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MEMORANDUM

TO: Senate Judiciary Committee

FROM: Andy Hoover, Legislative Director

DATE: January 25, 2010

RE: SENATE BILL 1074, THE HEALTHY BIRTH FOR INCARCERATED WOMEN ACT

The Senate Judiciary Committee is scheduled to consider Senate Bill 1074- the Healthy Birth for Incarcerated Women Act- at its meeting on Tuesday. SB 1074 bans the practice of shackling incarcerated women during childbirth. The American Civil Liberties Union of Pennsylvania supports Senate Bill 1074. On behalf of the approximately 16,000 members of the ACLU of PA, I urge you to please vote “yes” on the bill.

With the passage of SB 1074, Pennsylvania would join Texas, New Mexico, New York, California, Illinois, and Vermont in assuring healthy and humane births for incarcerated women. The Federal Bureau of Prisons prohibits the use of “restraints on pregnant inmates...except in extenuating circumstances” in all federal correctional institutions and medical centers. And the federal Marshals Service, which transports people in federal custody, has adopted a similar policy.

The Eighth Amendment of the U.S. Constitution prohibits the use of “Cruel and Unusual Punishment.” The Eighth Circuit Court of Appeals recently affirmed the constitutionally protected rights of incarcerated pregnant women by affirming a lower courts ruling that the shackling of pregnant women is indeed cruel and unusual.

Medical experts have determined that the restraining of pregnant women can pose undue health risks to the woman and her pregnancy. National health associations like the American Public Health Association (APHA) and the American College of Obstetricians and Gynecologists (ACOG) support the prohibition of shackling of pregnant women. The APHA Task Force on Correctional Health Care Standards takes the position that “women must never be shackled during labor and delivery.” ACOG goes further in that the shackling of pregnant women is “demeaning and unnecessary” and that “physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor

and delivery process more difficult than it needs to be; thus, overall putting the health and lives of the women and unborn children at risk.”

With the passage of SB 1074, Pennsylvania would join in the efforts of the federal government and states across the country in eliminating the unnecessary and inhumane practice of shackling and reaffirm that pregnant women in prison do not lose their rights to safe and humane treatment.