

To: Senate Judiciary Committee
From: Tiffany Smith, Attorney, Ohio Justice & Policy Center
Date: October 23, 2019
Re: Proponent Testimony for S.B. 18

Chair Eklund, Vice Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to testify today. My name is Tiffany Smith. I am an attorney at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. I primarily serve incarcerated women in Ohio. I have represented women who have been injured from falling while shackled, and I have worked with clients who have been shackled while giving birth. OJPC strongly supports Senate Bill 18, based on our clients' experiences and on our decades of expertise in criminal justice.

This commonsense bill prohibits corrections officers and law enforcement personnel from restraining or confining a woman or child at certain points during pregnancy or postpartum recovery. We believe that even people who have earned a term in jail or prison are entitled to personal safety, and that the state should avoid causing harm or medical risk to a pregnant woman or her unborn child. The unnecessary shackling and solitary confinement of pregnant women undermines these principles.

The U.S. has 4% of the world's population but over 30% of the world's incarcerated women. Per capita, the U.S. has the highest incarceration rate for women, and Ohio's rate is even higher. Forty years ago, there were 291 women behind bars in Ohio; now there are over 4,000.¹ In 2018, Ohio's total correctional population of women, from jails to prisons to community supervision, totaled approximately 11,000.²

Before entering the criminal legal system, as many as 98% of women report that they experience physical and sexual abuse, more often and for longer periods than men. Shackling pregnant women, or forcing them into solitary confinement, only exacerbates their trauma.

SB 18 addresses the unique needs of our state's most vulnerable prisoners, by limiting the use of solitary confinement for pregnant women and children. The Department of Justice has acknowledged that solitary confinement "can cause serious, long-lasting harm" and should be used only as a last resort. The negative impact of isolation on prisoners' mental health is well established³ and has been appropriately described as an effective means of driving the sane insane.⁴ Solitary confinement is especially dangerous for pregnant women – restricting access to necessary obstetric care, limiting exercise necessary to support healthy pregnancy, and exacerbating mental health and trauma. Isolation in a small cell for 23 hours a day increases

¹ <http://www.wyso.org/post/prisons-now-largest-mental-health-provider-ohio>

² Ohio Department of Rehabilitation and Correction Master Population Count, July 1, 2018, <https://www.drc.ohio.gov/Portals/0/MASTER%20POPULATION%20COUNT%20JULY99009.pdf>

³ *Solitary confinement should be banned in most cases, UN expert says*, UN News Centre, 18 Oct. 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=40097>.

⁴ *In re Medley*, 134 U.S. 160 (1890)



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the risk of preterm labor, miscarriage, and low birth weight. Further, solitary confinement is much more expensive than housing prisoners in general population units.

SB 18 also restricts the use of shackling which in Ohio involves ankle cuffs attached to belly chains attached to hard metal handcuffs. Shackling during pregnancy is medically hazardous, emotionally traumatizing, and unnecessary.⁵ Shackling inhibits walking which aids in labor, increases the risk of falling and causing injury to the mother and child, prevents the mother's ability to protect her abdomen, impedes medical professionals' ability to provide care, delays emergency responses, and limits a mother's ability to bond with her child. The use of restraints during labor and delivery is cruel and unusual punishment in violation of the Ohio and federal constitutions, poses a substantial risk for serious harm, and demonstrates deliberate indifference to a prisoner's serious medical needs.⁶

Opponents of this kind of legislation may argue that restraints prevent women from harming themselves; prevent the escape of pregnant women; and helps maintain security and public safety. However, these arguments fail. Rather than keeping anyone safe, the use of shackling and solitary confinement increases stress on a woman's body which decreases oxygen flow to the fetus without serving any legitimate public safety purpose. Women who are pregnant, in labor, or recovering postpartum are physically unable to present a flight or public-safety risk. The International Human Rights Clinic at the University of Chicago found that "[a]mong states that have restricted the shackling of pregnant women, none have reported any subsequent instances of women in labor escaping or causing harm to themselves, the public, security guards, or medical staff."⁷

SB 18 presents an opportunity to ban dangerous, inhumane, and degrading practices and to create better health outcomes for mothers and children. Moreover, it allows Ohio to save taxpayer dollars through reduced health care expenditures and reduced litigation costs and is consistent with national trends, including the federal First Step Act.⁸

In closing, I would like to leave you with a statement from one of my clients: "I was shackled for the entire birth of my son. It is in every way cruel and unusual punishment that causes damage. Meeting my son for the first time while shackled was a horror I'll never forget." I urge you to pass this important and life-saving bill. Thank you again for the opportunity to testify.

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⁵ Clarke J.G., Simon R.E., *Shackling and separation: Motherhood in prison*, *The Virtual Mentor*, 15 (9) (2013), pp. 779-785, [10.1001/virtualmentor.2013.15.9.pfor2-1309](https://doi.org/10.1001/virtualmentor.2013.15.9.pfor2-1309).

⁶ *Nelson v. Correctional Medical Services*, 583 F.3d 522, 8th Cir., 2009, *MendiolaMartinez v. Arpaio*, No. 14-15189 (9th Cir. 2016), p. 24, *Juana Villegas de la Paz v. Metro Nashville Government* – Amicus Brief (May 10, 2012), <https://www.aclu-tn.org/wp-content/uploads/2016/06/Villegas-Amicus.pdf>.

⁷ *The Shackling of Incarcerated Pregnant Women: A Human Rights Violation Committed Regularly in the United States*, University of Chicago Law School International Human Rights Clinic & Coalition, Chicago Legal Advocacy for Incarcerated Mothers and the ACLU National Prison Project, August 2013, <http://ihrclinic.uchicago.edu/sites/ihrclinic.uchicago.edu/files/uploads/Report%20-%20Shackling%20of%20Pregnant%20Prisoners%20in%20the%20US.pdf>

⁸ <https://www.firststepact.org/>