

## AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania  
2 Consolidated Statutes, in general administration, further  
3 providing for State recording system for application of  
4 restraints to pregnant prisoners or detainees; in county  
5 correctional institutions, further providing for county  
6 recording system for application of restraints to pregnant  
7 prisoners or detainees; and, in miscellaneous provisions,  
8 further providing for healthy birth for incarcerated women.

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

11 Section 1. Section 1104 of Title 61 of the Pennsylvania  
12 Consolidated Statutes is amended to read:

13 § 1104. State recording system for application of restraints to  
14 pregnant, laboring or postpartum prisoners or  
15 detainees.

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

1 findings for each restraint must accompany the report. This  
2 shall include reports from the following:] Each custodian who  
3 applies restraints to a pregnant, laboring or postpartum  
4 prisoner or detainee shall, on a form prepared by the  
5 department, submit a written report of the application of  
6 restraints to a staff person appointed by the officer in charge  
7 of a correctional institution within two days of use of the  
8 restraint on a pregnant, laboring or postpartum prisoner or  
9 detainee. The staff person appointed under this section shall  
10 deliver each written report of the use of restraints to the  
11 officer in charge within two days of receiving the report under  
12 this section. The written report must note the date and time  
13 restraints were applied, the number of restraints, the prisoner  
14 or detainee's name, the name of the correctional institution,  
15 the name of the staff member who applied the restraints and the  
16 staff member's explanation for the use of restraints.  
17 Individual, separate written findings for the use of each  
18 restraint, as specified under subsection (b), must accompany the  
19 report. The officer in charge shall deliver the reports in the  
20 following manner:

21 (1) [A] The officer in charge of a correctional  
22 institution that is not operated, supervised or licensed by  
23 the Department of [Public Welfare pursuant to] Human Services  
24 under the act of June 13, 1967 (P.L.31, No.21), known as the  
25 [Public Welfare] Human Services Code, shall [make the report]  
26 deliver the reports to the secretary.

27 (2) [A] The officer in charge of a correctional  
28 institution that is operated, supervised or licensed by the  
29 Department of [Public Welfare pursuant to] Human Services  
30 under the [Public Welfare] Human Services Code shall [make

1 the report] deliver the reports to the Secretary of [Public  
2 Welfare] Human Services.

3 (b) Contents of written findings.--Written findings of each  
4 restraint as required under subsection (a) must include the  
5 following:

6 (1) the circumstances that led to the determination that  
7 the prisoner or detainee represented a substantial risk of  
8 imminent flight; or

9 (2) the circumstances that led to the determination that  
10 other extraordinary medical or security circumstances  
11 dictated the prisoner or detainee be restrained to ensure the  
12 safety and security of the prisoner or detainee, the staff of  
13 the correctional institution or medical facility, other  
14 prisoners or detainees or the public.

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

18 "Correctional institution." As defined in section 5905(e)  
19 (relating to healthy birth for incarcerated prisoners and  
20 detainees).

21 "Custodian." As defined in section 5905(e).

22 "Officer in charge." As defined in section 5905(e).

23 Section 2. Section 1758 heading, (a) and (b) (1) of Title 61  
24 are amended to read:

25 § 1758. County recording system for application of restraints  
26 to pregnant, laboring or postpartum prisoners or  
27 detainees.

28 (a) General rule.--The application of restraints to a  
29 pregnant, laboring or postpartum prisoner or detainee [occurring  
30 pursuant] subject to section 5905 (relating to healthy birth for

1 incarcerated [women] prisoners and detainees) shall constitute  
2 an incident that qualifies as an extraordinary occurrence that  
3 must be reported to the department in the County Extraordinary  
4 Occurrence Monthly Report. The provisions of this subsection  
5 shall apply to county constables, police, sheriffs or other law  
6 enforcement personnel.

