

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

1 ~~Relating to the incarceration of pregnant women.~~ ←  
2 AMENDING TITLE 61 (PENAL AND CORRECTIONAL INSTITUTIONS) OF THE ←  
3 PENNSYLVANIA CONSOLIDATED STATUTES, PROVIDING FOR STATE  
4 RECORDING SYSTEM FOR APPLICATION OF RESTRAINTS TO PREGNANT  
5 PRISONERS OR DETAINEES, FOR COUNTY RECORDING SYSTEM FOR  
6 APPLICATION OF RESTRAINTS TO PREGNANT PRISONERS OR DETAINEES  
7 AND FOR INCARCERATION OF PREGNANT WOMEN.

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

10 ~~Section 1. Short title.~~ ←

11 ~~This act shall be known and may be cited as the Healthy Birth-~~  
12 ~~for Incarcerated Women Act.~~

13 ~~Section 2. Definitions.~~

14 ~~The following words and phrases when used in this act shall~~  
15 ~~have the meanings given to them in this section unless the~~  
16 ~~context clearly indicates otherwise:~~

17 ~~"Correctional institution." Any entity under the authority~~  
18 ~~of any state, county or municipal law enforcement division that~~  
19 ~~has the power to detain and restrain a person under the laws of~~  
20 ~~this Commonwealth.~~

1 ~~"Detainee." Includes any person detained under the~~  
2 ~~immigration laws of the United States at any correctional~~  
3 ~~facility.~~

4 ~~"Labor." The period of time before a birth during which~~  
5 ~~contractions are of sufficient frequency, intensity and duration~~  
6 ~~to bring about effacement and progressive dilation of the~~  
7 ~~cervix. The determination of when labor has commenced shall rest~~  
8 ~~solely with the medical providers of the prisoner or detainee.~~

9 ~~"Postpartum." The period following delivery, including the~~  
10 ~~entire period a woman is in the hospital after the birth of her~~  
11 ~~child or children.~~

12 ~~"Prisoner." Any person incarcerated or detained in any~~  
13 ~~facility who is accused of, convicted of, sentenced for or~~  
14 ~~adjudicated delinquent for violations of criminal law or the~~  
15 ~~terms and conditions of parole, probation, pretrial release or a~~  
16 ~~diversionary program.~~

17 ~~"Restraints." Any physical restraint or mechanical device~~  
18 ~~used to control the movement of a prisoner's or detainee's body~~  
19 ~~and limbs, including, but not limited to, shackles, flex cuffs,~~  
20 ~~soft restraints, hard metal handcuffs, a black box, Chubb cuffs,~~  
21 ~~leg irons, belly chains, a security (tether) chain or a convex~~  
22 ~~shield.~~

23 ~~Section 3. Duties of correctional institution.~~

24 ~~Consistent with established correctional policy and practice,~~  
25 ~~it shall be the duty and responsibility of the correctional~~  
26 ~~institution to provide adequate personnel to monitor the~~  
27 ~~pregnant prisoner or detainee during transport to and from the~~  
28 ~~hospital and during her stay at the hospital.~~

29 ~~Section 4. Restraint of pregnant prisoners and detainees.~~

30 ~~(a) Limitation on restraints. Unless provided in subsection~~

1 ~~(b), a correctional institution shall not apply restraints to a~~  
2 ~~prisoner or detainee known to be pregnant during any stage of~~  
3 ~~labor, any pregnancy related medical distress, transport to a~~  
4 ~~medical facility, delivery or postpartum, as defined in section~~  
5 ~~2.~~

6 ~~(b) Exception. Subsection (a) shall not bar reasonable~~  
7 ~~restraint provided a shift commander or the staff equivalent at~~  
8 ~~the correctional institution makes an individualized~~  
9 ~~determination that the prisoner or detainee presents a~~  
10 ~~substantial flight risk or some other extraordinary medical or~~  
11 ~~security circumstance dictates that the prisoner or detainee be~~  
12 ~~restrained to ensure the safety and security of the prisoner or~~  
13 ~~detainee, the staff of the correctional institution or medical~~  
14 ~~facility, other prisoners or detainees or the public.~~

