

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1419 Session of 2021

INTRODUCED BY JONES, CEPHAS, T. DAVIS, MIZGORSKI, SHUSTERMAN, DALEY, KINSEY, KRAJEWSKI, McNEILL, RYAN, HILL-EVANS, HOHENSTEIN, FREEMAN, INNAMORATO, ISAACSON, MALAGARI, SANCHEZ, SIMS, GUZMAN, WEBSTER, LEE, HOWARD, BROOKS, WARREN, SOLOMON, D. MILLER, KINKEAD, HANBIDGE, YOUNG, KIM, N. NELSON, HELM, SCHWEYER, FITZGERALD, KEEFER, BOBACK, PENNYCUICK, OTTEN, BULLOCK, GUENST, A. BROWN, FIEDLER, McCLINTON, GILLEN, FLOOD, KENYATTA, SCHMITT, BURGOS, PARKER AND MERSKI, SEPTEMBER 21, 2021

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 21, 2021

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 relating to pregnant [prisoners] and postpartum
 17 inmates or detainees.

18 (a) General rule.--[A correctional institution as defined by

1 section 5905(e) (relating to healthy birth for incarcerated
2 women) shall report each restraint applied to a pregnant
3 prisoner or detainee. The report must be in writing and must
4 note the number of restraints. Individual, separate written
5 findings for each restraint must accompany the report. This
6 shall include reports from the following:] A correctional
7 institution shall, in writing, report each restraint applied to
8 a pregnant, laboring or postpartum individual in the
9 correctional institution's custody, as well as any instance
10 where a pregnant, laboring or postpartum individual is placed in
11 restrictive housing. The report shall note the number and type
12 of restraints or, in the case of restrictive housing, the length
13 of time the individual was placed in restrictive housing. The
14 provisions of this subsection shall apply to any person tasked
15 with transporting or housing incarcerated or detained
16 individuals. Reports shall be made as follows:

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

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

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

1 (1) [the] The circumstances that led to the
2 determination that the [prisoner] inmate or detainee
3 represented a substantial risk of imminent flight[; or].

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

11 (3) The date and time restraints were applied or the
12 restrictive housing placement occurred, and the length of
13 time the incarcerated or detained individual was kept in
14 restraints or restrictive housing.

15 (4) The badge number or identification number of the
16 following:

17 (i) The custodian or staff member that applied the
18 restraints or placed the individual into restrictive
19 housing.

20 (ii) Any superior officers approving or advising the
21 application of restraints or placement in restrictive
22 housing.

23 (5) The number and type of restraints used.

24 (6) Any physical effects on the incarcerated or detained
25 individual or the unborn child of an incarcerated or detained
26 individual resulting from placement in the restraints or
27 restrictive housing.

28 (c) Staff presence during labor.--Only female staff shall be
29 present in the room during the examination, labor or delivery of
30 the pregnant incarcerated individual. If male staff remain

1 present during the examination, labor or delivery of the
2 pregnant incarcerated individual, that information shall be
3 reported to the department or the Department of Human Services,
4 as applicable.

5 (d) Availability of reports.--The nonidentifying data
6 contained in the written reports submitted to the department or
7 the Department of Human Services shall be posted on the
8 department or Department of Human Services' publicly accessible
9 Internet website annually. No identifying information, such as
10 names or dates of birth, shall be posted.

11 (e) Failure to submit report.--If a correctional institution
12 fails to submit a report under this section by the end of the
13 fiscal year, the department or the Department of Human Services,
14 as applicable, shall obtain a certification, to be created by
15 the department or the Department of Human Services, as
16 applicable, from the correctional institution verifying that the
17 institution had zero instances of use of restraints, placement
18 in restrictive housing or male staff presence during medical
19 examinations or appointments of pregnant incarcerated
20 individuals under the provisions of this section.

21 (f) Definitions.--As used in this section, the following
22 words and phrases shall have the meanings given to them in this
23 subsection unless the context clearly indicates otherwise:

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

26 "Postpartum." The eight-week period, or longer as determined
27 by the health care professional responsible for the health and
28 safety of the incarcerated or detained person, following
29 childbirth.

30 "Restraints." Any physical or mechanical device used to

1 restrict or control the movement of a prisoner's body, limbs or
2 both.

3 "Restrictive housing." Any type of detention that involves
4 removal from the general incarcerated population for purposes of
5 discipline or administrative purpose.

6 "Staff." An individual who is employed by a correctional
7 institution, the department or the Department of Human Services.

