

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2875 Session of 2020

INTRODUCED BY CEPHAS, JONES, T. DAVIS, SOLOMON, KINSEY,
HANBIDGE, SCHLOSSBERG, HILL-EVANS, McCLINTON, McNEILL,
SANCHEZ, MADDEN, HOWARD AND GREEN, SEPTEMBER 17, 2020

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 17, 2020

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; and, in
5 miscellaneous provisions, providing for restrictive housing
6 prohibited for pregnant or postpartum inmates and detainees,
7 for cavity search and inspection restrictions, for training
8 and education requirement, for family consideration in
9 placement and visitation, for feminine hygiene and
10 incontinence products and for postpartum recovery.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Section 1104 of Title 61 of the Pennsylvania
14 Consolidated Statutes is amended to read:

15 § 1104. State recording system for application of restraints
16 and restrictive housing to pregnant [prisoners] and
17 postpartum inmates or detainees.

18 (a) General rule.--[A correctional institution as defined by
19 section 5905(e) (relating to healthy birth for incarcerated
20 women) shall report each restraint applied to a pregnant
21 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:] A correctional
4 institution shall, in writing, report each restraint applied to
5 a pregnant, laboring or postpartum individual in the
6 correctional institution's custody, as well as any instance
7 where a pregnant, laboring or postpartum individual is placed in
8 restrictive housing. The report shall note the number of
9 restraints or, in the case of restrictive housing, the length of
10 time the individual was placed in restrictive housing.
11 Individual, separate written findings for each restraint and
12 placement of an individual in restrictive housing must accompany
13 the report. The provisions of this subsection shall apply to
14 county constables, police, sheriffs and other law enforcement
15 personnel. The report shall include reports from the following:

16 (1) A correctional institution that is not operated,
17 supervised or licensed by the Department of [Public Welfare]
18 Human Services pursuant to the act of June 13, 1967 (P.L.31,
19 No.21), known as the [Public Welfare] Human Services Code,
20 shall make the report to the secretary.

21 (2) A correctional institution that is operated,
22 supervised or licensed by the Department of [Public Welfare]
23 Human Services pursuant to the [Public Welfare] Human
24 Services Code shall make the report to the Secretary of
25 [Public Welfare] Human Services.

26 (b) Contents of written findings.--Written findings of each
27 restraint or placement of an incarcerated or detained individual
28 in restrictive housing as required under subsection (a) must
29 include the following:

30 (1) [the] The circumstances that led to the

1 determination that the [prisoner] inmate or detainee
2 represented a substantial risk of imminent flight[; or]. For
3 the purpose of this paragraph, substantial risk of imminent
4 flight shall be established by a showing of real and
5 considerable risk of escaping by the incarcerated individual
6 with the intent to avoid continued incarceration. An
7 individual's history of escape attempts and flight to avoid
8 continued incarceration may be relevant to the determination,
9 but history alone cannot meet the requirement.

10 (2) [the] The circumstances that led to the
11 determination that other extraordinary medical or security
12 circumstances dictated the [prisoner] inmate or detainee be
13 restrained to ensure the safety and security of the
14 [prisoner] inmate or detainee, the staff of the correctional
15 institution or medical facility, other [prisoners] inmates or
16 detainees or the public.

17 (3) The date and time restraints were applied or the
18 restrictive housing placement occurred, and the length of
19 time the incarcerated or detained individual was kept in
20 restraints or restrictive housing.

21 (4) The badge number or identification number of the
22 custodian or staff member that applied the restraints or
23 placed the individual into restrictive housing.

24 (5) The number of restraints used.

25 (6) Any physical or mental effects on the incarcerated
26 or detained individual or the unborn child of an incarcerated
27 or detained individual resulting from placement in the
28 restraints or restrictive housing as reported by a medical
29 professional or self-reported by the incarcerated or detained
30 individual.

1 (7) Instances of restraints being used for transport to
2 or from a correctional institution. If restraints are applied
3 to a pregnant or postpartum individual or detainee en route
4 between facilities, the law enforcement or staff assigned to
5 escort the individual must report the use to the receiving
6 institution, including the badge number or identification
7 number of the law enforcement or staff assigned to escort the
8 individual. The receiving institution must then file a
9 written report pursuant to this subsection.

10 (c) Staff presence during labor.--Only female staff shall be
11 present in the room during the examination, labor or delivery of
12 the pregnant incarcerated individual. A privacy curtain shall be
13 drawn between the pregnant or laboring incarcerated individual
14 and the female staff.

15 (d) Report required.--If staff remain present during the
16 examination, labor or delivery of the pregnant incarcerated
17 individual, staff shall provide the following information to the
18 Secretary of Human Services and the Pennsylvania Commission on
19 Crime and Delinquency:

20 (1) The badge number or identification number of the
21 staff who remained in the room during the medical procedure
22 or appointment.

