THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1074 Session of 2009

INTRODUCED BY LEACH, STOUT, HUGHES, KITCHEN, FERLO, FONTANA, WILLIAMS, COSTA AND TARTAGLIONE, SEPTEMBER 2, 2009

REFERRED TO JUDICIARY, SEPTEMBER 2, 2009

AN ACT

Relating to the incarceration of pregnant women.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Healthy Birth for Incarcerated Women Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Correctional institution." Any entity under the authority of any state, county or municipal law enforcement division that has the power to detain and restrain a person under the laws of this Commonwealth.

"Detainee." Includes any person detained under the immigration laws of the United States at any correctional facility.
"Labor." 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. The determination of when labor has commenced shall rest solely with the medical providers of the prisoner or detainee.

"Postpartum." The period following delivery, including the entire period a woman is in the hospital after the birth of her child or children.

"Prisoner." Any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.

"Restraints." Any physical restraint or mechanical device used to control the movement of a prisoner's or detainee's body and limbs, including, but not limited to, shackles, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain or a convex shield.

Section 3. Duties of correctional institution.
Consistent with established correctional policy and practice, it shall be the duty and responsibility of the correctional institution to provide adequate personnel to monitor the pregnant prisoner or detainee during transport to and from the hospital and during her stay at the hospital.

Section 4. Restraint of pregnant prisoners and detainees.
(a) Limitation on restraints.--Unless provided in subsection (b), a correctional institution shall not apply restraints to a prisoner or detainee known to be pregnant during any stage of labor, any pregnancy related medical distress, transport to a
medical facility, delivery or postpartum, as defined in section 2.

(b) Exception.--Subsection (a) shall not bar reasonable restraint provided a shift commander or the staff equivalent at the correctional institution makes an individualized determination that the prisoner or detainee presents a substantial flight risk or some other extraordinary medical or security circumstance dictates that the prisoner or detainee be restrained to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees or the public.

(c) Condition of restraint.--If restraint is applied under subsection (b), at no time shall the detainee be left unattended by a correctional officer with the ability to release said restraints should such a release become medically necessary.

(d) Least restrictive alternative.--When restraints are permitted under this section, a correctional institution shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that a prisoner is in the second or third trimester of pregnancy.

Section 5. Restraints.

The following shall apply to a prisoner or detainee who has been restrained under section 4:

(1) The corrections officer accompanying the prisoner or detainee shall immediately remove all restraints upon request of the doctor, nurse or other health care professional.

(2) Leg or waist restraints shall not be used on any prisoner or detainee who is in labor.

(3) The type of restraint applied and the application of the restraint shall be done in the least restrictive manner
possible.

(4) A correctional officer shall not apply restraints without prior authorization of the shift commander or staff equivalent.

Section 6. Duties of warden or other correctional institution official.

The warden or the highest-ranking official of the correctional institution shall make written findings within ten days of the application of restraints to a pregnant prisoner or detainee under section 4. The report shall specifically identify and enumerate the circumstances that led to the determination that the prisoner or detainee represented a substantial flight risk or to the determination that other extraordinary medical or security circumstances dictated the prisoner or detainee be restrained to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees or the public. These findings shall be maintained by the institution for at least five years and be made available for public inspection, except that no information identifying any prisoner or detainee shall be made public without the prisoner's or detainee's prior written consent.

Section 7. Annual report.

No later than August 1 of each year, the Secretary of Corrections and the official responsible for oversight of each municipal and county correctional institution where a pregnant prisoner or detainee had been subject to application of restraints during that previous fiscal year shall submit to the Office of the Governor a written report containing detailed information, including information required under section 6.
regarding the use of restraints on any pregnant prisoner or
detainee in the official's custody during the preceding fiscal
year. The written report shall not contain any identifying
information of any prisoner or detainee. The reports shall be
posted on the Governor's Internet website and shall be made
available for public inspection at the office of the Department
of Corrections.

Section 8. Effective date.

This act shall take effect in 60 days.