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

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JANUARY 26, 2010

AN ACT

Relating to the incarceration of pregnant women.

AMENDING TITLE 61 (PENAL AND CORRECTIONAL INSTITUTIONS) 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. 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
labour, 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.

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.—ANY AND ALL INCIDENTS WHERE THE
APPLICATION OF RESTRAINTS TO A PREGNANT PRISONER OR DETAINEE
OCCURRED PURSUANT TO SECTION 5905 (RELATING TO HEALTHY BIRTH FOR
INCARCERATED WOMEN) MUST BE REPORTED TO THE DEPARTMENT. THE
REPORT MUST BE IN WRITING AND MUST NOTE THE NUMBER OF INCIDENTS
THAT OCCURRED. INDIVIDUAL, SEPARATE WRITTEN FINDINGS FOR EACH
INCIDENT THAT OCCURRED MUST ACCOMPANY THE REPORT.

(B) CONTENTS OF WRITTEN FINDINGS.—WRITTEN FINDINGS OF EACH
INCIDENT 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 DETAINES OR THE PUBLIC.

§ 1758. COUNTY RECORDING SYSTEM FOR APPLICATION OF RESTRAINTS
TO PREGNANT PRISONERS OR DETAINES.

(A) GENERAL RULE.--THE APPLICATION OF RESTRAINTS TO A
PREGNANT PRISONER OR DETAINEE OCCURRING PURSUANT TO SECTION 5905
(RELATED 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 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.

(B) RESTRRAINT OF PREGNANT PRISONERS AND DETAINNEES.--
(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 STAFF ASSIGNED TO THE PRISONER 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 STAFF SHALL REPORT THE INCIDENT TO THE SHIFT COMMANDER OR STAFF EQUIVALENT IN A REASONABLE AMOUNT OF TIME AFTER THE RESTRAINT OCCURS. IF THE ASSIGNED CORRECTIONAL STAFF IS NOT EMPLOYED BY THE CORRECTIONAL INSTITUTION THEN THE ASSIGNED CORRECTIONAL 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 DETAINEE BE LEFT UNATTENDED BY A CORRECTIONAL OFFICER WITH THE ABILITY TO RELEASE SAID RESTRAINTS SHOULD SUCH A RELEASE BECOME MEDICALLY NECESSARY.

(4) 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.
(C) RESTRAINTS.—THE FOLLOWING SHALL APPLY TO A PRISONER OR
DETAINEE WHO HAS BEEN RESTRAINED UNDER THIS SUBSECTION:

(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.

(D) ANNUAL REPORT.—NO LATER THAN AUGUST 1 OF EACH YEAR, THE
SECRETARY OF CORRECTIONS SHALL SUBMIT TO THE GOVERNOR'S OFFICE A
WRITTEN REPORT CONTAINING INFORMATION REGARDING THE USE OF
RESTRAINTS ON ANY PREGNANT PRISONER OR DETAINEE IN THE
OFFICIAL'S CUSTODY DURING THE PRECEDING FISCAL YEAR SPECIFICALLY
IDENTIFYING AND ENUMERATING THE CIRCUMSTANCES THAT LED TO THE
DETERMINATION THAT THE INMATE FELL UNDER THE EXCEPTION IN
SUBSECTION (B)(2). 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.

(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 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 BEFORE A
PRISONER OR DETAINEE HAS BEEN DISCHARGED FROM A MEDICAL
FACILITY.

"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 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.