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

9 § 5905.1. Restrictive housing prohibited for pregnant or
10 postpartum inmates and detainees.

11 (a) Restrictive housing prohibited.--Except as provided
12 under subsection (c), a pregnant or postpartum incarcerated or
13 detained individual may not be involuntarily placed in
14 restrictive housing in any correctional institution in this
15 Commonwealth.

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

21 (c) Exceptions.--A pregnant or postpartum incarcerated or
22 detained individual may be placed in restrictive housing only as
23 a temporary response to behavior that poses a serious and
24 immediate risk of physical harm to the pregnant or postpartum
25 incarcerated or detained individual, another incarcerated or
26 detained individual, the unborn child of the pregnant
27 incarcerated or detained individual or staff. The following
28 shall apply:

29 (1) The decision to place a pregnant or postpartum
30 incarcerated or detained individual in restrictive housing

1 under this subsection must be approved by the warden or
2 individual in charge of the correctional institution.

3 (2) The rationale for the decision under this subsection
4 must be documented as required by section 1104 (relating to
5 State recording system relating to pregnant and postpartum
6 inmates or detainees).

7 (3) No period of restrictive housing in excess of seven
8 days may be approved.

9 (d) Bed assignments.--The correctional institution may not
10 assign a pregnant incarcerated individual or detainee to any bed
11 that is elevated more than three feet from the floor of the
12 facility.

13 (e) Definition.--As used in this section, the term
14 "postpartum" means the eight-week period, or longer as
15 determined by the health care professional responsible for the
16 health and safety of the incarcerated or detained person,
17 following childbirth.

18 § 5908. Cavity search and inspection restrictions.

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

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

24 (2) A correctional institution shall limit searches by
25 male staff where a female incarcerated individual or detainee
26 is in a state of undress.

27 (b) Documentation requirement.--If staff is required to
28 perform an invasive cavity search on a pregnant incarcerated
29 individual or detainee, or male staff is required to conduct a
30 search on a female incarcerated individual or detainee in a

1 state of undress, a written report shall be submitted to the
2 correctional institution within 72 hours following the cavity
3 search or inspection. The report under this subsection shall:

4 (1) include the justification for performing the cavity
5 search or male staff inspection;

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

8 (3) be sent to the department or the Department of Human
9 Services, as applicable.

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

13 "Body cavity search." An invasive search of incarcerated or
14 detained individuals, conducted by staff in search of
15 contraband.

16 "Staff." An individual, including contracted staff, who is
17 employed by a correctional institution, the department or the
18 Department of Human Services.

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

23 § 5909. Training and education requirement.

24 (a) Correctional institution staff training.--The department
25 and the Department of Human Services shall jointly develop and
26 provide both correctional institutions with a training program
27 for staff who have contact with a pregnant, laboring or
28 postpartum incarcerated or detained individual. The training
29 program shall be related to the physical and mental health of
30 the pregnant or postpartum incarcerated or detained individual

1 and unborn child, including:

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

3 (2) The impact of restraints on a pregnant individual
4 and unborn child.

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

7 (4) The impact of invasive searches on a pregnant
8 individual.

9 (5) Any other pertinent information the department or
10 the Department of Human Services finds appropriate or
11 necessary.

12 (b) Correctional institution staff training exceptions.--If
13 the correctional institution or county correctional institution
14 prohibits the placement of pregnant individuals as a matter of
15 law, that institution may submit a written exemption reporting
16 that there is no risk of staff interacting with pregnant
17 individuals housed in the institution. The exemption under this
18 subsection shall apply only to the correctional institution, not
19 the individual staff of the institution. All correctional
20 institution staff that come in contact with pregnant
21 incarcerated individuals shall complete the training under this
22 section. If correctional institution staff work at more than one
23 institution, the staff must receive the required training at the
24 non-exempt institution.

25 (c) Education programming for pregnant incarcerated
26 individuals.--The department and the Department of Human
27 Services shall jointly develop and provide both correctional
28 institutions and county correctional institutions with
29 educational programming for pregnant or postpartum incarcerated
30 or detained individuals. The educational programming shall be

1 related to:

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

4 (2) Prenatal care.

5 (3) Pregnancy-specific hygiene.

6 (4) The impact of alcohol and drugs on the unborn child.

7 (5) General health of the child.

8 (6) Any other pertinent information the department or
9 the Department of Human Services finds appropriate or
10 necessary.

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

12 (1) The warden of a correctional institution shall, as
13 the warden deems necessary, ensure that the correctional
14 institution provides to incarcerated individuals and
15 detainees quality trauma-informed care.

