

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1074 Session of 2009

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 16, 2010

AN ACT

1 Amending Title 61 (Penal and Correctional Institutions) of the
2 Pennsylvania Consolidated Statutes, providing for State
3 recording system for application of restraints to pregnant
4 prisoners or detainees, for county recording system for
5 application of restraints to pregnant prisoners or detainees
6 and for incarceration of pregnant women.

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

9 Section 1. Title 61 of the Pennsylvania Consolidated
10 Statutes is amended by adding sections to read:

11 § 1104. State recording system for application of restraints to
12 pregnant prisoners or detainees.

13 (a) General rule.--A correctional institution as defined by
14 section 5905(e) (relating to healthy birth for incarcerated
15 women) shall report each restraint applied to a pregnant
16 prisoner or detainee. The report must be in writing and must
17 note the number of restraints. Individual, separate written
18 findings for each restraint must accompany the report to. THIS

19 SHALL INCLUDE REPORTS FROM the following:



1           (1) A correctional institution that is not operated,  
2 supervised or licensed by the Department of Public Welfare  
3 pursuant to the act of June 13, 1967 (P.L.31, No.21), known  
4 as the Public Welfare Code, shall make the report to the  
5 secretary.

6           (2) A correctional institution that is operated,  
7 supervised or licensed by the Department of Public Welfare  
8 pursuant to the Public Welfare Code shall make the report to  
9 the Secretary of Public Welfare.

10       (b) Contents of written findings.--Written findings of each  
11 restraint as required under subsection (a) must include the  
12 following:

13           (1) the circumstances that led to the determination that  
14 the prisoner or detainee represented a substantial risk of  
15 imminent flight; or

16           (2) the circumstances that led to the determination that  
17 other extraordinary medical or security circumstances  
18 dictated the prisoner or detainee be restrained to ensure the  
19 safety and security of the prisoner or detainee, the staff of  
20 the correctional institution or medical facility, other  
21 prisoners or detainees or the public.

22 § 1758. County recording system for application of restraints  
23 to pregnant prisoners or detainees.

24       (a) General rule.--The application of restraints to a  
25 pregnant prisoner or detainee occurring pursuant to section 5905  
26 (relating to healthy birth for incarcerated women) shall  
27 constitute an incident that qualifies as an extraordinary  
28 occurrence that must be reported to the department in the County  
29 Extraordinary Occurrence Monthly Report.

30       (b) Information to be included in County Extraordinary

1 Occurrence Monthly Report.--

2 (1) Any and all incidents where the application of  
3 restraints to a pregnant prisoner or detainee pursuant to  
4 section 5905 occurred must be included in the County  
5 Extraordinary Occurrence Monthly Report that is submitted to  
6 the department. An indication of the incidents must be noted  
7 on the designated report form or other available approved  
8 method, if applicable, and individual, separate written  
9 findings must accompany the form for each incident that  
10 occurred.

11 (2) Written findings of each incident as required under  
12 paragraph (1) must include the following:

13 (i) the circumstances that led to the determination  
14 that the prisoner or detainee represented a substantial  
15 risk of imminent flight; or

16 (ii) the circumstances that led to the determination  
17 that other extraordinary medical or security  
18 circumstances dictated the prisoner or detainee be  
19 restrained to ensure the safety and security of the  
20 prisoner or detainee, the staff of the correctional  
21 institution or medical facility, other prisoners or  
22 detainees or the public.

23 (c) Definitions.--As used in this section, the following  
24 words and phrases shall have the meanings given to them in this  
25 subsection unless the context clearly indicates otherwise:

26 "County Extraordinary Occurrence Monthly Report." A  
27 collection of statistics and other information by the department  
28 on designated report forms or by other available approved  
29 methods for the collection of such incident information under  
30 this section and in accordance with written local policy

1 providing for the collection of population information  
2 prescribed by 37 Pa. Code 95.242 (relating to Statistical/  
3 informational reporting).

4 "Department." The Department of Corrections of the  
5 Commonwealth.

6 § 5905. Healthy birth for incarcerated women.

7 (a) Duties of correctional institution.--Consistent with  
8 established policy and practice, it shall be the duty and  
9 responsibility of the correctional institution to provide  
10 adequate personnel to monitor the pregnant prisoner or detainee  
11 during transport to and from the medical facility and during her  
12 stay at the medical facility.