15 ~~(c) Condition of restraint. If restraint is applied under~~  
16 ~~subsection (b), at no time shall the detainee be left unattended~~  
17 ~~by a correctional officer with the ability to release said~~  
18 ~~restraints should such a release become medically necessary.~~

19 ~~(d) Least restrictive alternative. When restraints are~~  
20 ~~permitted under this section, a correctional institution shall~~  
21 ~~use the least restrictive restraints necessary when the facility~~  
22 ~~has actual or constructive knowledge that a prisoner is in the~~  
23 ~~second or third trimester of pregnancy.~~

24 ~~Section 5. Restraints.~~

25 ~~The following shall apply to a prisoner or detainee who has~~  
26 ~~been restrained under section 4:~~

27 ~~(1) The corrections officer accompanying the prisoner or~~  
28 ~~detainee shall immediately remove all restraints upon request~~  
29 ~~of the doctor, nurse or other health care professional.~~

30 ~~(2) Leg or waist restraints shall not be used on any~~

1 ~~prisoner or detainee who is in labor.~~

2 ~~(3) The type of restraint applied and the application of~~  
3 ~~the restraint shall be done in the least restrictive manner~~  
4 ~~possible.~~

5 ~~(4) A correctional officer shall not apply restraints~~  
6 ~~without prior authorization of the shift commander or staff~~  
7 ~~equivalent.~~

8 ~~Section 6. Duties of warden or other correctional institution~~  
9 ~~official.~~

10 ~~The warden or the highest ranking official of the~~  
11 ~~correctional institution shall make written findings within ten~~  
12 ~~days of the application of restraints to a pregnant prisoner or~~  
13 ~~detainee under section 4. The report shall specifically identify~~  
14 ~~and enumerate the circumstances that led to the determination~~  
15 ~~that the prisoner or detainee represented a substantial flight~~  
16 ~~risk or to the determination that other extraordinary medical or~~  
17 ~~security circumstances dictated the prisoner or detainee be~~  
18 ~~restrained to ensure the safety and security of the prisoner or~~  
19 ~~detainee, the staff of the correctional institution or medical~~  
20 ~~facility, other prisoners or detainees or the public. These~~  
21 ~~findings shall be maintained by the institution for at least~~  
22 ~~five years and be made available for public inspection, except~~  
23 ~~that no information identifying any prisoner or detainee shall~~  
24 ~~be made public without the prisoner's or detainee's prior~~  
25 ~~written consent.~~

26 ~~Section 7. Annual report.~~

27 ~~No later than August 1 of each year, the Secretary of~~  
28 ~~Corrections and the official responsible for oversight of each~~  
29 ~~municipal and county correctional institution where a pregnant~~  
30 ~~prisoner or detainee had been subject to application of~~

1 ~~restraints during that previous fiscal year shall submit to the~~  
2 ~~Office of the Governor a written report containing detailed~~  
3 ~~information, including information required under section 6,~~  
4 ~~regarding the use of restraints on any pregnant prisoner or~~  
5 ~~detainee in the official's custody during the preceding fiscal~~  
6 ~~year. The written report shall not contain any identifying~~  
7 ~~information of any prisoner or detainee. The reports shall be~~  
8 ~~posted on the Governor's Internet website and shall be made~~  
9 ~~available for public inspection at the office of the Department~~  
10 ~~of Corrections.~~

11 ~~Section 8. Effective date.~~

12 ~~This act shall take effect in 60 days.~~

13 SECTION 1. TITLE 61 OF THE PENNSYLVANIA CONSOLIDATED  
14 STATUTES IS AMENDED BY ADDING SECTIONS TO READ:

15 § 1104. STATE RECORDING SYSTEM FOR APPLICATION OF RESTRAINTS TO  
16 PREGNANT PRISONERS OR DETAINEES.