7 (b) Information to be included in County Extraordinary  
8 Occurrence Monthly Report.--

9 (1) Any and all incidents where the application of  
10 restraints to a pregnant, laboring or postpartum prisoner or  
11 detainee [pursuant] subject to section 5905 occurred must be  
12 included in the County Extraordinary Occurrence Monthly  
13 Report that is submitted to the department. [An indication of  
14 the incidents must be noted on the designated report form or  
15 other available approved method, if applicable, and  
16 individual, separate written findings must accompany the form  
17 for each incident that occurred.] The report must note the  
18 date and time restraints were applied, the number of  
19 restraints, the prisoner or detainee's name, the name of the  
20 correctional institution, the name of the staff member who  
21 applied the restraints and the staff member's explanation for  
22 the use of restraints. Individual, separate written findings  
23 for each restraint, as provided under paragraph (2), must  
24 accompany the report.

25 \* \* \*

26 Section 3. Section 5905 of Title 61 is amended to read:

27 § 5905. Healthy birth for incarcerated [women] prisoners and  
28 detainees.

29 (a) Duties of correctional institution.--[Consistent with  
30 established policy and practice, it] It shall be the duty and

1 responsibility of the correctional institution and officers in  
2 charge to:

3 (1) provide adequate personnel to monitor [the] a  
4 pregnant prisoner or detainee in the correctional  
5 institution:

6 (i) during transport to and from [the] a medical  
7 facility, court or other destination; and

8 (ii) during [her] a pregnant prisoner or detainee's  
9 stay at [the] a medical facility[.], court or other  
10 destination;

11 (2) provide annual training on the requirements of this  
12 section to all personnel who will monitor pregnant prisoners  
13 or detainees;

14 (3) adopt and implement a written policy consistent with  
15 and reiterating the requirements of this section; and

16 (4) prepare and distribute written information to  
17 pregnant and potentially pregnant prisoners and detainees  
18 explaining their rights under this section, provided that  
19 this obligation shall be satisfied by distribution of a fact  
20 sheet prepared by the department or the Department of Human  
21 Services that accurately states the requirements of this  
22 section.

23 (b) Restraint of pregnant, laboring and postpartum prisoners  
24 and detainees.--

25 (1) Unless provided in paragraph (2), a correctional  
26 institution and its personnel shall not apply restraints to a  
27 prisoner or detainee:

28 (i) known to be pregnant, laboring or postpartum  
29 during any stage of [labor,] pregnancy. A prisoner or  
30 detainee is known to be pregnant, laboring or postpartum

1 on the earliest date on which the custodian:

2 (A) receives medical confirmation of an  
3 incarcerated individual's status of being pregnant,  
4 laboring or postpartum;

5 (B) sees that an incarcerated individual is  
6 visibly pregnant, laboring or postpartum; or

7 (C) has received a credible report of the  
8 incarcerated individual's status of being pregnant,  
9 laboring or postpartum or of the incarcerated  
10 individual's symptoms of being pregnant, laboring or  
11 postpartum, including a report from the incarcerated  
12 individual;

13 (ii) experiencing any pregnancy-related medical  
14 distress[ , ];

15 (iii) in any period of labor, delivery[ , ] or  
16 childbirth;

17 (iv) experiencing any period of postpartum as  
18 defined in subsection (e); or

19 (v) during transport to or stay at a medical  
20 facility [as a result of any of the preceding conditions  
21 or transport to a medical facility after the beginning of  
22 the second trimester of pregnancy.], courthouse or other  
23 destination.