13 (b) Restraint of pregnant prisoners and detainees.--

14 (1) Unless provided in paragraph (2), a correctional  
15 institution shall not apply restraints to a prisoner or  
16 detainee known to be pregnant during any stage of labor, any  
17 pregnancy-related medical distress, any period of delivery,  
18 any period of postpartum, as defined in subsection (e), or  
19 transport to a medical facility as a result of any of the  
20 preceding conditions or transport to a medical facility after  
21 the beginning of the second trimester of pregnancy.

22 (2) Paragraph (1) shall not bar reasonable restraint  
23 provided the correctional institution staff assigned to the  
24 prisoner or detainee makes an individualized determination  
25 that the prisoner or detainee presents a substantial risk of  
26 imminent flight or some other extraordinary medical or  
27 security circumstance dictates that the prisoner or detainee  
28 be restrained to ensure the safety and security of the  
29 prisoner or detainee, the staff of the correctional  
30 institution or medical facility, other prisoners or detainees

1 or the public. The assigned correctional institution staff  
2 shall report the incident to the correctional institution in  
3 a reasonable amount of time after the restraint occurs. If  
4 the assigned correctional institution staff is not employed  
5 by the correctional institution then the assigned  
6 correctional institution staff shall report the restraint to  
7 the correctional institution in a reasonable amount of time  
8 after the incident occurs.

9 (3) If restraint is applied under paragraph (2), at no  
10 time shall the prisoner or detainee be left unattended by a  
11 correctional institution staff with the ability to release  
12 the restraint should a release become medically necessary.

13 (4) When a restraint is permitted under this section, a  
14 correctional institution shall use the least restrictive  
15 restraint necessary when the facility has actual or  
16 constructive knowledge that a prisoner or detainee is in the  
17 second or third trimester of pregnancy.

18 (c) Restraints.--The following shall apply to a prisoner or  
19 detainee who has been restrained under this subsection:

20 (1) The correctional institution staff accompanying the  
21 prisoner or detainee shall immediately remove all restraints  
22 upon request of a doctor, nurse or other health care  
23 professional.

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

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

29 (d) Annual report.--No later than August 1 of each year, the  
30 secretary and the Secretary of Public Welfare shall each submit

1 to the Governor's Office a written report containing information  
2 regarding the use of restraints on any pregnant prisoner or  
3 detainee during the preceding fiscal year specifically  
4 identifying and enumerating the circumstances that led to the  
5 determination that the prisoner or detainee fell under the  
6 exception in subsection (b)(2). The secretary shall report on  
7 pregnant prisoners or detainees in the custody of correctional  
8 institutions operated, supervised or licensed by the department.  
9 The Secretary of Public Welfare shall report on pregnant  
10 prisoners or detainees in the custody of correctional  
11 institutions operated, supervised or licensed by the Department  
12 of Public Welfare pursuant to the act of June 13, 1967 (P.L.31,  
13 No.21), known as the Public Welfare Code. The reports shall not  
14 contain any identifying information of any prisoner or detainee.  
15 The reports shall be posted on the Governor's Internet website  
16 and shall be made available for public inspection at the offices  
17 of the department and the Department of Public Welfare,  
18 respectively.

19 (e) Definitions.--As used in this section, the following  
20 words and phrases shall have the meanings given to them in this  
21 subsection unless the context clearly indicates otherwise:

22 "Correctional institution." Any entity under the authority  
23 of the state, or any county or municipality that has the power  
24 to detain and restrain a person under the laws of this  
25 Commonwealth.

26 "Detainee." Includes any person detained under the  
27 immigration laws of the United States at any correctional  
28 facility.

29 "Labor." The period of time before a birth during which  
30 contractions are of sufficient frequency, intensity and duration

1 to bring about effacement and progressive dilation of the  
2 cervix. The determination of when labor has commenced shall rest  
3 solely with the medical providers of the prisoner or detainee.

4 "Postpartum." The period following delivery before a  
5 prisoner or detainee has been discharged from a medical  
6 facility.

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

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

18 Section 2. This act shall take effect in 60 days.