management has resulted in breaches of confidentiality and waits of four months for the simple registration card ("blue card") to be issued. We will not enumerate the many problems with NED's management here. We feel certain that the Committees will hear of many personal experiences from the patients who have been continually disappointed with the attitude and the performance of NED.

In addition to specific example of problems with NED, there is a definite chilling effect when patients and physicians learn they must work with a law enforcement agency. NED has the authority to pull a physician's prescriptive authority - this makes participation in this program problematic for many doctors who are fearful of negative consequences, even if they are following the letter of the law.

NED has done the bare minimum to provide the public with information about the program and in some cases has been forced to do so by the intervention of entities like the State Ombudsman and the Office of Information Practices. In contrast, DOH has experience and expertise in doing outreach and public education to the communities they serve. They also have expertise and an excellent reputation for handling confidential medical information.

Another consideration is that the current law permits DOH to set up a process for adding new qualifying conditions. It makes more sense for one department to handle all aspects of administering this program.

We hope that if this bill move forward, and if new Administrative Rules are required, DOH will convene and consult with a well-defined and broad group of stakeholders to improve the way the program works.

As noted, on the following page the Executive Summary of the Medical Cannabis Working Group which was issued in February 2010 appears. The entire report can be found on the Drug Policy Forum of Hawai'i website: www.dpfhi.org.

Mahalo for hearing this bill and we anticipate your favorable consideration. We ask the Committees to pass this bill on to WAM with a strong recommendation for passage. Thank you for the opportunity to testify.



WOMEN'S CAUCUS

DEMOCRATIC PARTY OF HAWAII

February 1, 2011

To: Committee on Health
Committee on Public Safety

LATE TESTIMONY

From: Jeanne Ohta, Co-Chair

RE: SB 219 Relating to Corrections
Hearing: Tuesday, February 8, 2011, 2:45 p.m., Room 224

Position: Support

Good afternoon, I am Jeanne Ohta, Co-Chair of the Hawaii State Democratic Women's Party testifying in support of SB 219 Relating to Corrections.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawai'i's women and girls. It is because of this mission, the Women's Caucus strongly supports this measure which will prohibit our correctional facilities from physically restraining pregnant inmates during the third trimester and during labor unless extraordinary circumstances exist. Those extraordinary circumstances must be documented in writing.

The measure will also require that the department provide pregnant women with notice of these requirements when they assume custody and that these requirements be posted at the facilities.

In October 2009, the Eighth Circuit Court of Appeals (*Nelson v. Norris*) upheld a woman's right to sue a guard who repeatedly re-shackled her legs to her bed during the final stages of labor. The court said that it has been clearly established by the decisions of the Supreme Court and the lower federal courts that shackling pregnant women in labor violates the 8th Amendment's prohibition on cruel and unusual punishment. The court suggested that the correctional officer should have known that the medical risks of shackling were obvious and that "the shackles interfered with Nelson's medical care, could be an obstacle in the event of a medical emergency, and caused unnecessary suffering at a time when Nelson would have likely been physically unable to flee because of the pain she was undergoing and the powerful contractions she was experiencing as her body worked to give birth."

Jails and prisons use restraints on women in labor and delivery as a matter of course regardless of whether a woman has a history of violence, regardless of whether she has ever attempted to escape, and regardless of her state of consciousness.

The American College of Obstetricians and Gynecologists (ACOG) released a statement in June 2007, supporting an end to the practice of shackling mothers in labor and delivery as the practice puts the health and lives of the women and unborn children at risk.

Hawai'i currently has no formal written policy governing the use of restraints on pregnant women. The United Nations standard for the Treatment of all Prisoners, Rule 33 states that shackles should not be used on inmates unless they are a danger to themselves, their children, others or property, or have a history of absconding.

The routine use of shackles and other restraints when not medically advisable is a cruel, inhuman and degrading form of treatment in violation of both UN Convention against Torture and the International Covenant on Civil and Political Rights, both of which the United States has ratified.

We urge the committee to pass this measure so that women may retain their dignity during labor and childbirth and during obstetrician examinations. Thank you for this opportunity to provide testimony.