23 (2) The duration during which the staff remained
24 present.

25 (e) Availability of written findings.--The non-identifying
26 data contained in the written reports submitted to the Secretary
27 of Human Services shall be posted on the Governor's publicly
28 accessible Internet website annually. No identifying
29 information, such as names or dates of birth, shall be posted.

30 (f) Failure to comply with written findings.--If a

1 correctional institution fails to submit a report under this
2 section by the end of the fiscal year, the Secretary of Human
3 Services shall obtain a certification, to be created by the
4 Secretary of Human Services, from the correctional institution
5 verifying that the institution had zero instances of use of
6 restraints, placement in restrictive housing or male staff
7 presence during medical examinations or appointments of pregnant
8 incarcerated individuals under the provisions of this section.
9 The Secretary shall share all reports with the Pennsylvania
10 Commission on Crime and Delinquency.

11 (g) Definitions.--As used in this section, the following
12 words and phrases shall have the meanings given to them in this
13 subsection unless the context clearly indicates otherwise:

14 "Correctional institution." As defined in section 5905(e)
15 (relating to healthy birth for incarcerated women).

16 "Department." The Department of Corrections.

17 "Incarcerated individuals." Individuals who are incarcerated
18 in a correctional facility in this Commonwealth. The term
19 includes detainees, inmates and prisoners.

20 "Licensed medical professional." An individual licensed to
21 practice medicine in this Commonwealth.

22 "Postpartum recovery." The eight-week period, or longer as
23 determined by the healthcare professional responsible for the
24 health and safety of the incarcerated or detained person,
25 following childbirth.

26 "Restraints." Any physical or mechanical device used to
27 restrict or control the movement of a prisoner's body, limbs or
28 both.

29 "Restrictive housing." Any type of detention that involves
30 removal from the general incarcerated population for purposes of

1 discipline or administrative purpose.

2 "Staff." An individual who is employed by a correctional
3 facility or the department.

4 Section 2. Title 61 is amended by adding sections to read:

5 § 5905.1. Restrictive housing prohibited for pregnant or
6 postpartum inmates and detainees.

7 (a) Restrictive housing prohibited.--A pregnant or
8 postpartum incarcerated or detained individual may not be
9 involuntarily placed in restrictive housing in any correctional
10 institution in this Commonwealth except as provided in
11 subsection (e). Pregnant or postpartum incarcerated or detained
12 individuals who violate the rules and regulations of a
13 correctional institution shall be issued an informal resolution
14 of misconduct.

15 (b) Alternative discipline.--Forms of discipline for
16 pregnant and postpartum incarcerated or detained individuals
17 shall be limited to sanctions, including restrictions on
18 telephone usage or visitation or other common forms of
19 alternative discipline used in the United States.

20 (c) Hearing.--An informal hearing with a meaningful
21 opportunity for the pregnant or postpartum incarcerated or
22 detained individual to be heard shall be conducted within 24
23 hours of any violation of the correctional institution's rules
24 or regulations under subsection (a), if the privileges of a
25 pregnant or postpartum incarcerated or detained individual are
26 restricted.

27 (d) Conduct of hearing.--No individual involved in the
28 incident that is the subject of the hearing may conduct the
29 hearing. Nothing in this subsection shall waive any right of the
30 pregnant or postpartum incarcerated or detained individual to a

1 formal hearing.

2 (e) Exceptions.--A pregnant or postpartum incarcerated or
3 detained individual may be placed in restrictive housing only as
4 a temporary response to behavior that poses a serious and
5 immediate risk of physical harm to the pregnant or postpartum
6 incarcerated or detained individual, another incarcerated or
7 detained individual or the unborn child of the pregnant
8 incarcerated or detained individual. The following shall apply:

9 (1) The decision to place a pregnant or postpartum
10 incarcerated or detained individual in restrictive housing
11 under this subsection must be approved by the warden or
12 individual in charge of the correctional institution and a
13 licensed medical professional.

14 (2) The rationale for the decision under this subsection
15 must be documented as required by section 1104 (relating to
16 State recording system for application of restraints and
17 restrictive housing to pregnant and postpartum inmates or
18 detainees).

19 (3) No period of restrictive housing in excess of seven
20 days may be approved unless a documented assessment of the
21 pregnant or postpartum incarcerated or detained individual by
22 a licensed medical professional finds good cause for
23 extending the time spent in restrictive housing and is
24 approved by the warden or individual in charge of the
25 facility. A copy of the assessment under this paragraph shall
26 be placed in the inmate's or detainee's medical file and
27 history file with 24 hours of the placement of the pregnant
28 or postpartum incarcerated or detained individual in
29 restrictive housing under this subsection.

30 § 5908. Cavity search and inspection restrictions.

