

# **BIRTH UNCHAINED:**

A case-study of SB 10-193, ending shackling of pregnant prisoners in  
Colorado

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On May 27, 2010, Colorado became the eighth state in the country to outlaw the practice of shackling pregnant prisoners during labor and delivery. With then-Governor Bill Ritter's signature on Senate Bill 193, colloquially known as "the shackling bill," Colorado joined a growing number of states expressly prohibiting the use of leg shackles and waist restraints on pregnant and laboring prisoners.

The use of shackles on pregnant and laboring prisoners is, by most estimations, the result of a criminal justice system constructed primarily for male prisoners. Requiring dangerous or violent offenders to remain shackled while they are under medical care seems logical when the prisoner in question is a strong male, or perhaps a violent offender who presents a serious flight risk upon transfer to a medical facility. But these generic shackling regulations, constructed with male prisoners in mind, don't account for the unique medical issues that arise with a pregnant woman. Further, while women make up an increasingly sizeable minority of the country's prison population, they are [statistically less likely](#) to be incarcerated for violent offenses than men, which makes them a lower security risk.

Currently, 40 states and the District of Columbia lack official policy directives regarding the shackling of pregnant prisoners. But in the past decade, anti-shackling activists have mobilized to enact policy change across the country. In 1999, Illinois passed anti-shackling legislation, the first in the country to do so. In 2008, in response to advocacy measures from groups like [The Rebecca Project for Human Rights](#), the [Federal Bureau of Prisons changed its policy](#) to prohibit shackling pregnant inmates during labor and delivery in all except the most extreme cases. By 2010, California, Vermont, New Mexico, Texas, Pennsylvania, West Virginia, [Washington](#) and [New York](#) all had anti-shackling legislation on the books. In 2011, [Idaho](#), [Virginia](#), [Rhode Island](#) and Florida each introduced anti-shackling legislation. Florida's anti-shackling bill passed out of the Senate on [a unanimous vote](#) – usually a rarity, but increasingly common for anti-shackling bills, which often benefit from bipartisan support. Backed by universal condemnation of the practice from [Amnesty International](#) and the [United Nations](#), activists are finding anti-shackling policies to be good politics, on either side of the aisle.

But in Colorado, the spark that ignited a flame of successful legislation came from a citizen – Pamela White, an editor at the regional newspaper *Boulder Weekly*. White had long been passionate about issues related to incarcerated women, and began her investigation by accompanying a nurse-midwife on regularly scheduled visits to the Denver Women's Correctional Facility (DWCF), where most of the state's pregnant prisoners are housed. White noted that the pregnant women in custody received quality prenatal care, which was a first-time experience for some of the inmates – a crystallization of the ironic fact that incarcerated individuals are the only people in America with guaranteed health care.

But while White found that pregnant prisoners received appropriate, high-quality prenatal care, she also found a shocking discrepancy in the way those pregnant prisoners were treated once they went into labor and were transported to Denver Health, the city's central urban hospital. While some women were transported and gave birth without incident, others had experiences that recalled Shawanna Nelson's – a pregnant Arkansas prisoner who was shackled by both legs and an arm at all times, except during the actual childbirth.

Nelson sought legal restitution for her treatment, and in October 2009 received a favorable [ruling by the Eighth Circuit Court of Appeals](#) that officially condemned shackling of pregnant prisoners as unconstitutional. The first ruling of its kind, the verdict in [Nelson v. Correctional Medical Services](#) provided some protection for pregnant and laboring prisoners, but only applied to those states within the Eighth Circuit's jurisdiction. Nevertheless, the ruling did provide an important precedent upon which to advance constitutional challenges to the practice of shackling, which The Court found to be cruel and unusual punishment.

Without a consistent, department-wide directive on how and when to shackle pregnant prisoners, White found that whether or not a Colorado inmate was shackled during labor depended almost entirely on the individual correctional officer in attendance. Most of the pregnant inmates arrived at Denver Health after being transported from the DWCF, a specialty location that was built, in part, to provide improved prenatal care to pregnant women.

