

# ? Ask Pat

*Ask Pat* is a feature provided by the Committee on Women and the Profession. This is a question and answer column with a twist—"Pat" will answer questions about gender bias in the legal profession. Letters are loosely based on real events. Send comments or letters to "Ask Pat," State Bar of New Mexico, PO Box 92860, Albuquerque, NM 87199-2860.

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*Dear Pat,*

Last year I heard concerns respecting the treatment of pregnant women in prison, even such things as being shackled while in labor and delivering their babies. Do you know what that is all about? And is this a problem in New Mexico?

*Sincerely,  
Concerned Mother*

*Dear Concerned Mother,*

You are probably referring to articles which appeared in the national press about a report released by The Sentencing Project, a research and advocacy group, which estimated that 40,000 women are admitted to the nation's prisons each year and that 2,000 babies are born to prisoners annually. A 1999 Justice Department report stated that about five per cent of female prisoners arrive pregnant. An article in the March 2, 2006, edition of the *New York Times* reported on a lawsuit in Arkansas in which it was alleged that a pregnant woman who was in prison for identity fraud and writing bad checks had been in labor for more than twelve hours when she arrived at the hospital. She had been given nothing stronger than Tylenol. Despite requests by her doctor and two nurses, her legs were shackled and the guard in charge refused to remove her shackles.

Although the Arkansas case and the resulting litigation brought worldwide notoriety and condemnation, the practice of shackling women during labor and childbirth appears not to be uncommon, or at least is not generally prohibited. According to reports in *New Statesman* and in *News & Letters*, twenty-three state prison systems and the Federal Bureau of Prisons allow the shackling of female prisoners during labor and childbirth. The *New Statesman* report added that since the lawsuit Arkansas has begun using "softer, more flexible restraints" for women in labor.

According to news reports, the shackling of the woman in labor is not the only cruelty suffered by pregnant women in prison. In February 2007 the *Kansas City Star* reported a suit against the city and the police department brought by a woman alleging that the jail staff ignored repeated requests for attention when she told them she was pregnant and bleeding, resulting in the premature birth and death of her son. The same article reported another case in which newborn twins born prematurely died when the pregnant mother was made to mop floors instead of receiving recommended bed rest.

A 1999 report by Amnesty International, *Violations of the Human Rights of Women in Custody*, stated that the use of restraints on women who are about to give birth endangers the woman and her child. The same report stated that a growing number of corrections departments acknowledged that special attention is required for pregnant prisoners, but added that many policies still permit the routine use of restraints without consideration of the necessity.

In New Mexico, it is a crime to injure a pregnant woman in the commission of a felony, causing her to suffer a miscarriage or a still birth as a result of the injury. (§ 30-3-7.) A similar statute criminalizes injury to a pregnant woman caused by a motor vehicle operated by a person under the influence of liquor or drugs (§ 66-8-101.1.), but there is no New Mexico statute addressing the treatment of pregnant women in prison. A spokesperson with the New Mexico Department of Corrections stated that there is no established policy relating to pregnancy of female inmates at the Grants facility for women. Medical staff within the Grants facility care for common or regular medical needs with some support for a pregnancy. Referrals to outside OB/GYN physicians and medical visits are arranged according to the directions of the doctor. It appears that New Mexico does not engage in practices which are condemned in the article you cite. An unfortunate note, however, is that the Grants facility is not equipped to care for newborn infants. As a consequence, when an inmate delivers a baby, the child is taken from the mother to be placed in the care of a family member, or in the absence of a family member, to be placed in foster care.

Thank you for your inquiry. While Pat is not commenting on the circumstances which result in a woman being confined in the Grants facility, once there she is entitled to humane treatment.

*Sincerely,  
Pat*