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December 29, 2011

Gina Caruolo, Chief
Program and Policy Development
RI Department of Corrections
1375 Pontiac Avenue
Cranston, RI 02920

Re: RI Department of Corrections Proposed Rule 9.17
DOC Use of Restraints on Pregnant Detainees or Inmates

Dear Ms. Caruolo:

On behalf of the groups listed below, enclosed you will find our comments on the proposed DOC rule referenced above. We thank the Department for this opportunity and trust that our recommendations will receive the appropriate consideration during the rule-making process.

If you have any questions, please do not hesitate to contact Steven R. DeToy, Director of Government and Public Affairs, Rhode Island Medical Society, 401-331-3207 or sdetoy@rimed.org; or Donna Policastro, RNP, Executive Director, RI State Nurses Association, 401-331-5644, DPolicastro@risnarn.org.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'N. S. Damle'.

Nitin S. Damle, MD
President

Enclosure

Direct Action for Rights and Equality
National Council of Jewish Women RI
Planned Parenthood of Southern New England
Rhode Island NOW
Rhode Island ACLU
Rhode Island Medical Society
RI State Nurses Association
Women's Medical Center of RI

**COMMENTS ON PROPOSED POLICY ON
USE OF RESTRAINTS ON PREGNANT DETAINEES OF INMATES
December 2011**

Our organizations greatly appreciate the work of the Department of Corrections in assisting with the passage of anti-shackling legislation in 2011. This law is not only an important human rights measure, it codifies a sound public health and safety policy as well.

We note that these proposed regulations incorporate all the aspects of the statute as it was passed. However, we believe the regulations should do more than just reiterate the statutory language. The rule-making process is an opportunity for the Department to better implement the statutory requirements and to clarify some of its provisions to ensure the law is carried out as effectively as possible. We would like to offer the following suggestions for doing so:

1. III.A – General Restraint Procedures – In accordance with the statute, this section allows only “medically appropriate” restraints to be used on pregnant women. We believe it would be helpful if this section clarified that the determination of what constitutes “medically appropriate” restraints will be made by the RIDOC Medical Program Director or his/her designee. By using the term “medically appropriate,” it is clear that the statute does not envision correctional officers making such decisions. We believe it makes sense to make that point explicit here, just as the regulation does in the more specific postpartum context in §III.B.3.

2. III.B.1.b – Transport – The proposal and the statute require that restraints, in the limited circumstances their use is allowable, be utilized in the “least restrictive manner

necessary.” However, except in the postpartum context, the regulations do not spell out what this means. Under the Postpartum section of these rules (and the statute), if there’s a compelling reason to shackle, the RIDOC Medical Program Director must be consulted to allow for the restraint and then the Program Director and “treating health care professional” determine whether leg or hand restraints will be used. We would urge that the rules specify that a similar procedure is to be followed for Transport. This could be accomplished by adding a subsection (c) requiring the Medical Program Director to determine that transport restraints are necessary and further requiring DOC medical personnel to make determinations about the type of restraints that are allowable prior to the woman’s transport from the facility. We would further urge that the regulations specify that “soft restraints” rather than handcuffs or metal shackles are to be used in these circumstances, since the latter types of restraints can cut into the skin, especially when the body is in contractions.

3. III.B.2. – Labor and Delivery – Since the statute does not define “labor,” the Department should consider adding a definition to the regulations in this section. The medical definition is “the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.”

4. III.B.3.d – Postpartum – There is a typographical error in this section. The first sentence refers to Section II.B.3, but it should be Section III.B.3.

5. III.D. – Notice – Both the statute and the regulations require that the facility handbook given to inmates include information about this law, and also require verbal notice to women once they are known to be pregnant. In addition to placement in the handbook, we would suggest adding a provision in these rules that a notice about the law will be posted in the medical clinic in areas where prisoners are present. Handbooks can tend to get lost, and the medical staff also needs to be fully aware of this law; a posting would ensure that the law is not ignored.

As for the verbal notice to women, we would urge that the proposed regulations be revised to clarify that the information will be communicated to each pregnant woman in a language she is competent to understand.

If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us. Thank you for your time and attention to our views.