1 (a) Cavity search and inspection restrictions.--To the
2 greatest extent possible:

3 (1) No staff other than a licensed health care
4 professional shall conduct an invasive body cavity search of
5 a pregnant incarcerated individual or detainee.

6 (2) A correctional institution shall limit inspections
7 by male staff where a female incarcerated individual or
8 detainee is in a state of undress.

9 (b) Documentation requirement.--If staff is required to
10 perform an invasive cavity search on a pregnant incarcerated
11 individual or detainee, or male staff is required to conduct an
12 inspection on a female incarcerated individual or detainee in a
13 state of undress, a written report shall be submitted to the
14 correctional institution within 72 hours following the cavity
15 search or inspection. The report under this subsection shall:

16 (1) include the justification for performing the cavity
17 search or male staff inspection;

18 (2) note if any contraband was found on the incarcerated
19 individual or detainee; and

20 (3) be sent to the Pennsylvania Commission on Crime and
21 Delinquency.

22 (c) Bed assignments.--The department may not assign a
23 pregnant incarcerated individual to any bed that is elevated
24 more than three feet from the floor of the facility.

25 (d) 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 "Body cavity search." An invasive search of incarcerated or
29 detained individuals, conducted by staff in search of
30 contraband.

1 "Staff." An individual, including contracted staff, who is
2 employed by a correctional facility or the department.

3 "State of undress." A state where an incarcerated or
4 detained female is partially or fully naked, either in the
5 shower, toilet areas, a medical examination room or while a body
6 cavity search is being conducted.

7 § 5909. Training and education requirement.

8 (a) Correction institution staff training.--The department
9 and the Department of Human Services shall jointly develop and
10 provide both correctional institutions and county correctional
11 institutions with a training program for staff who have contact
12 with a pregnant, laboring or postpartum incarcerated or detained
13 individual. The training program shall be related to the
14 physical and mental health of the pregnant or postpartum
15 incarcerated or detained individual and unborn child, including:

16 (1) The general care of a pregnant individual.

17 (2) The impact of restraints on a pregnant individual
18 and unborn child.

19 (3) The impact of being placed in restrictive housing on
20 a pregnant individual.

21 (4) The impact of invasive searches on a pregnant
22 individual.

23 (5) Any other pertinent information the department or
24 the Department of Human Services finds appropriate or
25 necessary.

26 (b) Correctional institution staff training exceptions.--If
27 the correctional institution or county correctional institution
28 prohibits the placement of pregnant individuals as a matter of
29 law, that institution may submit a written exemption reporting
30 that there is no risk of staff interacting with pregnant

1 individuals housed in the institution. The exemption under this
2 subsection shall apply only to the correctional institution, not
3 the individual staff of the institution. All correctional
4 institution staff that come in contact with pregnant
5 incarcerated individuals must complete the training under this
6 section. If correctional institution staff work at more than one
7 institution, the staff must receive the required training at the
8 non-exempt institution.

9 (c) Education programming for pregnant incarcerated
10 individuals.--The department and the Department of Human
11 Services shall jointly develop and provide both correctional
12 institutions and county correctional institutions with
13 educational programming for pregnant or postpartum incarcerated
14 or detained individuals. The educational programming shall be
15 related to:

16 (1) Medical screenings related to female reproductive
17 and overall health, including preventive screenings.

18 (2) Prenatal care.

19 (3) Pregnancy-specific hygiene.

20 (4) Parenting skills.

21 (5) The impact of alcohol and drugs on the unborn child.

22 (6) General health of the child.

23 (7) Any other pertinent information the department or
24 the Department of Human Services finds appropriate or
25 necessary.

26 (d) Trauma-informed care.--The following shall apply:

27 (1) The warden of a correctional institution shall
28 ensure that the correctional institution provides to all
29 incarcerated individuals and detainees quality trauma-
30 informed care as specified by the Substance Abuse and Mental

1 Health Services Administration of the United States

2 Department of Health and Human Services.

3 (2) Trauma-informed care for an individual shall begin
4 immediately upon the individual's intake and assessment at a
5 correctional institution.

6 (3) Correctional staff training.--Correctional staff
7 must have no fewer than four hours of professional training
8 related to trauma-informed care, which must include, but not
9 be limited to, the following:

10 (i) Training to identify individuals with trauma.

11 (ii) Training on how and when to refer individual to
12 the proper health care professionals, including, but not
13 limited to, preventive health care and mental health
14 care.

15 (iii) Training on how to interact with and empower
16 incarcerated individuals who have experienced trauma.

17 (e) Definitions.--As used in this section, the term "trauma-
18 informed care" means an organizational structure and treatment
19 framework that involves recognizing, understanding and
20 responding to the effects of trauma.

21 § 5910. Family consideration in placement and visitation.

