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October 9, 2015

Hon. Andrew M. Cuomo
Governor of the State of New York
Executive Chamber
Capitol Building
Albany, New York 12224

Re: Support of A.6430-A (AM Perry) / S.983-A (Sen. Montgomery), which would strengthen protections to prevent the shackling of incarcerated pregnant women

Dear Governor Cuomo:

On behalf of the Corrections and Community Reentry Committee and the Sex and Law Committee of the New York City Bar Association (the "Association"), we write to recommend that you sign the above legislation,¹ which will promote compliance with the 2009 amendment to the Correction Law imposing restrictions on the shackling of pregnant inmates. This legislation will present a minimal burden to the state, and will affirm New York's commitment to the important women's and human rights issues implicated by the practice.

The Association is an independent, non-governmental organization of 24,000 lawyers, law professors, and government officials from the United States and 50 other countries. Throughout its 144-year history, the Association has consistently advocated for a fair, just, and efficient judicial process and respect for the rule of law. The Corrections and Community Reentry Committee is an association of attorneys and legal professionals from a range of private,

¹ The legislation passed the Senate unanimously on June 23, 2015 and passed the Assembly on June 15, 2015 by a vote of 143-3.

governmental and non-profit work backgrounds who work to address issues affecting the people who live and work in New York's correctional institutions. The Sex and Law Committee addresses issues pertaining to gender and the law in a variety of areas, such as violence against women and reproductive rights.

The Correction Law was amended in 2009 to prohibit the shackling of incarcerated women before, during, or immediately after labor and delivery. This was landmark legislation: New York became the sixth state to enact an anti-shackling law. Violations of the 2009 law, however, are common. The bill awaiting your signature is necessary because it requires correctional facilities to demonstrate compliance with the 2009 law and will allow for greater monitoring of the law's implementation.

A survey the Correctional Association of New York conducted found that 23 of 27 women who gave birth in state corrections custody after the 2009 law came into effect were shackled during their pregnancies.² The proposed legislation contains robust reporting and training requirements that will ensure correctional facilities adhere to the restrictions on shackling. The bill requires that corrections officials conduct annual trainings for corrections and medical staff on the law, that information about the shackling restrictions be prominently posted in areas where women receive medical care, and that corrections officials provide annual reports to your office and members of the legislature detailing every use of shackling. In the event that corrections officials, in consultation with medical officials, determine that extraordinary circumstances exist warranting the restraint of a pregnant woman, she may be handcuffed only in front of her body. The law requires corrections officials to document the facts on which the decision was based, as well as the types of restraints used and for how long. These requirements promote compliance with the law and will hold corrections officials accountable for the law's implementation.

Your signature on the proposed law will ensure that New York upholds its commitment to ending the practice of shackling incarcerated pregnant women. There is widespread consensus that the practice is a violation of female prisoners' constitutional and human rights. A number of federal courts have found the practice constitutes cruel and unusual punishment in contravention of the Eighth Amendment, and 22 states and the District of Columbia have instituted laws restricting its use.³ New York has traditionally been at the forefront of protecting the rights of individuals involved in the criminal justice system and, indeed, was one of the first states to institute anti-shackling laws. Unfortunately, the state's efforts have fallen short. While the 2009 legislation was laudable in its intent, more than five years later, New York's female prisoners, due to poor enforcement of the law, remain vulnerable to a wide range of health risks and degradation that shackling inflicts. The 2015 Anti-Shackling Bill provides New York the opportunity to reclaim its place as a leader on women's and human rights issues by giving teeth to its 2009 anti-shackling legislation.

² Correctional Association of New York, Reproductive Injustice: The State of Reproductive Health Care for Women in New York State Prisons, at 134-144 (2015), available at <http://www.correctionalassociation.org/wp-content/uploads/2015/03/Reproductive-Injustice-FULL-REPORT-FINAL-2-11-15.pdf> (last visited Oct. 4, 2015).

³ 2015 Anti-Shackling Bill Talking Points (A.6430-A/S.983-A), Women in Prison Project, Correctional Association of New York, available at <http://www.correctionalassociation.org/wp-content/uploads/2015/09/Anti-Shackling-Bill-2015-Talking-Points-9-15-FINAL.pdf> (last visited Oct. 4, 2015).

The cost and safety concerns expressed by local law enforcement in response to the bill are unwarranted. Any resulting costs will be a minimal and worthwhile expenditure. The number of pregnant women in local correctional facilities is small -- on a given day, only about 110 in the entire state⁴ -- and most of those women will be held for only a short time and may never need to be transported. Little additional training should be needed to implement this straightforward amendment to the 2009 law. To the extent that training on the original law has been inadequate, this should be remedied. Protecting the health and the constitutional and human rights of pregnant women is worth this minor expenditure.⁵ The bill also sufficiently addresses any safety concerns, maintaining an exception for the extraordinary circumstance in which restraints are necessary to prevent the pregnant woman from injuring herself or medical or correctional personnel. Corrections officials need only report on the tiny fraction of cases that qualify -- hardly an onerous requirement. The benefits of enacting this important legislation far outweigh the minimal costs of its implementation.

For the above reasons, we urge you to sign the A.6430-A/S.983-A and reaffirm New York's prohibition of shackling pregnant women.

Respectfully,



Allegra Glashausser
Chair, Corrections & Community Reentry Committee



Katharine Bodde
Chair, Sex & Law Committee

⁴ Id.

⁵ The potential savings in civil rights litigation costs also should not be discounted.