Appalled by what she found, and motivated by a drive to improve the lives of Coloradan women, White turned her multi-year investigation into the [Boulder Weekly](#)'s cover story on February 18, 2010, titled "[Pregnant in Prison](#)." The story quickly drew additional media attention, including an [interview with Boulder independent radio station KGNU](#), where White focused on the absurdity of the policy's implied conclusion that any woman, incarcerated or not, was a serious flight risk in the midst of giving birth. White's story effectively launched a citizen-initiated movement to end the practice of shackling in Colorado correctional facilities. White remained closely connected to the issue, eventually helping to draft the language of the bill.

"Pregnant in Prison" was Colorado Sen. Evie Hudak's (D-Westminster) first introduction to the issue of shackling pregnant inmates in Colorado prisons. Sen. Hudak was so moved by the story that she agreed to sponsor SB-193, the anti-shackling bill. White and Hudak drafted the legislation together and introduced it at the Colorado Senate on April 13, 2010. That same month, Hudak spoke to [Boulder Weekly](#) on the importance of a statewide policy restricting the use of shackles on pregnant inmates.

"It's needed because it's inhumane treatment of women," Hudak told [Boulder Weekly](#). "Maybe it's based on a misunderstanding that men have, who have never been through labor and are generally in charge of the corrections system. One person said the women might escape. I think that shows a misunderstanding of how a woman feels during labor and after delivery."

It wasn't just Hudak who was spurred to action by "Pregnant in Prison." As news about the legislative effort spread, a broad, diverse coalition of bill supporters emerged to offer their perspective on the need for legislation. In addition to White's influence and credibility as an investigative journalist with strong professional connections to the DOC, the supportive coalition included faith leaders, social justice advocates, legal experts and medical professionals. Because the issue came to public attention through a private citizen, rather than as a pet issue of a partisan politician, advocates could focus on the content of the bill instead of trying to cater to specific constituent groups.

Some local advocacy groups were already aware of the need for such policy reform, and were therefore able to leverage their organizational support to further advocate for the bill. The [Colorado Organization for Latina Opportunity and](#)

[Reproductive Rights](#) (COLOR), [Luz Reproductive Justice Think Tank](#) (Luz) and the [Elephant Circle](#) had planned to take on the issue of shackling in the 2011 legislative session, but when they received news of the pending legislation, the organizations put their full support behind SB-193. Lorena Garcia, COLOR’s policy director, was crucial in organizing the diverse coalition that demonstrated broad, interdisciplinary support for the proposed policy. Garcia’s previous experience with the state legislature offered the bill’s advocates much-needed guidance on precisely *how* to navigate the legislative system, and Garcia’s existing professional relationships at the State Capitol served as direct lines to the organizations, lobbyists and elected officials who were willing and able to support the bill.

Garcia, for her part, credits the tight-knit social justice non-profit sector in Denver for the expedient and widespread support she was able to secure. White’s multi-year investigation, culminated by “Pregnant in Prison” and combined with White’s professional relationship with the DOC lent authority to White’s calls for policy reform. After “Pregnant in Prison” hit the stands, White reached out to Garcia and Luz member Indra Lusero, a law student and progressive women’s rights advocate, to seek additional support. Lusero’s legal expertise led her to raise constitutional concerns about the existing policy (or lack thereof), and highlight Colorado’s failure to protect its incarcerated citizens in this arena.

Another crucial group of advocates came along with Dr. Eliza Buyers, legislative chair for the Colorado chapter of the [American College of Obstetricians and Gynecologists](#) (ACOG). Dr. Buyers testified in support of the bill – speaking to the potential medical harm that could come to the mother and child if the mother is restrained during childbirth, but also engaged the powerful medical lobby, which lent expertise, credibility, and resources to the legislative effort.

On April 14, 2010, the Senate Judiciary Committee heard testimony on SB-193. As originally written, the bill prohibited outright the use of restraints on prisoners in their third trimester and during labor, and more broadly prohibited shackling a pregnant inmate once she had gone into labor, even during transport to a medical facility. Members of the [Judiciary Committee heard supporting testimony](#) for the first time from the bill’s broad coalition of supporters, beginning with Dr. Buyers.