22 (a) Visitation.--The department shall authorize visitation
23 by a minor dependent child, with the minimum following
24 requirements:

25 (1) A minor dependent child under 18 years of age must
26 be able to visit the dependent child's primary caregiver at
27 least two days per week.

28 (2) No restriction on the number of minor dependent
29 children under 18 years of age that may be permitted
30 visitation privileges may be enforced.

1 (3) Contact visits for primary caregivers with low-
2 security or minimum-security classifications shall be
3 authorized.

4 (b) Exception.--Former primary caregivers who have been
5 deemed unsafe or ineligible for visitation through the
6 department shall be exempt from the requirements of this section
7 until deemed safe or eligible for visitation by the department.

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

11 "Former primary caregiver." The former legal guardian of a
12 dependent minor or individual who provided a significant portion
13 of the emotional or financial support to a minor dependent
14 child.

15 "Minor dependent child." An individual under 18 years of age
16 who the incarcerated individual was the former primary caregiver
17 of and who is proven to be related to the incarcerated or
18 detained individual by the facility.

19 § 5911. Feminine hygiene and incontinence products.

20 (a) Issuance of feminine hygiene products related to
21 menstruation.--A supply of feminine hygiene products shall be
22 provided to all incarcerated individuals and detainees who are
23 menstruating in a correctional institution each month at no cost
24 to the incarcerated individuals and detainees, regardless of
25 financial means. Incarcerated individuals and detainees shall
26 not be required to show proof of need or to undergo a medical
27 examination or obtain a medical permit, authorization or
28 diagnosis to receive the products under this section.

29 (b) Feminine hygiene products provided.--The following
30 products shall be distributed to all incarcerated individuals

1 and detainees who are menstruating in a correctional
2 institution:

3 (1) a choice of at least two sizes or absorbencies of
4 sanitary pads; and

5 (2) a choice of at least two sizes of tampons.

6 (c) Issuance of feminine hygiene products related to bladder
7 control and incontinence.--A supply of products for bladder
8 control and incontinence shall be provided to incarcerated
9 individuals and detainees, including geriatric incarcerated
10 individuals and postpartum incarcerated individuals, who require
11 such products each month at no cost to incarcerated individuals
12 and detainees, regardless of financial means.

13 (d) Bladder control and incontinence products
14 distribution.--Adult diapers or protective undergarments shall
15 be distributed to incarcerated individuals who require them.

16 (e) Rules and regulations.--The correctional institution
17 shall promulgate rules necessary to implement and enforce the
18 provisions of this section.

19 (f) Definition.--As used in this section, the term "feminine
20 hygiene products" means products that women use during
21 menstruation. The term includes tampons and sanitary napkins.

22 § 5912. Postpartum recovery.

23 (a) Restraints during postpartum recovery.--No restraints
24 shall be used on any incarcerated or detained individual who has
25 given birth within the last 30 days and is in postpartum
26 recovery, unless the department has a reasonable belief that the
27 incarcerated or detained individual will harm themselves, their
28 newborn or another individual or pose a substantial risk of
29 imminent flight. If restraints are used, the facility employee
30 ordering the use of restraints on an incarcerated or detained

1 individual while in postpartum recovery shall submit a written
2 report to the warden of the facility within 72 hours following
3 the use of the restraints, containing the justification for
4 restraining the incarcerated or detained individual during
5 postpartum recovery. The report shall also be sent to the
6 Pennsylvania Commission on Crime and Delinquency.

7 (b) Post-delivery bonding period.--Following the delivery of
8 a newborn, the department shall permit the child to remain with
9 the mother for 72 hours unless a licensed medical or mental
10 health professional has a reasonable belief that the newborn
11 child remaining with the mother poses a health or safety risk to
12 the newborn child.

13 (c) Nutritional and hygiene products.--During the 72-hour
14 period under subsection (b), the department shall make available
15 the necessary nutritional and hygiene products, including
16 diapers, to care for the newborn.

17 (d) Definition.--As used in this section, the term
18 "substantial risk of imminent flight" means a showing of real
19 and considerable risk of escaping by the incarcerated individual
20 with the intent to avoid continued incarceration. An
21 individual's history of escape attempts and flight to avoid
22 continued incarceration may be relevant to the determination,
23 but history alone cannot meet the requirement.

24 Section 3. This act shall apply to an entity under the
25 authority of the Commonwealth or any county or municipality that
26 has the power to detain and restrain an individual under the
27 laws of this Commonwealth, including, but not limited to State
28 correctional institutions, county correctional institutions,
29 juvenile detention facilities, police departments, constable's
30 offices, sheriff's offices and private entities performing

1 contracts for the Commonwealth or a county or municipality of
2 the Commonwealth.

3 Section 4. This act shall take effect in 60 days.