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May 15, 2014

Kathleen G. Kane
Attorney General
Pennsylvania Office of Attorney General
16th Floor, Strawberry Square
Harrisburg, PA 17120

RE: Compliance with the 2010 Healthy Birth for Incarcerated Women Act

Dear Attorney General Kane,

We write to you to ask for your assistance in providing much-needed legal guidance to the operators of detention facilities that house incarcerated women and to the healthcare professionals who serve pregnant incarcerated women about the requirements of the Healthy Birth for Incarcerated Women Act.

The Clara Bell Duvall Reproductive Freedom Project of the ACLU of Pennsylvania has been monitoring the de facto and de jure implementation of the Act since its passage in 2010. Unfortunately, we've found that in counties across the Commonwealth women are still being illegally restrained during prenatal-care visits, and facilities are not adhering to the Act's reporting requirements on the use of restraints for pregnant women.

Legal Restrictions on Restraining Pregnant Inmates

Incarcerated women in Pennsylvania won a tremendous victory when Governor Rendell signed SB 1074, the Healthy Birth for Incarcerated Women Act, into law on July 2, 2010. Act 45 of 2010 ("the Act"), codified at 61 Pa. Cons. Stat. § 5905, prohibits the use of handcuffs, leg shackles, and all other physical restraints on pregnant incarcerated women in their second and third trimesters, during prenatal care visits, labor and delivery, the postpartum period, and transportation to and from the hospital, absent an "extraordinary occurrence" warranting the use of restraints. The restraint of a pregnant prisoner is considered an extraordinary occurrence only when the prisoner or detainee presents a substantial flight risk or there are extraordinary medical or security risks to the prisoner, the staff of the correctional institution or medical facility, other prisoners, or the public. Even in extraordinary circumstances, the

least restrictive method of restraint must be used. Under the Act, medical staff has the right to demand the removal of any restraints used on pregnant incarcerated women during the provision of medical care.

The law also requires detention facilities to report their use of restraints for pregnant women in an Extraordinary Occurrence Monthly Report filed with the Pennsylvania Department of Corrections. This requirement has been interpreted and applied inconsistently by different prisons and jails. There is apparent confusion about whether this provision requires reporting of restraint use during any trimester of pregnancy or only in the second and third trimesters. It is also unclear what provisions of the Act apply when the trimester has not yet been determined.

Report: Change in Official Policy Only

The passage of the Healthy Birth for Incarcerated Women Act did have a profound effect on Pennsylvania jail policies. Following three rounds of Right to Know requests from 2009 to 2012, the Duvall Project found that while the majority of the 56 jails that house pregnant women in the state did not have an anti-restraint policy for pregnant incarcerated women prior to the passage of the Act, nearly all of the state's jails now have written policies that comply with the law.

Jail Policies Obtained Between 2009 and 2012 Through Right-to-Know Requests

	Restraints During Transport	Restraints During Medical Visits	Restraints During Labor and Delivery	Restraints During Postpartum Period
Does Not Allow	50	47	50	48
Allows*	0	1	0	1
No Policy*	0	2	0	1
No Response	6	6	6	6

** In violation of Act 45 of 2010*

Despite this widespread change in *written policy*, jails have been less consistent in *implementing* their anti-restraint policies and complying with the Act.

Reported Incidents of Restraint Use

In the three fiscal years since the law was implemented, 15 of the 56 county jails that house pregnant women have reported incidents of restraint use to the Department of Corrections.

According to the enclosed report from the Pennsylvania Department of Corrections, available at http://www.portal.state.pa.us/portal/server.pt/document/1286398/pregnant_women_in_restraints_pdf, five county jails reported 109 overall incidents of restraint use on pregnant women during the 2012–2013 fiscal year. Only 15 different pregnant women were involved in these reported restraint incidents.

The report notes that it “is not known if the remaining 47 jails were without incident or failed to report incidents as required.” The Department of Corrections also states that the reports often lack required information about the women’s trimester of pregnancy, as well as the required description of circumstances that led to restraint use.

Duvall Project’s Data Collection About Implementation of the Act

The Duvall Project’s investigation of the implementation of the Act confirms that, across the Commonwealth, there are many incidents of restraint use on pregnant women that are not being reported to the Department of Corrections.