Next, elected officials heard from Dr. Laraine Guyette, representing the Colorado chapter of the [American College of Nurse-Midwives](#), who answered Senators’ questions about what happens to children born to incarcerated women; They stay with a family member, are adopted, turned over to child welfare services, or taken in by a program of Mennonite families who support the child until its mother is released. Dr. Guyette reiterated Dr. Buyers’ sentiment that giving birth in shackles can be medically harmful to the mother and her child, but also stressed the psychological weight of giving birth – in a room full of strangers, in chains. The birth process can be traumatic for any woman, Dr. Guyette said, but it is especially important to ensure that incarcerated women are treated with respect in the birth process, since they spend only a short amount of time with the child, and cannot participate in typical maternal bonding activities like breastfeeding.

Following testimony from the medical community, Theresa Murphy of the [County Sheriffs of Colorado](#) testified in support of the bill, illuminating existing shackling practices and saying that while guards have no intention to harm pregnant prisoners, they

believe they are following state policy when they shackle them. Murphy supported the bill, she said, since it would provide a clear, consistent directive to which correctional employees can adhere.

Julie Krow, of the University of Colorado [Addiction Research and Treatment Program](#) and [The Haven](#), a program for pregnant women who transition out of the DOC, county jails, social services, and homeless shelters, read and distributed a letter from one of The Haven's clients who had given birth in Colorado with both feet shackled. The letter, from Ryan Owens, spoke of her experience giving birth while shackled and of the necessity to treat pregnant inmates humanely and with dignity.

White also testified at the hearing, speaking to her years-long exposure to incarcerated, pregnant women while investigating "Pregnant in Prison," highlighting the DOC policy that requires inmates to be strip-searched upon return to DWCF. White spoke of one inmate who was ordered to "squat and cough" when she was strip-searched, even though the inmate had just given birth and received stitches for tears incurred in the birth process. White also mentioned court cases regarding shackling – a topic into which Lusero would delve more deeply during her subsequent testimony.

Lusero testified on behalf of Luz, as the state's leading legal expert on birthing rights in Colorado. As a mother of two, Lusero could speak personally to the impact of pregnancy and labor, and to the fundamentally human experience of giving birth. Focusing on judicial decisions in Colorado, Arkansas and Washington, Lusero reminded Senators of the state's responsibility to care for its citizens – a responsibility that is heightened when the citizen is in state custody, and elevated even further when that inmate is pregnant. Both the Colorado and U.S. Constitution include specific prohibitions of cruel and unusual punishment – which legal precedent has determined includes shackling during labor. By adopting this legislation, Lusero concluded, Colorado would not only be aligning itself with its stated responsibilities, it would also be eliminating the possibility of costly, time-consuming litigation should an inmate who was shackled seek legal restitution on constitutional grounds. Lusero closed with this summary:

"Sometimes these interests, an overall interest in promoting healthy pregnancy, the state responsibility to provide for the basic healthy and safety needs of those in its custody, and the constitutional protections for liberty and dignity come in conflict - but here - these interests come together.

Shackling pregnant and laboring women who are in the custody of the state violates the public policy interest in healthy pregnancy, it violates the requirement that basic health and safety standards be met, and it violates the constitution by inflicting cruel and unusual punishment on both the laboring woman and her child."

Following Lusero's legal testimony, Senators heard from Jordan Garcia of the [American Friends Service Community](#), a Quaker-led interdenominational organization focusing on social justice. Jordan Garcia spoke of Quaker beliefs about the universality of human dignity and respect, especially with regard to childbirth. Regardless of the mother's incarceration, he stressed the importance of a positive birth experience as central to the child and the mother's well-being. Jordan Garcia's testimony, given from

his position as a spiritual leader, further solidified the impression of a diverse coalition of support for the anti-shackling bill.

