

TESTIMONY OF

**GARY LAPLANTE
DIRECTOR OF OPERATIONS**

**THE DEPARTMENT OF CORRECTIONS
IS OPPOSED TO**

LD 1013 "AN ACT TO PREVENT THE SHACKLING OF PREGNANT PRISONERS"

**BEFORE THE
JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**April 17, 2015
at 9AM**

Senator Rosen, Representative Fowle and members of the Criminal Justice and Public Safety Committee, I am Gary LaPlante, Director of Operations for the Maine Department of Corrections. The Department is opposed to LD 1013 "An act to prevent the shackling of pregnant prisoners."

The Department agrees that a pregnant prisoner of an adult facility or pregnant resident of a juvenile facility who is in labor, delivery, or postpartum recovery after giving birth should not be shackled. To the knowledge of the Department, this has never been an issue in Maine.

As required for ACA certification, the Department has had policies covering this subject area since February 21, 2007. The Department policies read as follows:

Mechanical restraints shall not be used on a prisoner who is determined to be in the third trimester of pregnancy or on a prisoner who is in an earlier stage of pregnancy, if the facility physician determines that medical considerations warrant restrictions on the use of restraints, unless the use of restraints is authorized by the Chief Administrative Officer, or designee, when the prisoner presents a real and immediate threat to her own safety, the safety of others, or the security of the facility. Whenever mechanical restraints are used, they shall consist only of wrist restraints without a waist belt, with the prisoner's wrists comfortably restrained in front. When the prisoner is walking, staff shall take appropriate steps to minimize the risk of a fall. Mechanical restraints shall not be used while a prisoner is in labor, during the birth process, or immediately after giving birth, unless the medical personnel who are responsible for the health care of the prisoner at that time request staff to restrain the prisoner due to a real and immediate threat to her own safety or the safety of others. The medical personnel shall determine the type and method of restraint.

Mechanical restraints shall not be used on a resident who is determined to be pregnant unless the use of restraints is authorized by the Chief Administrative Officer, or designee, when the resident presents a real and immediate threat to her own safety, the safety of others, or the security of the facility. Whenever mechanical restraints are used, they shall consist only of wrist restraints without a waist belt, with the resident's wrists comfortably restrained in front. When the resident is walking, staff shall take appropriate steps to minimize the risk of a fall. Mechanical restraints shall not be used while a resident is in labor, during the birth process, or immediately after giving birth unless the medical personnel who are responsible for the health care of the resident at that time request staff to restrain the resident due to a real and immediate threat to her own safety or the safety of others.

Also, the Department has started a review of the jail standards and will be incorporating similar provisions in those standards.

The Department is opposed to a statute being enacted to cover this subject area, but if a bill is passed, the Department sees some issues with the provisions of this particular LD.

1. As this bill is written, a prisoner or resident who is dangerous cannot be restrained if health personnel do not want restraints to be used. This means that a health professional who is seeing the prisoner/resident in the community can override the decision of the corrections professionals who are familiar with the person and the risks she poses.
2. This bill requires written documentation on the use of restraints on pregnant prisoners/residents to be available for public inspection. Even though the bill says that identifying information is not public without the consent of the person, there are so few pregnant prisoners/residents that it would not be difficult to identify the particular person involved, which would be an obvious invasion of that person's privacy. It should be sufficient that there is written documentation kept in the person's file, as is the ordinary practice.
3. This bill prevents a corrections officer from being present in the room during labor or child birth unless specifically requested by medical personnel. Again, this is allowing someone unfamiliar with safety issues and security requirements to make the decision. It should be sufficient that the corrections officer who is present is female if practicable and is situated in such a way as to respect the privacy of the pregnant person to the extent that safety and security considerations allow.

4. Given that the Department already has policies about this matter and intends to include this subject in the next revision to the jail standards, it would not appear that a statutory provision requiring rule making is required. Furthermore, providing notice to all prisoners/residents upon admission to the facility does not make sense for males.
5. Some of the terminology in the bill is confusing and contradictory to common usage in the corrections field. "Corrections official" is a confusing term. For jails, "jail administrator" is the proper term. For the Department, there is already in Title 34-A the term "chief administrative officer."

Also, "detainee" should not be restricted to a person detained under immigration laws. "Detainee" is ordinarily used in the corrections field to mean any person in a jail or departmental facility who has not been sentenced or given a juvenile disposition.

Similarly, "prisoner" (or "inmate," the term used in the jails) is not used in the corrections field to refer to juveniles. Also, the term "delinquent," while common in other states, is not used in Maine. In addition, there is no "parole" for juveniles and the few adults in Maine who are on parole or are eligible for parole are all men.