24 (2) [Paragraph] Except as provided in paragraph (4) and  
25 subsections (c) and (c.1), paragraph (1) shall not bar  
26 reasonable restraint provided:

27 (i) the custodian or correctional institution staff  
28 assigned to the prisoner or detainee makes an  
29 individualized determination that the prisoner or  
30 detainee presents a substantial risk of imminent flight

1 or some other extraordinary medical or security  
2 circumstance dictates that the prisoner or detainee be  
3 restrained to ensure the safety and security of the  
4 prisoner or detainee, the staff of the correctional  
5 institution or medical facility, other prisoners or  
6 detainees or the public[. The assigned correctional  
7 institution staff shall report the incident to the  
8 correctional institution in a reasonable amount of time  
9 after the restraint occurs. If the assigned correctional  
10 institution staff is not employed by the correctional  
11 institution, then the assigned correctional institution  
12 staff shall report the restraint to the correctional  
13 institution in a reasonable amount of time after the  
14 incident occurs.]; and

15 (ii) except when prevented from doing so due to  
16 exigent circumstances, the officer in charge approves the  
17 use of the restraint.

18 (2.1) Whenever a prisoner or detainee is restrained  
19 under paragraph (2), including in the event of exigent  
20 circumstances, the assigned correctional institution staff or  
21 other custodian shall report the incident to the correctional  
22 institution staff assigned to receive the reports within two  
23 days after the restraint occurs, on a form prepared by the  
24 department for this purpose. The assigned staff person shall  
25 deliver the written report to the officer in charge within  
26 two days of receiving the report. This paragraph shall apply  
27 even if the assigned custodian or correctional institution  
28 staff is not employed by the correctional institution.

29 (3) If restraint is applied under paragraph (2), at no  
30 time shall the prisoner or detainee be left unattended by a

1 correctional institution staff with the ability to release  
2 the restraint should a release become medically necessary.  
3 The correctional institution staff shall be female if  
4 practicable and preferred by the prisoner or detainee;  
5 however, no correctional personnel shall be present in the  
6 room during the prisoner's or detainee's examination, labor,  
7 delivery or childbirth unless specifically requested by  
8 medical personnel.

9 (4) [When a] A restraint is permitted under [this  
10 section, a correctional institution shall use] paragraph (2)  
11 only if the restraint is the least restrictive [restraint  
12 necessary when the facility has actual or constructive  
13 knowledge that a prisoner or detainee is in the second or  
14 third trimester of pregnancy] method available.

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

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

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

23 (3) The type of restraint applied and the application of  
24 the restraint shall be done in the least restrictive manner  
25 possible.] restraints may not be used on a prisoner or  
26 detainee any time during pregnancy, labor and delivery or  
27 postpartum period:

28 (4) abdomen, ankle, leg or waist restraints;

29 (5) restraint of the hands behind the back;

30 (6) four-point restraints; or



1 (7) restraints attaching the prisoner or detainee to  
2 another prisoner or detainee.

3 (c.1) Medical request.--Notwithstanding subsection (b) (2),  
4 on the request of a health care professional who is responsible  
5 for the health and safety of a prisoner or detainee, a  
6 correctional official or other custodian, as applicable, shall  
7 refrain from using restraints on the prisoner or detainee or  
8 shall immediately remove all restraints.

9 (c.2) Duties of officer in charge.--The officer in charge  
10 shall:

11 (1) review and assess the appropriateness of the use of  
12 restraints under this section and shall provide an assessment  
13 to the custodian who used restraints;

14 (2) maintain reports of the use of restraints under this  
15 section for a minimum of five years; and

16 (3) deliver reports of the use of restraints under this  
17 section to the secretary or the Secretary of Human Services  
18 consistent with section 1104(a) (relating to State recording  
19 system for application of restraints to pregnant, laboring or  
20 postpartum prisoners or detainees).

21 (d) Annual report.--No later than August 1 of each year, the  
22 secretary and the Secretary of [Public Welfare] Human Services  
23 shall each submit to the Governor's Office a written report  
24 containing information regarding the use of restraints on any  
25 pregnant, laboring or postpartum prisoner or detainee during the  
26 preceding fiscal year specifically identifying and enumerating  
27 the circumstances that led to the determination that the  
28 prisoner or detainee fell under the exception in subsection (b)  
29 (2). The following shall apply:

30 (1) The secretary shall report on pregnant prisoners or

1 detainees in the custody of correctional institutions  
2 operated, supervised or licensed by the department. If a  
3 correctional institution fails to submit a report of  
4 restraints used on pregnant, laboring or postpartum prisoners  
5 or detainees during the preceding fiscal year, the secretary  
6 shall:

7 (i) obtain a certification from the correctional  
8 institution that the correctional institution did not use  
9 any restraints on any pregnant, laboring or postpartum  
10 prisoner or detainee during the preceding fiscal year;  
11 and

12 (ii) include the certification under subparagraph  
13 (i) in the secretary's report.

