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No. \_\_\_\_\_

**LEGISLATIVE REFERENCE BUREAU**

**AN ACT**

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration, further providing for State recording system for application of restraints to pregnant prisoners or detainees; in county correctional institutions, further providing for county recording system for application of restraints to pregnant prisoners or detainees; and, in miscellaneous provisions, further providing for healthy birth for incarcerated women.

**INTRODUCED** \_\_\_\_\_ **20** \_\_\_\_\_

**By** \_\_\_\_\_ **District NO.** \_\_\_\_\_

**By** \_\_\_\_\_ **District NO.** \_\_\_\_\_

**By** \_\_\_\_\_ **District NO.** \_\_\_\_\_

**By** \_\_\_\_\_ **District NO.** \_\_\_\_\_

**See next page for additional co-sponsors.**

**Prior Session** \_\_\_\_\_

<b>Referred to Committee on</b>	
<b>Date</b> _____	<b>20</b> _____
<b>Reported</b> _____	<b>20</b> _____
<b>As Committed-Amended</b>	
<b>Recommendation</b>	
_____	
<b>By Hon.</b> _____	



## AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania  
2 Consolidated Statutes, in general administration, further  
3 providing for State recording system for application of  
4 restraints to pregnant prisoners or detainees; in county  
5 correctional institutions, further providing for county  
6 recording system for application of restraints to pregnant  
7 prisoners or detainees; and, in miscellaneous provisions,  
8 further providing for healthy birth for incarcerated women.

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

11 Section 1. Sections 1104, 1758 heading, (a) and (b)(1) and  
12 5905 of Title 61 of the Pennsylvania Consolidated Statutes are  
13 amended to read:

14 § 1104. State recording system for application of restraints to  
15 pregnant, laboring or postpartum prisoners or  
16 detainees.

17 (a) General rule.--[A correctional institution as defined by  
18 section 5905(e) (relating to healthy birth for incarcerated  
19 women) shall report each restraint applied to a pregnant  
20 prisoner or detainee. The report must be in writing and must

1 note the number of restraints. Individual, separate written  
2 findings for each restraint must accompany the report. This  
3 shall include reports from the following:] Each custodian, as  
4 defined by section 5905(e) (relating to healthy birth for  
5 incarcerated prisoners and detainees), who applies restraints to  
6 a pregnant, laboring or postpartum prisoner or detainee shall,  
7 on a form prepared by the department, submit a written report of  
8 the application of restraints to a staff person appointed by the  
9 officer in charge of a correctional institution within two days  
10 of use of the restraint on a pregnant, laboring or postpartum  
11 prisoner or detainee. The staff person appointed under this  
12 section shall deliver each written report of the use of  
13 restraints to the officer in charge within two days of receiving  
14 the report under this section. The officer in charge shall  
15 deliver the reports in the following manner:

16 (1) [A] The officer in charge of a correctional  
17 institution that is not operated, supervised or licensed by  
18 the Department of [Public Welfare pursuant to] Human Services  
19 under the act of June 13, 1967 (P.L.31, No.21), known as the  
20 [Public Welfare] Human Services Code, shall [make the report]  
21 deliver the reports on a monthly basis to the secretary  
22 within 30 days of the end of the previous month.

23 (2) [A] The officer in charge of a correctional  
24 institution that is operated, supervised or licensed by the  
25 Department of [Public Welfare pursuant to] Human Services  
26 under the [Public Welfare] Human Services Code shall [make  
27 the report] deliver the reports on a monthly basis to the  
28 Secretary of [Public Welfare] Human Services within 30 days  
29 of the end of the previous month.

30 (b) Contents of written [findings] reports.--Written

1 [findings of each restraint as] reports required under  
2 subsection (a) must include the following for each restraint  
3 applied:

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

7 (2) the circumstances that led to the determination that  
8 other extraordinary medical or security circumstances  
9 dictated the prisoner or detainee be restrained to ensure the  
10 safety and security of the prisoner or detainee, the staff of  
11 the correctional institution or medical facility, other  
12 prisoners or detainees or the public.]