At the initial Senate Judiciary hearing, The Colorado Department of Corrections (DOC) took no position on the bill, though the DOC notably did not testify in opposition. A [Joint Budget Committee report](#) compiled after the bill's initial hearing requested an additional \$22,140 per fiscal year for the DOC to cover the cost of hiring an additional guard to accompany an inmate during her hospital stay, since she would not be restrained. That fiscal note also included an \$11,840 appropriation for costs related to the bill's provision that a written record be kept of every incident in which a prisoner was shackled during labor, delivery, or transport.

The fiscal note attached to the legislation could have proved a stumbling block for advocates, since financial expenditures are often difficult to successfully pass through the legislature. But on May 4, the Colorado Legislative Council released its [revised fiscal impact report](#) on SB-193. The report found that due to the limited number of births in Colorado correctional facilities and pre-existing DOC policy that requires the least restrictive restraints on all prisoners, any fiscal impact on the DOC was, in fact, negligible. This revised fiscal impact report concluded that creating records of any shackling of pregnant prisoners – a rare occurrence in and of itself – could be sustained with already-existing software such as spreadsheets.

Yet the fiscal note – a moot point though it turned out to be – wasn't the only hurdle advocates faced in passing the legislation. Although the DOC didn't expressly oppose the bill, advocates wanted to get the Department on board to present a truly united front. So the bill's authors – including White – sat down and hammered out a compromise with the DOC to ensure its support. The original text of the bill restricted the use of any restraints on inmates during labor, delivery, postpartum recovery, or transport to and from a medical facility. The DOC took issue with the carte-blanche restriction on restraints, claiming that such a restriction hindered their ability to keep inmates securely in custody. The DOC and advocates reached an agreeable compromise by removing the unequivocal restriction on restraints and replacing it with the phrase “the least restrictive restraints necessary to ensure safety,” while still explicitly forbidding the use of belly belts or leg shackles. With this minor language alteration, the DOC officially endorsed SB-193.

Though support for the bill was widespread and bipartisan, ideological politics could be found at the Senate's second reading of the bill. Though the bill ultimately received unanimous support in the Senate, debate prior to the vote centered around a Senator's proposed amendment which acknowledged that shackling is forbidden for the health and safety of both the mother and the unborn child. Sen. Keith King's (R-Colorado Springs) amendment fired up the ever-partisan abortion issue, eliciting testimony from pro-choice groups like [NARAL](#) and [Planned Parenthood](#), as well as from pro-life Senators who argued that the amendment had nothing to do with abortion. *Boulder Weekly's* Jefferson Dodge explained the amendment in a [May 4 article](#):

“King's amendment, which failed, would have tacked a legislative declaration onto the bill containing language about how various types of restraints, from handcuffs to belly belts, can threaten the health and safety of both the mother and the unborn baby and called for the use



of ‘best practices’ in the treatment of pregnant women who are incarcerated.”

Following the Senate’s unanimous passage of the bill, amended to ensure the support of the DOC, the House of Representatives passed SB-193 on May 11, 2010, with only one “Nay” vote, from Rep. Mark Waller (R-Colorado Springs). Before the end of the month, Gov. Ritter had signed the bill into law, and the DOC stated that it would implement the policy change prior to the date required by the legislation.

As written, [SB-193](#) requires that correctional officers employ the “least restrictive restraints necessary” to restrain an inmate while she is in labor, during delivery, postpartum recovery in a medical facility, and during transport to and from a medical facility. The law explicitly prohibits the use of leg shackles or belly belts and requires that a written record be kept of every incident where a pregnant prisoner is shackled, detailing the reasons for restraining the woman. The bill also provides an option for inmates to have a medical professional on-hand when they are strip-searched on returned to a correctional facility, and requires that the inmate be informed of this right in a manner or language that is understandable to her.