14 (2) The Secretary of [Public Welfare] Human Services  
15 shall report on pregnant prisoners or detainees in the  
16 custody of correctional institutions operated, supervised or  
17 licensed by the Department of [Public Welfare pursuant to]  
18 Human Services under the act of June 13, 1967 (P.L.31,  
19 No.21), known as the [Public Welfare] Human Services Code.  
20 [The reports] If a correctional institution did not submit a  
21 report of restraints used on pregnant, laboring or postpartum  
22 prisoners or detainees during the preceding fiscal year, then  
23 the Secretary of Human Services shall:

24 (i) obtain a certification from the correctional  
25 institution that the correctional institution did not use  
26 restraints on a pregnant, laboring or postpartum prisoner  
27 or detainee during the preceding fiscal year; and

28 (ii) include the certification in the Secretary of  
29 Human Services' report.

30 (3) The annual reports submitted under this subsection

1 shall not contain any identifying information of any prisoner  
2 or detainee.

3 (4) The annual reports submitted under this subsection  
4 shall be posted on the Governor's Internet website and shall  
5 be made available for public inspection at the offices of the  
6 department and the Department of [Public Welfare] Human  
7 Services, respectively.

8 (d.1) Oversight.--The following shall apply:

9 (1) In addition to the department's inspection powers  
10 and duties under section 1105(a)(2) (relating to powers and  
11 duties of department), the department shall have the power  
12 and duty to inspect county correctional institutions'  
13 fulfillment of the requirements of this section.

14 (2) Consistent with section 402 of the act of April 9,  
15 1929, (P.L.343, No.176), known as The Fiscal Code, the  
16 Department of the Auditor General shall have the authority to  
17 make a special audit of the department's affairs under this  
18 section.

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 to  
24 detain and restrain a person under the laws of this  
25 Commonwealth[.], including, but not limited to, State  
26 correctional institutions, county correctional institutions,  
27 juvenile detention facilities, police departments, constables  
28 offices, sheriff's offices and private entities performing  
29 contracts for the State, county or municipality.

30 "Custodian." Warden, sheriff, jailer, deputy sheriff, police

1 officer or other correctional or law enforcement officer having  
2 actual custody of a pregnant, laboring or postpartum prisoner or  
3 detainee.

4 "Detainee." Includes any person detained under the  
5 immigration laws of the United States at any correctional  
6 facility.

7 "Labor." The period of time before a birth during which  
8 contractions [are of sufficient frequency, intensity and  
9 duration to bring about effacement and progressive dilation of  
10 the cervix. The determination of when labor has commenced shall  
11 rest solely with the medical providers of the prisoner or  
12 detainee.] commence, followed by delivery of the child and  
13 placenta.

14 "Officer in charge." The warden, captain, superintendent or  
15 other individual who is responsible for the supervision of a  
16 correctional institution or of another custodian.

17 "Postpartum." The period of eight weeks following [delivery  
18 before a prisoner or detainee has been discharged from a medical  
19 facility] labor.

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

25 "Restraint." Any physical hold [or], mechanical device or  
26 chemical used to control the movement of a prisoner's or  
27 detainee's body and limbs, including, but not limited to,  
28 shackles, flex cuffs, soft restraints, hard metal handcuffs, a  
29 black box, Chubb cuffs, leg irons, belly chains, a security  
30 (tether) chain [or], a convex shield or drug or medication.

1 Section 4. This act shall take effect in 60 days.