13 :

14 (1) the date and time restraints were applied and  
15 removed;

16 (2) the number and type of restraints applied;

17 (3) the name of the prisoner or detainee on which  
18 restraints were applied;

19 (4) the gestational period of the pregnant prisoner or  
20 detainee;

21 (5) the name of the correctional institution of the  
22 prisoner or detainee;

23 (6) the name of the staff member who applied the  
24 restraints; and

25 (7) the staff member's justification for the  
26 individualized determination to use restraints, including the  
27 underlying facts that led to the determination:

28 (i) that the prisoner or detainee represented a  
29 substantial risk of imminent flight that could not be  
30 reasonably prevented by other means; or

1           (ii) that the prisoner or detainee posed an  
2           extraordinary, immediate and serious threat to  
3           themselves, the staff of the correctional institution or  
4           medical or other facility, other prisoners or detainees  
5           or the public.

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

9           "Correctional institution." As defined in section 5905(e)  
10          (relating to healthy birth for incarcerated prisoners and  
11          detainees).

12          "Custodian." As defined in section 5905(e).

13          "Officer in charge." As defined in section 5905(e).

14 § 1758. County recording system for application of restraints  
15           to pregnant, laboring or postpartum prisoners or  
16           detainees.

17          (a) General rule.--The application of restraints to a  
18          pregnant, laboring or postpartum prisoner or detainee [occurring  
19          pursuant] subject to section 5905 (relating to healthy birth for  
20          incarcerated [women] prisoners and detainees) shall constitute  
21          an incident that qualifies as an extraordinary occurrence that  
22          must be reported to the department in the County Extraordinary  
23          Occurrence Monthly Report. The provisions of this subsection  
24          shall apply to county constables, police, sheriffs or other law  
25          enforcement personnel.

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

28                  (1) Any and all incidents where the application of  
29                  restraints to a pregnant, laboring or postpartum prisoner or  
30                  detainee [pursuant] subject to section 5905 occurred must be

1 included in the County Extraordinary Occurrence Monthly  
2 Report that is submitted to the department. [An indication of  
3 the incidents must be noted on the designated report form or  
4 other available approved method, if applicable, and  
5 individual, separate written findings must accompany the form  
6 for each incident that occurred.] The report must include the  
7 following for each restraint applied:

8 (i) the date and time restraints were applied and  
9 removed;

10 (ii) the number and type of restraints applied;

11 (iii) the name of the prisoner or detainee on which  
12 restraints were applied;

13 (iv) the gestational period of the pregnant prisoner  
14 or detainee;

15 (v) the name of the correctional institution of the  
16 prisoner or detainee;

17 (vi) the name of the staff member who applied the  
18 restraints; and

19 (vii) the staff member's justification for the  
20 individualized determination to use restraints, including  
21 the underlying facts that led to the determination:

22 (A) that the prisoner or detainee represented a  
23 substantial risk of imminent flight that cannot be  
24 reasonably prevented by other means; or

25 (B) that the prisoner or detainee posed an  
26 extraordinary, immediate and serious threat to  
27 themselves, the staff of the correctional institution  
28 or medical or other facility, other prisoners or  
29 detainees or the public.

30 \* \* \*

1 § 5905. Healthy birth for incarcerated [women] prisoners and  
2 detainees.

3 (a) Duties of correctional institution.--[Consistent with  
4 established policy and practice, it] It shall be the duty and  
5 responsibility of the correctional institution and officers in  
6 charge to:

7 (1) provide adequate personnel to monitor [the] and  
8 promptly address the medical needs of a pregnant prisoner or  
9 detainee:

10 (i) in the correctional institution;

11 (ii) during transport to and from [the] a medical  
12 facility, court or other location; and

13 (iii) during [her] a pregnant prisoner or detainee's  
14 stay at [the] a medical facility~~[.]~~, court or other  
15 location;

16 (2) provide annual training on the requirements of this  
17 section to all personnel who will monitor pregnant prisoners  
18 or detainees, including training consistent with the  
19 guidelines developed by the Department of Human Services in  
20 consultation with health care professionals with expertise in  
21 pregnancy and postpartum recovery, which shall include:

22 (i) the general care of a pregnant individual;