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

24 (B) CONTENTS OF WRITTEN FINDINGS.--WRITTEN FINDINGS OF EACH  
25 INCIDENT AS REQUIRED UNDER SUBSECTION (A) MUST INCLUDE THE  
26 FOLLOWING:

27 (1) THE CIRCUMSTANCES THAT LED TO THE DETERMINATION THAT  
28 THE PRISONER OR DETAINEE REPRESENTED A SUBSTANTIAL RISK OF  
29 IMMINENT FLIGHT; OR

30 (2) THE CIRCUMSTANCES THAT LED TO THE DETERMINATION THAT

1 OTHER EXTRAORDINARY MEDICAL OR SECURITY CIRCUMSTANCES  
2 DICTATED THE PRISONER OR DETAINEE BE RESTRAINED TO ENSURE THE  
3 SAFETY AND SECURITY OF THE PRISONER OR DETAINEE, THE STAFF OF  
4 THE CORRECTIONAL INSTITUTION OR MEDICAL FACILITY, OTHER  
5 PRISONERS OR DETAINEES OR THE PUBLIC.

6 § 1758. COUNTY RECORDING SYSTEM FOR APPLICATION OF RESTRAINTS  
7 TO PREGNANT PRISONERS OR DETAINEES.

8 (A) GENERAL RULE.--THE APPLICATION OF RESTRAINTS TO A  
9 PREGNANT PRISONER OR DETAINEE OCCURRING PURSUANT TO SECTION 5905  
10 (RELATING TO HEALTHY BIRTH FOR INCARCERATED WOMEN) SHALL  
11 CONSTITUTE AN INCIDENT THAT QUALIFIES AS AN EXTRAORDINARY  
12 OCCURRENCE THAT MUST BE REPORTED TO THE DEPARTMENT IN THE COUNTY  
13 EXTRAORDINARY OCCURRENCE MONTHLY REPORT.

14 (B) INFORMATION TO BE INCLUDED IN COUNTY EXTRAORDINARY  
15 OCCURRENCE MONTHLY REPORT.--

16 (1) ANY AND ALL INCIDENTS WHERE THE APPLICATION OF  
17 RESTRAINTS TO A PREGNANT PRISONER OR DETAINEE PURSUANT TO  
18 SECTION 5905 OCCURRED MUST BE INCLUDED IN THE COUNTY  
19 EXTRAORDINARY OCCURRENCE MONTHLY REPORT THAT IS SUBMITTED TO  
20 THE DEPARTMENT. AN INDICATION OF THE INCIDENTS MUST BE NOTED  
21 ON THE DESIGNATED REPORT FORM OR OTHER AVAILABLE APPROVED  
22 METHOD, IF APPLICABLE, AND INDIVIDUAL, SEPARATE WRITTEN  
23 FINDINGS MUST ACCOMPANY THE FORM FOR EACH INCIDENT THAT  
24 OCCURRED.

25 (2) WRITTEN FINDINGS OF EACH INCIDENT AS REQUIRED UNDER  
26 PARAGRAPH (1) MUST INCLUDE THE FOLLOWING:

27 (I) THE CIRCUMSTANCES THAT LED TO THE DETERMINATION  
28 THAT THE PRISONER OR DETAINEE REPRESENTED A SUBSTANTIAL  
29 RISK OF IMMINENT FLIGHT; OR

30 (II) THE CIRCUMSTANCES THAT LED TO THE DETERMINATION

1 THAT OTHER EXTRAORDINARY MEDICAL OR SECURITY  
2 CIRCUMSTANCES DICTATED 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.

7 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
8 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
9 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

10 "COUNTY EXTRAORDINARY OCCURRENCE MONTHLY REPORT." A  
11 COLLECTION OF STATISTICS AND OTHER INFORMATION BY THE DEPARTMENT  
12 ON DESIGNATED REPORT FORMS OR BY OTHER AVAILABLE APPROVED  
13 METHODS FOR THE COLLECTION OF SUCH INCIDENT INFORMATION UNDER  
14 THIS SECTION AND IN ACCORDANCE WITH WRITTEN LOCAL POLICY  
15 PROVIDING FOR THE COLLECTION OF POPULATION INFORMATION  
16 PRESCRIBED BY 37 PA. CODE 95.242 (RELATING TO STATISTICAL/  
17 INFORMATIONAL REPORTING).

18 "DEPARTMENT." THE DEPARTMENT OF CORRECTIONS OF THE  
19 COMMONWEALTH.

20 § 5905. HEALTHY BIRTH FOR INCARCERATED WOMEN.

