

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1074 Session of 2009

INTRODUCED BY LEACH, STOUT, HUGHES, KITCHEN, FERLO, FONTANA, WILLIAMS, COSTA, TARTAGLIONE AND WASHINGTON, SEPTEMBER 2, 2009

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, MARCH 15, 2010

AN ACT

1 Amending Title 61 (Penal and Correctional Institutions) of the
2 Pennsylvania Consolidated Statutes, providing for State
3 recording system for application of restraints to pregnant
4 prisoners or detainees, for county recording system for
5 application of restraints to pregnant prisoners or detainees
6 and for incarceration of pregnant women.

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

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

11 § 1104. State recording system for application of restraints to
12 pregnant prisoners or detainees.

13 (a) General rule.--Any and all incidents where the ←
14 application of restraints A CORRECTIONAL INSTITUTION AS DEFINED ←
15 BY SECTION 5905(E) (RELATING TO HEALTHY BIRTH FOR INCARCERATED
16 WOMEN) SHALL REPORT EACH RESTRAINT APPLIED to a pregnant
17 prisoner or detainee occurred pursuant to section 5905 (relating ←
18 to healthy birth for incarcerated women) must be reported to the
19 department. The report must be in writing and must note the

1 number of incidents that occurred RESTRAINTS. Individual, ←
2 separate written findings for each incident that occurred must ←
3 accompany the report. RESTRAINT MUST ACCOMPANY THE REPORT TO THE ←
4 FOLLOWING:

5 (1) A CORRECTIONAL INSTITUTION THAT IS NOT OPERATED,
6 SUPERVISED OR LICENSED BY THE DEPARTMENT OF PUBLIC WELFARE
7 PURSUANT TO THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN
8 AS THE PUBLIC WELFARE CODE, SHALL MAKE THE REPORT TO THE
9 SECRETARY.

10 (2) A CORRECTIONAL INSTITUTION THAT IS OPERATED,
11 SUPERVISED OR LICENSED BY THE DEPARTMENT OF PUBLIC WELFARE
12 PURSUANT TO THE PUBLIC WELFARE CODE SHALL MAKE THE REPORT TO
13 THE SECRETARY OF PUBLIC WELFARE.

14 (b) Contents of written findings.--Written findings of each
15 incident RESTRAINT as required under subsection (a) must include ←
16 the following:

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

20 (2) the circumstances that led to the determination that
21 other extraordinary medical or security circumstances
22 dictated the prisoner or detainee be restrained to ensure the
23 safety and security of the prisoner or detainee, the staff of
24 the correctional institution or medical facility, other
25 prisoners or detainees or the public.

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

28 (a) General rule.--The application of restraints to a
29 pregnant prisoner or detainee occurring pursuant to section 5905
30 (relating to healthy birth for incarcerated women) shall

1 constitute an incident that qualifies as an extraordinary
2 occurrence that must be reported to the department in the County
3 Extraordinary Occurrence Monthly Report.

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

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

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

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

20 (ii) the circumstances that led to the determination
21 that other extraordinary medical or security
22 circumstances dictated the prisoner or detainee be
23 restrained to ensure the safety and security of the
24 prisoner or detainee, the staff of the correctional
25 institution or medical facility, other prisoners or
26 detainees or the public.

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

30 "County Extraordinary Occurrence Monthly Report." A

1 collection of statistics and other information by the department
2 on designated report forms or by other available approved
3 methods for the collection of such incident information under
4 this section and in accordance with written local policy
5 providing for the collection of population information
6 prescribed by 37 Pa. Code 95.242 (relating to Statistical/
7 informational reporting).

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

10 § 5905. Healthy birth for incarcerated women.