As of June 8, 2011, DOC spokesperson Katherine Sanguinetti reports that since SB-193 passed, 44 pregnant inmates have been transferred from DWCF to Denver Health on pregnancy-related issues. Half of those inmates were not restrained in any way, while 21 inmates were restrained using only wrist restraints secured in front of the woman’s body. One inmate, in her second trimester and serving a two-year sentence for vehicular evasion, was restrained using wrist and leg shackles. The required report of the incident was given upon request by the DOC – with personal information redacted – and explains that the woman was taken to Denver Health for “back problems.” The report notes that the inmate was pregnant, and clarifies that only wrist and leg restraints were used, at the direction of the shift commander. Because the DOC implemented the policy change almost immediately after the bill passed, this data represents a comprehensive collection of shackling incidents at DWCF since SB-193 became law.

The journey SB-193 took through the Colorado legislature was uncharacteristically quick, a process that was primarily facilitated by the committed, diverse coalition that supported the bill. The successful strategy featured three primary prongs of support, initiated by White’s years of research and investigative reporting, which lent credibility and authority to her position as a concerned citizen. Colorado’s close-knit, cooperative social justice community was crucial in identifying support for anti-shackling legislation, tapping into interdisciplinary organizations which had an interest in protecting women, prisoners, and women’s rights. These pre-existing relationships, found among members of the coalition with prior familiarity of the legislative process and contacts at the state capitol, facilitated the bill’s expedient movement through the legislature. Finally, the diversity of the coalition in support of SB-193 demonstrated the bill’s wide-ranging influence and impact – rarely in politics does a piece of legislation receive vocal support from the progressive, legal, legislative *and* medical community.

But that was the case in Colorado with SB-193, which demonstrated the non-partisan nature of the legislation. Because the issue of shackling pregnant prisoners crosses ideological, class and political divisions, as well as intersects with the medical

community, correctional establishment, and the social justice sphere, SB-193 was free of the partisan infighting which often hinders legislative success. By focusing on the central, universally understood and widely revered process of childbirth, advocates were able to demonstrate that anti-shackling legislation is a human rights issue, determined to maintain the dignity of some of the state's most vulnerable members. Advocates were able to frame SB-193 as a piece of common-sense legislation by highlighting the absurdity of the belief that a pregnant woman is a flight risk during labor. With even the DOC supporting the bill, it's clear that Colorado was ready for anti-shackling legislation. And with nearly unanimous support in both chambers of the legislature, along with the Governor's signature, SB-193 – and anti-shackling legislation like it – can only be considered effective, good politics for all those involved. In addition to its political palatability, anti-shackling legislation is smart policy that invokes common-sense, human-decency regulations on a population which can all too easily fall through the cracks of a criminal justice system primarily designed to deal with male offenders.



## How to end shackling in YOUR state

1. Get educated about where your state stands in regard to shackling. The [ACLU](#) has a helpful page with detailed information about reproductive rights for incarcerated women in each state: <http://www.aclu.org/state-standards-pregnancy-related-health-care-and-abortion-women-prison-map>
2. Gather your information into a cohesive, persuasive argument, using resources like [The Rebecca Project's Shackling Fact Sheet](#) (PDF).
3. Contact local legislators who may be sympathetic to the issue – like women who have given birth, or legislators with a history of fighting for women's or minority rights. Don't forget, though, this issue is bipartisan in nature – look across the aisle if you need more legislative support.
4. Reach out to local reproductive rights organizations, prisoner and women's advocacy groups, as well as medical professional organizations that advocate for or serve pregnant women.
5. With traction comes support – Get a few organizations on-board and you're likely to hear from others wanting to support the effort.
6. Contact legal resources – including law professors who write on reproductive justice or students like those from [Law Students for Reproductive Justice](#) – to help navigate through the legislative process and hammer out compromises.
7. Notify local media outlets about the practice of shackling in your state – newspapers, magazines, and television stations – because with media attention comes public pressure, which often motivates legislative bodies to move on an issue.
8. Stay vigilant. Make sure your coalition of support is visible during the legislative process. Take advantage of opportunities to testify in favor of the bill, emphasizing the physical and emotional harm done by shackling. Find specialists from within your coalition who would be willing to testify about the specific harms of shackling, to present a diverse, well-rounded supporting argument.
9. Be a part of your community. Be engaged with other organizations and causes so that when the time comes, you have people to call on for support.