21 (A) DUTIES OF CORRECTIONAL INSTITUTION.--CONSISTENT WITH  
22 ESTABLISHED CORRECTIONAL POLICY AND PRACTICE, IT SHALL BE THE  
23 DUTY AND RESPONSIBILITY OF THE CORRECTIONAL INSTITUTION TO  
24 PROVIDE ADEQUATE PERSONNEL TO MONITOR THE PREGNANT PRISONER OR  
25 DETAINEE DURING TRANSPORT TO AND FROM THE HOSPITAL AND DURING  
26 HER STAY AT THE HOSPITAL.

27 (B) RESTRAINT OF PREGNANT PRISONERS AND DETAINEES.--

28 (1) UNLESS PROVIDED IN PARAGRAPH (2), A CORRECTIONAL  
29 INSTITUTION SHALL NOT APPLY RESTRAINTS TO A PRISONER OR  
30 DETAINEE KNOWN TO BE PREGNANT DURING ANY STAGE OF LABOR, ANY

1 PREGNANCY-RELATED MEDICAL DISTRESS, ANY PERIOD OF DELIVERY,  
2 ANY PERIOD OF POSTPARTUM, AS DEFINED IN SUBSECTION (E), OR  
3 TRANSPORT TO A MEDICAL FACILITY AS A RESULT OF ANY OF THE  
4 PRECEDING CONDITIONS OR TRANSPORT TO A MEDICAL FACILITY AFTER  
5 THE BEGINNING OF THE SECOND TRIMESTER OF PREGNANCY.

6 (2) PARAGRAPH (1) SHALL NOT BAR REASONABLE RESTRAINT  
7 PROVIDED THE CORRECTIONAL STAFF ASSIGNED TO THE PRISONER  
8 MAKES AN INDIVIDUALIZED DETERMINATION THAT THE PRISONER OR  
9 DETAINEE PRESENTS A SUBSTANTIAL RISK OF IMMINENT FLIGHT OR  
10 SOME OTHER EXTRAORDINARY MEDICAL OR SECURITY CIRCUMSTANCE  
11 DICTATES THAT THE PRISONER OR DETAINEE BE RESTRAINED TO  
12 ENSURE THE SAFETY AND SECURITY OF THE PRISONER OR DETAINEE,  
13 THE STAFF OF THE CORRECTIONAL INSTITUTION OR MEDICAL  
14 FACILITY, OTHER PRISONERS OR DETAINEES OR THE PUBLIC. THE  
15 ASSIGNED CORRECTIONAL STAFF SHALL REPORT THE INCIDENT TO THE  
16 SHIFT COMMANDER OR STAFF EQUIVALENT IN A REASONABLE AMOUNT OF  
17 TIME AFTER THE RESTRAINT OCCURS. IF THE ASSIGNED CORRECTIONAL  
18 STAFF IS NOT EMPLOYED BY THE CORRECTIONAL INSTITUTION THEN  
19 THE ASSIGNED CORRECTIONAL STAFF SHALL REPORT THE RESTRAINT TO  
20 THE CORRECTIONAL INSTITUTION IN A REASONABLE AMOUNT OF TIME  
21 AFTER THE INCIDENT OCCURS.

22 (3) IF RESTRAINT IS APPLIED UNDER PARAGRAPH (2), AT NO  
23 TIME SHALL THE DETAINEE BE LEFT UNATTENDED BY A CORRECTIONAL  
24 OFFICER WITH THE ABILITY TO RELEASE SAID RESTRAINTS SHOULD  
25 SUCH A RELEASE BECOME MEDICALLY NECESSARY.

26 (4) WHEN RESTRAINTS ARE PERMITTED UNDER THIS SECTION, A  
27 CORRECTIONAL INSTITUTION SHALL USE THE LEAST RESTRICTIVE  
28 RESTRAINTS NECESSARY WHEN THE FACILITY HAS ACTUAL OR  
29 CONSTRUCTIVE KNOWLEDGE THAT A PRISONER IS IN THE SECOND OR  
30 THIRD TRIMESTER OF PREGNANCY.



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

3 (1) THE CORRECTIONS OFFICER ACCOMPANYING THE PRISONER OR  
4 DETAINEE SHALL IMMEDIATELY REMOVE ALL RESTRAINTS UPON REQUEST  
5 OF THE DOCTOR, NURSE OR OTHER HEALTH CARE PROFESSIONAL.

