

PRISONS AND PAROLE CODE (61 PA.C.S.) - STATE AND COUNTY
RECORDING SYSTEMS FOR APPLICATION OF RESTRAINTS TO PREGNANT
PRISONERS OR DETAINEES AND INCARCERATION OF PREGNANT WOMEN

Act of Jul. 2, 2010, P.L. 275, No. 45

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SB 1074

AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, providing for State recording system for application of restraints to pregnant prisoners or detainees, for county recording system for application of restraints to pregnant prisoners or detainees and for incarceration of pregnant women.

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

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

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

(a) General rule.-- A correctional institution as defined by section 5905(e) (relating to healthy birth for incarcerated women) shall report each restraint applied to a pregnant prisoner or detainee. The report must be in writing and must note the number of restraints. Individual, separate written findings for each restraint must accompany the report. This shall include reports from the following:

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

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

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

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

(2) the circumstances that led 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.

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

(a) General rule.--The application of restraints to a pregnant prisoner or detainee occurring pursuant to section 5905 (relating to healthy birth for incarcerated women) shall constitute an incident that qualifies as an extraordinary

occurrence that must be reported to the department in the County Extraordinary Occurrence Monthly Report.

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

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

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

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

(ii) the circumstances that led 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.

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

"County Extraordinary Occurrence Monthly Report." A collection of statistics and other information by the department on designated report forms or by other available approved methods for the collection of such incident information under this section and in accordance with written local policy providing for the collection of population information prescribed by 37 Pa. Code 95.242 (relating to Statistical/informational reporting).

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

§ 5905. Healthy birth for incarcerated women.

(a) Duties of correctional institution.--Consistent with established 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 medical facility and during her stay at the medical facility.

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

(1) Unless provided in paragraph (2), 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, any period of delivery, any period of postpartum as defined in subsection (e) or transport to a medical facility as a result of any of the preceding conditions or transport to a medical facility after the beginning of the second trimester of pregnancy.

(2) Paragraph (1) shall not bar reasonable restraint provided the correctional institution staff assigned to the prisoner or detainee makes an individualized determination that the prisoner or detainee presents a substantial risk of imminent flight 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. The assigned correctional institution staff shall report the incident to the correctional institution in a reasonable amount of time after the restraint occurs. If the assigned correctional institution staff is not employed by the correctional institution, then the assigned correctional institution staff shall report the restraint to the correctional institution in a reasonable amount of time after the incident occurs.

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

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

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

(1) The correctional institution staff accompanying the prisoner or detainee shall immediately remove all restraints upon request of a 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.

(d) Annual report.--No later than August 1 of each year, the secretary and the Secretary of Public Welfare shall each submit to the Governor's Office a written report containing information regarding the use of restraints on any pregnant prisoner or detainee during the preceding fiscal year specifically identifying and enumerating the circumstances that led to the determination that the prisoner or detainee fell under the exception in subsection (b)(2). The secretary shall report on pregnant prisoners or detainees in the custody of correctional institutions operated, supervised or licensed by the department. The Secretary of Public Welfare shall report on pregnant prisoners or detainees in the custody of correctional institutions operated, supervised or licensed by the Department of Public Welfare pursuant to the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code. The reports 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 offices of the department and the Department of Public Welfare, respectively.

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

"Correctional institution." Any entity under the authority of the state or any county or municipality 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 before a prisoner or detainee has been discharged from a medical facility.

"Prisoner." Any person incarcerated or detained in any correctional institution 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.

"Restraint ." Any physical hold 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 2. This act shall take effect in 60 days.

APPROVED--The 2nd day of July, A.D. 2010.

EDWARD G. RENDELL