During meetings conducted at 26 hospitals in 2011–2013, hospital clinicians and staff members reported that restraints were routinely being used on women in their second or third trimester of pregnancy during transportation; that women were regularly being handcuffed in the hospital, as well as to beds during deliveries and prenatal testing; and that leg restraints were also occasionally being used. One incident in February 2011 involving the improper use of restraints on a pregnant Allegheny County Jail inmate was particularly egregious. The woman, who was seven months pregnant, was subjected to the routine use of leg and waist restraints during transport to Magee Women’s Hospital for prenatal care. The restraints caused her to trip and fall face down. No report of this incident was submitted to the state by Allegheny County, which plainly violates the Act’s reporting requirement.

Additionally, a survey of providers in the Geisinger Health System showed that the vast majority of clinicians were unfamiliar with the law, and most did not know they could ask a correctional officer to remove restraints from any pregnant patient. Considering the Geisinger Health System operates more than 20 prenatal care clinics and offers delivery services at five sites throughout central and northeastern Pennsylvania, the survey findings demonstrate that there is widespread need for clarification about the law’s requirements, and present an opportunity to improve the law’s implementation. Enclosed is a document with further details about this survey and the Duvall Project’s findings.

The data compiled over the course of the Duvall Project’s visits to hospitals is largely anecdotal. But this data suggests that illegal use of restraints is widespread, and occurrences take place in counties across the state. The widespread non-compliance with the Act appears to be the result of inadequate training of correctional officers and medical staff on the law’s requirements. Although every prison warden surveyed was aware of the

Act's legal requirements, hospitals across the Commonwealth reported that inmates still were routinely being restrained during transport and, to a lesser degree, during the prenatal visits themselves. Although the Act requires that correctional institutions report every use of restraints on a pregnant inmate, i.e., to justify the "extraordinary occurrence" of using restraints, the number of incidents of restraint use reported by hospitals to Duvall Project staff far exceeds the number of incidents formally reported by correctional facilities to the Department of Corrections. In fiscal year 2012-13, 109 incidents involving only 15 women were reported by county facilities (with 90 incidents in Blair County alone). Based on our analysis, details of which are enclosed, that figure should be several times higher.

Recommendations

The Duvall Project of the ACLU of Pennsylvania routinely works with prisons to improve incarcerated women's access to reproductive health services, but the ACLU lacks the resources necessary to adequately educate all of the correctional and hospital staff about the requirements of the Healthy Birth for Incarcerated Women Act.

Our experience suggests that an advisory letter from the Office of the Attorney General about the requirements of the Act would significantly advance the education of correctional-facility and obstetrical staff who serve incarcerated pregnant women. In 2006 and 2007, then-Attorney General Corbett sent letters to medical facilities across the Commonwealth explaining his interpretation of the child-abuse-reporting requirements. These letters had a substantial impact on how medical providers interpreted the law on mandatory reporting. We expect your assistance could have a similarly significant effect here.

We recommend that the Office of the Attorney General issue an advisory bulletin—to wardens at Pennsylvania county jails, state prisons, and detention facilities housing incarcerated women and girls, as well as county solicitors, nurse managers, hospital-based directors of security, Ob/Gyn chairs, and hospital legal counsel—explaining the requirements of the Healthy Birth for Incarcerated Women Act of 2010. We also recommend including a model written policy about use of restraints and reporting requirements, as well as training materials and best practices from wardens who have successfully educated and trained their correctional staffs in regard to the Act. We would be happy to work with you to compile materials for distribution.

The Office of the Attorney General could consider these additional steps:

- 1) Advise state and county detention facility wardens to add pregnancy status to their transportation checklists.
- 2) Work with the DOC Training Academy to ensure its curriculum adequately addresses provisions of the Act.
- 3) Review the April 2014 report from the U.S. Department of Justice about restraints and pregnancy for guidance about best practices regarding universal training,

quality control, and assurance at:

<http://cjinvolvedwomen.org/sites/all/documents/Best-Practices-Use-of-Restraints-Pregnant.pdf>

We are eager to speak with you more about this important issue. Thank you in advance for your help. We look forward to hearing from you.

Sincerely,



Carol Petraitis, Director
Clara Bell Duvall Reproductive Freedom Project



Witold J. Walczak
Legal Director

Enclosures:

PA Department of Corrections FY 2012–2013 Report on Restraining Pregnant Females
Details of Duvall Project's Data Collection Process
Geisinger study