
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

1 Relating to the incarceration of pregnant women.

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

4 Section 1. Short title.

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

7 Section 2. Definitions.

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

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

15 "Detainee." Includes any person detained under the
16 immigration laws of the United States at any correctional
17 facility.

1 "Labor." The period of time before a birth during which
2 contractions are of sufficient frequency, intensity and duration
3 to bring about effacement and progressive dilation of the
4 cervix. The determination of when labor has commenced shall rest
5 solely with the medical providers of the prisoner or detainee.

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

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

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

20 Section 3. Duties of correctional institution.

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

26 Section 4. Restraint of pregnant prisoners and detainees.

27 (a) Limitation on restraints.--Unless provided in subsection
28 (b), a correctional institution shall not apply restraints to a
29 prisoner or detainee known to be pregnant during any stage of
30 labor, any pregnancy related medical distress, transport to a

1 medical facility, delivery or postpartum, as defined in section
2 2.

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

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

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

21 Section 5. Restraints.

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

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

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

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

1 possible.

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

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

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

23 Section 7. Annual report.

24 No later than August 1 of each year, the Secretary of
25 Corrections and the official responsible for oversight of each
26 municipal and county correctional institution where a pregnant
27 prisoner or detainee had been subject to application of
28 restraints during that previous fiscal year shall submit to the
29 Office of the Governor a written report containing detailed
30 information, including information required under section 6,

1 regarding the use of restraints on any pregnant prisoner or
2 detainee in the official's custody during the preceding fiscal
3 year. The written report shall not contain any identifying
4 information of any prisoner or detainee. The reports shall be
5 posted on the Governor's Internet website and shall be made
6 available for public inspection at the office of the Department
7 of Corrections.

8 Section 8. Effective date.

9 This act shall take effect in 60 days.