23 (ii) the impact of restraints on a pregnant  
24 individual and fetus;

25 (iii) how to identify certain symptoms of pregnancy  
26 and postpartum complications that require immediate  
27 referral to a health care professional;

28 (iv) the restrictions on use of restraints on  
29 pregnant prisoners and detainees;

30 (v) circumstances under which the exceptions under



1 subsection (b) (2) would apply;

2 (vi) in the case that an exception under subsection  
3 (b) (2) applies, how to apply restraints in a way that  
4 does not harm the prisoner, detainee or fetus;

5 (vii) the requirements to report and the information  
6 required to be reported under sections 1104(b) (relating  
7 to State recording system for application of restraints  
8 to pregnant, laboring or postpartum prisoners or  
9 detainees), 1758(b) (relating to county recording system  
10 for the application of restraints to pregnant, laboring  
11 or postpartum prisoners or detainees) and subsection (b)  
12 (2.1); and

13 (viii) the right of a health care professional to  
14 request that restraints not be used and the requirements  
15 under subsection (c.1) to comply with such a request;

16 (3) adopt and implement a written policy consistent with  
17 and reiterating the requirements of sections 1104, 1758 and  
18 this section; and

19 (4) prepare and distribute written information to  
20 pregnant and potentially pregnant prisoners and detainees  
21 explaining their rights under this section, provided that  
22 this obligation shall be satisfied by distribution of a fact  
23 sheet prepared by the department or the Department of Human  
24 Services that accurately sets forth the requirements of this  
25 section.

26 (b) Restraint of pregnant, laboring and postpartum prisoners  
27 and detainees.--

28 (1) Unless provided in paragraph (2), a correctional  
29 institution and its personnel shall not apply restraints to a  
30 prisoner or detainee known to be pregnant [during any stage

1 of labor, any pregnancy-related medical distress, any period  
2 of delivery, any period of postpartum as defined in  
3 subsection (e) or transport to a medical facility as a result  
4 of any of the preceding conditions or transport to a medical  
5 facility after the beginning of the second trimester of  
6 pregnancy.], laboring or postpartum within the correctional  
7 institution's facilities or during transport to or a stay at  
8 a medical facility, courthouse or other location. A prisoner  
9 or detainee is known to be pregnant, laboring or postpartum  
10 on the earliest date on which the custodian:

11 (i) receives medical confirmation of a prisoner or  
12 detainee's status of being pregnant, laboring or  
13 postpartum;

14 (ii) sees that a prisoner or detainee is visibly  
15 pregnant, laboring or postpartum; or

16 (iii) has received a credible report of the prisoner  
17 or detainee's status of being pregnant, laboring or  
18 postpartum or of the prisoner or detainee's symptoms of  
19 being pregnant, laboring or postpartum, including a  
20 report from the prisoner or detainee;

21 (2) [Paragraph] Except as provided in paragraph (4) and  
22 subsections (c) and (c.1), paragraph (1) shall not bar  
23 reasonable restraint provided:

24 (i) the custodian or correctional institution staff  
25 assigned to the prisoner or detainee makes an  
26 individualized determination that the prisoner or  
27 detainee presents a substantial risk of imminent flight  
28 [or some other extraordinary medical or security  
29 circumstance dictates that the prisoner or detainee be  
30 restrained to ensure the safety and security of the

1 prisoner or detainee,] that cannot be reasonably  
2 prevented by other means or poses an extraordinary,  
3 immediate and serious threat to themselves, the staff of  
4 the correctional institution or medical or other  
5 facility, other prisoners or detainees or the public[.  
6 The assigned correctional institution staff shall report  
7 the incident to the correctional institution in a  
8 reasonable amount of time after the restraint occurs. If  
9 the assigned correctional institution staff is not  
10 employed by the correctional institution, then the  
11 assigned correctional institution staff shall report the  
12 restraint to the correctional institution in a reasonable  
13 amount of time after the incident occurs.]; and

14 (ii) except when prevented from doing so due to  
15 exigent circumstances, the officer in charge approves the  
16 use of the restraint.