6 (2) LEG OR WAIST RESTRAINTS SHALL NOT BE USED ON ANY  
7 PRISONER OR DETAINEE WHO IS IN LABOR.

8 (3) THE TYPE OF RESTRAINT APPLIED AND THE APPLICATION OF  
9 THE RESTRAINT SHALL BE DONE IN THE LEAST RESTRICTIVE MANNER  
10 POSSIBLE.

11 (D) ANNUAL REPORT.--NO LATER THAN AUGUST 1 OF EACH YEAR, THE  
12 SECRETARY OF CORRECTIONS SHALL SUBMIT TO THE GOVERNOR'S OFFICE A  
13 WRITTEN REPORT CONTAINING INFORMATION REGARDING THE USE OF  
14 RESTRAINTS ON ANY PREGNANT PRISONER OR DETAINEE IN THE  
15 OFFICIAL'S CUSTODY DURING THE PRECEDING FISCAL YEAR SPECIFICALLY  
16 IDENTIFYING AND ENUMERATING THE CIRCUMSTANCES THAT LED TO THE  
17 DETERMINATION THAT THE INMATE FELL UNDER THE EXCEPTION IN  
18 SUBSECTION (B) (2). THE WRITTEN REPORT SHALL NOT CONTAIN ANY  
19 IDENTIFYING INFORMATION OF ANY PRISONER OR DETAINEE. THE REPORTS  
20 SHALL BE POSTED ON THE GOVERNOR'S INTERNET WEBSITE AND SHALL BE  
21 MADE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICE OF THE  
22 DEPARTMENT OF CORRECTIONS.

23 (E) 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 "CORRECTIONAL INSTITUTION." ANY ENTITY UNDER THE AUTHORITY  
27 OF ANY STATE, COUNTY OR MUNICIPAL LAW ENFORCEMENT DIVISION THAT  
28 HAS THE POWER TO DETAIN AND RESTRAIN A PERSON UNDER THE LAWS OF  
29 THIS COMMONWEALTH.

30 "DETAINEE." INCLUDES ANY PERSON DETAINED UNDER THE

1 IMMIGRATION LAWS OF THE UNITED STATES AT ANY CORRECTIONAL  
2 FACILITY.

3 "LABOR." THE PERIOD OF TIME BEFORE A BIRTH DURING WHICH  
4 CONTRACTIONS ARE OF SUFFICIENT FREQUENCY, INTENSITY AND DURATION  
5 TO BRING ABOUT EFFACEMENT AND PROGRESSIVE DILATION OF THE  
6 CERVIX. THE DETERMINATION OF WHEN LABOR HAS COMMENCED SHALL REST  
7 SOLELY WITH THE MEDICAL PROVIDERS OF THE PRISONER OR DETAINEE.

8 "POSTPARTUM." THE PERIOD FOLLOWING DELIVERY BEFORE A  
9 PRISONER OR DETAINEE HAS BEEN DISCHARGED FROM A MEDICAL  
10 FACILITY.

11 "PRISONER." ANY PERSON INCARCERATED OR DETAINED IN ANY  
12 FACILITY WHO IS ACCUSED OF, CONVICTED OF, SENTENCED FOR OR  
13 ADJUDICATED DELINQUENT FOR VIOLATIONS OF CRIMINAL LAW OR THE  
14 TERMS AND CONDITIONS OF PAROLE, PROBATION, PRETRIAL RELEASE OR A  
15 DIVERSIONARY PROGRAM.

16 "RESTRAINTS." ANY PHYSICAL RESTRAINT OR MECHANICAL DEVICE  
17 USED TO CONTROL THE MOVEMENT OF A PRISONER'S OR DETAINEE'S BODY  
18 AND LIMBS, INCLUDING, BUT NOT LIMITED TO, SHACKLES, FLEX CUFFS,  
19 SOFT RESTRAINTS, HARD METAL HANDCUFFS, A BLACK BOX, CHUBB CUFFS,  
20 LEG IRONS, BELLY CHAINS, A SECURITY (TETHER) CHAIN OR A CONVEX  
21 SHIELD.

22 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.