11 (a) Duties of correctional institution.--Consistent with
12 established ~~correctional~~ policy and practice, it shall be the ←
13 duty and responsibility of the correctional institution to
14 provide adequate personnel to monitor the pregnant prisoner or
15 detainee during transport to and from the ~~hospital~~ MEDICAL ←
16 FACILITY and during her stay at the ~~hospital~~ MEDICAL FACILITY. ←

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

18 (1) Unless provided in paragraph (2), a correctional
19 institution shall not apply restraints to a prisoner or
20 detainee known to be pregnant during any stage of labor, any
21 pregnancy-related medical distress, any period of delivery,
22 any period of postpartum, as defined in subsection (e), or
23 transport to a medical facility as a result of any of the
24 preceding conditions or transport to a medical facility after
25 the beginning of the second trimester of pregnancy.

26 (2) Paragraph (1) shall not bar reasonable restraint
27 provided the correctional INSTITUTION staff assigned to the ←
28 prisoner OR DETAINEE makes an individualized determination ←
29 that the prisoner or detainee presents a substantial risk of
30 imminent flight or some other extraordinary medical or

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

13 (3) If restraint is applied under paragraph (2), at no
14 time shall the PRISONER OR detainee be left unattended by a ←
15 correctional ~~officer~~ INSTITUTION STAFF with the ability to ←
16 release ~~said restraints~~ THE RESTRAINT should ~~such~~ a release ←
17 become medically necessary.

18 (4) When ~~restraints are~~ A RESTRAINT IS permitted under ←
19 this section, a correctional institution shall use the least
20 restrictive ~~restraints~~ RESTRAINT necessary when the facility ←
21 has actual or constructive knowledge that a prisoner OR ←
22 DETAINEE is in the second or third trimester of pregnancy.

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

25 (1) The ~~corrections officer~~ CORRECTIONAL INSTITUTION ←
26 STAFF accompanying the prisoner or detainee shall immediately
27 remove all restraints upon request of ~~the~~ A doctor, nurse or ←
28 other health care professional.

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

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

4 (d) Annual report.--No later than August 1 of each year, the
5 ~~Secretary of Corrections~~ SECRETARY AND THE SECRETARY OF PUBLIC ←
6 WELFARE shall EACH submit to the Governor's Office a written ←
7 report containing information regarding the use of restraints on
8 any pregnant prisoner or detainee in the official's custody ←
9 during the preceding fiscal year specifically identifying and
10 enumerating the circumstances that led to the determination that
11 the inmate PRISONER OR DETAINEE fell under the exception in ←
12 subsection (b) (2). The written report SECRETARY SHALL REPORT ON ←
13 PREGNANT PRISONERS OR DETAINEES IN THE CUSTODY OF CORRECTIONAL
14 INSTITUTIONS OPERATED, SUPERVISED OR LICENSED BY THE DEPARTMENT.
15 THE SECRETARY OF PUBLIC WELFARE SHALL REPORT ON PREGNANT
16 PRISONERS OR DETAINEES IN THE CUSTODY OF CORRECTIONAL
17 INSTITUTIONS OPERATED, SUPERVISED OR LICENSED BY THE DEPARTMENT
18 OF PUBLIC WELFARE PURSUANT TO THE ACT OF JUNE 13, 1967 (P.L.31,
19 NO.21), KNOWN AS THE PUBLIC WELFARE CODE. THE REPORTS shall not
20 contain any identifying information of any prisoner or detainee.
21 The reports shall be posted on the Governor's Internet website
22 and shall be made available for public inspection at the office ←
23 ~~OFFICES of the Department of Corrections~~ DEPARTMENT AND THE ←
24 DEPARTMENT OF PUBLIC WELFARE, RESPECTIVELY.

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

28 "Correctional institution." Any entity under the authority
29 of any THE state, OR ANY county or municipal law enforcement ←
30 ~~division~~ MUNICIPALITY that has the power to detain and restrain ←

1 a person under the laws of this Commonwealth.

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

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

10 "Postpartum." The period following delivery before a
11 prisoner or detainee has been discharged from a medical
12 facility.

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

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

24 Section 2. This act shall take effect in 60 days.