AN ACT

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. 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:

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(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.