17 (2.1) Whenever a prisoner or detainee is restrained  
18 under paragraph (2), including in the event of exigent  
19 circumstances, the assigned correctional institution staff or  
20 other custodian shall report the incident to the correctional  
21 institution staff assigned to receive the reports within two  
22 days after the restraint occurs, on a form prepared by the  
23 department for this purpose. The assigned staff person shall  
24 deliver the written report to the officer in charge within  
25 two days of receiving the report. This paragraph shall apply  
26 even if the assigned custodian or correctional institution  
27 staff is not employed by the correctional institution.

28 (3) If restraint is applied under paragraph (2), at no  
29 time shall the prisoner or detainee be left unattended by a  
30 correctional institution staff with the ability to release

1 the restraint should a release become medically necessary.  
2 The correctional institution staff under this paragraph shall  
3 be female if practicable and preferred by the prisoner or  
4 detainee; however, no correctional personnel shall be present  
5 in the room during the prisoner's or detainee's examination,  
6 labor, delivery or childbirth unless specifically requested  
7 by medical personnel.

8 (4) [When a] A restraint is permitted under [this  
9 section, a correctional institution shall use] paragraph (2)  
10 only if the restraint is the least restrictive [restraint  
11 necessary when the facility has actual or constructive  
12 knowledge that a prisoner or detainee is in the second or  
13 third trimester of pregnancy] method available.

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

16 (1) The correctional institution staff accompanying the  
17 prisoner or detainee shall immediately remove all restraints  
18 upon request of a doctor, nurse or other health care  
19 professional.

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

22 (3) The type of restraint applied and the application of  
23 the restraint shall be done in the least restrictive manner  
24 possible.] restraints may not be used on a prisoner or  
25 detainee at any time during pregnancy, labor or postpartum  
26 period:

27 (1) abdomen, ankle, leg or waist restraints;

28 (2) restraint of the hands behind the back;

29 (3) four-point restraints;

30 (4) restraints attaching the prisoner or detainee to

1 another prisoner or detainee; or

2 (5) tasers and stun guns.

3 (c.1) Medical request.--Notwithstanding subsection (b)(2),  
4 on the request of a health care professional who is responsible  
5 for the health and safety of a prisoner or detainee, a  
6 correctional official or other custodian, as applicable, shall  
7 refrain from using restraints on the prisoner or detainee or  
8 shall immediately remove all restraints.

9 (c.2) Duties of officer in charge.--The officer in charge  
10 shall:

11 (1) review and assess the appropriateness of the use of  
12 restraints under this section and shall provide an assessment  
13 to the custodian who used restraints;

14 (2) maintain reports of the use of restraints under this  
15 section for a minimum of five years; and

16 (3) deliver reports of the use of restraints under this  
17 section to the secretary or the Secretary of Human Services  
18 consistent with section 1104(a) (relating to State recording  
19 system for application of restraints to pregnant, laboring or  
20 postpartum prisoners or detainees).

21 (d) Annual report.--No later than August 1 of each year, the  
22 secretary and the Secretary of [Public Welfare] Human Services  
23 shall each submit to the Governor's Office a written report  
24 containing information regarding the use of restraints on any  
25 pregnant, laboring or postpartum prisoner or detainee during the  
26 preceding fiscal year [specifically identifying and enumerating  
27 the circumstances that led to the determination that the  
28 prisoner or detainee fell under the exception in subsection (b)  
29 (2)]. The following shall apply:

30 (1) For each restraint, the following information shall

1 be included:

2 (i) the date and time restraints were applied and  
3 removed;

4 (ii) the number and type of restraints applied;

5 (iii) the name of the correctional institution of  
6 the prisoner or detainee;

7 (iv) the job title and employer of the staff person  
8 who applied the restraints; and

9 (v) the staff member's justification for the  
10 individualized determination to use restraints, including  
11 the particular factual circumstances that support a  
12 determination that the prisoner or detainee fell under  
13 the exception in subsection (b) (2).

14 (2) The secretary shall report on pregnant prisoners or  
15 detainees in the custody of correctional institutions  
16 operated, supervised or licensed by the department. If a  
17 correctional institution fails to submit a report of  
18 restraints used on pregnant, laboring or postpartum prisoners  
19 or detainees during the preceding fiscal year, the secretary  
20 shall:

21 (i) obtain a certification from the correctional  
22 institution that the correctional institution did not use  
23 any restraints on any pregnant, laboring or postpartum  
24 prisoner or detainee during the preceding fiscal year;  
25 and

26 (ii) include the certification under subparagraph  
27 (i) in the secretary's report.

28 (3) The Secretary of [Public Welfare] Human Services  
29 shall report on pregnant prisoners or detainees in the  
30 custody of correctional institutions operated, supervised or

1 licensed by the Department of [Public Welfare pursuant to]  
2 Human Services under the act of June 13, 1967 (P.L.31,  
3 No.21), known as the [Public Welfare] Human Services Code.

4 [The reports] If a correctional institution does not submit a  
5 report of restraints used on pregnant, laboring or postpartum  
6 prisoners or detainees during the preceding fiscal year, then  
7 the Secretary of Human Services shall:

8 (i) obtain a certification from the correctional  
9 institution that the correctional institution did not use  
10 restraints on a pregnant, laboring or postpartum prisoner  
11 or detainee during the preceding fiscal year; and

12 (ii) include the certification in the Secretary of  
13 Human Services' report.

14 (4) The annual reports submitted under this subsection  
15 shall not contain any identifying information of any prisoner  
16 or detainee.

17 (5) The annual reports submitted under this subsection  
18 shall be posted on the [Governor's] department's publicly  
19 accessible Internet website and shall be made available for  
20 public inspection at the offices of the department and the  
21 Department of [Public Welfare] Human Services, respectively.

22 (d.1) Oversight.--The following shall apply:

23 (1) In addition to the department's inspection powers  
24 and duties under section 1105(a)(2) (relating to powers and  
25 duties of department), the department shall have the power  
26 and duty to inspect county correctional institutions'  
27 fulfillment of the requirements of this section.

28 (2) Consistent with section 402 of the act of April 9,  
29 1929 (P.L.343, No.176), known as The Fiscal Code, the  
30 Department of the Auditor General shall have the authority to

1 make a special audit of the department's affairs under this  
2 section.

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

6 "Correctional institution." Any entity under the authority  
7 of the state or any county or municipality that has the power to  
8 detain and restrain a person under the laws of this  
9 Commonwealth[.], including, but not limited to, State  
10 correctional institutions, county correctional institutions,  
11 juvenile detention facilities, police departments, constables  
12 offices, sheriff's offices and private entities performing  
13 contracts for the State, county or municipality.

14 "Custodian." Warden, sheriff, jailer, deputy sheriff, police  
15 officer or other correctional or law enforcement officer having  
16 actual custody of a pregnant, laboring or postpartum prisoner or  
17 detainee.

18 "Detainee." Includes any person detained under the  
19 immigration laws of the United States at any correctional  
20 facility.

21 "Labor." The period of time before a birth during which  
22 contractions [are of sufficient frequency, intensity and  
23 duration to bring about effacement and progressive dilation of  
24 the cervix. The determination of when labor has commenced shall  
25 rest solely with the medical providers of the prisoner or  
26 detainee.] commence, followed by delivery of the child and  
27 placenta.

28 "Officer in charge." The warden, captain, superintendent or  
29 other individual who is responsible for the supervision of a  
30 correctional institution or of another custodian.



1 "Postpartum." The period of eight weeks following [delivery  
2 before a prisoner or detainee has been discharged from a medical  
3 facility] labor.

4 "Prisoner." Any person incarcerated or detained in any  
5 correctional institution who is accused of, convicted of,  
6 sentenced for or adjudicated delinquent for violations of  
7 criminal law or the terms and conditions of parole, probation,  
8 pretrial release or a diversionary program.

9 "Restraint." Any physical hold [or mechanical] device or  
10 chemical used to control the movement of a prisoner's or  
11 detainee's body and limbs, including, but not limited to,  
12 shackles, flex cuffs, soft restraints, hard metal handcuffs, a  
13 black box, Chubb cuffs, leg irons, belly chains, a security  
14 (tether) chain [or], a convex shield or drug or medication.

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