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

19 (3) Correctional staff training.--Correctional staff
20 shall have no fewer than four hours of professional training
21 related to trauma-informed care, which shall include, but not
22 be limited to, the following:

23 (i) Training to identify individuals with trauma.

24 (ii) Training on how and when to refer individuals
25 to the proper health care professionals, including, but
26 not limited to, preventive health care and mental health
27 care.

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

30 (e) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection unless the context clearly indicates otherwise:

3 "Postpartum." The eight-week period, or longer as determined
4 by the health care professional responsible for the health and
5 safety of the incarcerated or detained person, following
6 childbirth.

7 "Trauma-informed care." An organizational structure and
8 treatment framework that involves recognizing, understanding and
9 responding to the effects of trauma.

10 § 5910. Family consideration in placement and visitation.

11 (a) Visitation.--The department and the Department of Human
12 Services shall authorize visitation by a minor dependent child,
13 with the minimum following requirements:

14 (1) A minor dependent child under 18 years of age shall
15 be able to visit the minor dependent child's parent with
16 primary physical custody at least two days per week.

17 (2) No restriction on the number of minor dependent
18 children under 18 years of age that may be permitted
19 visitation privileges may be enforced, subject to the
20 facility's space, staffing and administrative capacity to
21 accommodate the number of visitors present.

22 (3) Contact visits for a parent with primary physical
23 custody with low-security or minimum-security classifications
24 shall be authorized.

25 (b) Exceptions.--Visitation rights shall not be authorized
26 under subsection (a):

27 (1) For parents who have been deemed unsafe or
28 ineligible for visitation through the department or the
29 Department of Human Services until deemed safe or eligible
30 for visitation by the department or the Department of Human

1 Services.

2 (2) In instances where the minor dependent child was the
3 victim of a criminal offense under 18 Pa.C.S. (relating to
4 crimes and offenses) resulting in the incarceration or
5 detention of the parent.

6 (3) If the parent voluntarily enrolled in a detention
7 program which prohibits visitation.

8 (c) Primary physical custody.--For purposes of this section,
9 an incarcerated or detained individual must prove that the
10 individual had physical custody of the minor dependent child for
11 the majority of time to be considered a parent with primary
12 physical custody.

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

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

20 § 5911. Feminine hygiene and incontinence products.

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

30 (b) Feminine hygiene products provided.--A choice of at

1 least two sizes or absorbencies of sanitary pads shall be
2 distributed to all incarcerated individuals and detainees who
3 are menstruating in a correctional institution or if requested
4 from medical staff.

5 (c) Feminine hygiene products to be requested.--A choice of
6 at least two sizes of tampons shall be distributed to
7 incarcerated individuals and detainees who request a tampon from
8 medical staff.

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

16 (e) Bladder control and incontinence products
17 distribution.--Adult diapers or protective undergarments shall
18 be distributed to incarcerated individuals who require them.

19 (f) Rules and regulations.--The correctional institution
20 shall promulgate rules necessary to implement and enforce the
21 provisions of this section.

22 (g) Definition.--As used in this section, the term "feminine
23 hygiene products" means products that women use during
24 menstruation. The term includes tampons and sanitary napkins.
25 § 5912. Postpartum recovery.

26 (a) Restraints during postpartum recovery.--No restraints
27 shall be used on any incarcerated or detained individual who has
28 given birth within the last 30 days and is in postpartum
29 recovery, unless the department or the Department of Human
30 Services, as applicable, has a reasonable belief that the

1 incarcerated or detained individual will harm themselves, their
2 newborn or another individual or pose a substantial risk of
3 imminent flight. If restraints are used, the facility employee
4 ordering the use of restraints on an incarcerated or detained
5 individual while in postpartum recovery shall submit a written
6 report to the warden of the facility within 72 hours following
7 the use of the restraints, containing the justification for
8 restraining the incarcerated or detained individual during
9 postpartum recovery. The report shall also be sent to the
10 department or the Department of Human Services, as applicable.

11 (b) Post-delivery bonding period.--Subject to hospital
12 policy, following the delivery of a newborn, the department or
13 the Department of Human Services, as applicable, shall permit
14 the child to remain with the mother at the hospital for 72 hours
15 unless a licensed medical professional or mental health
16 professional has a reasonable belief that the newborn child
17 remaining with the mother poses a health or safety risk to the
18 newborn child.

19 (c) Nutritional and hygiene products.--During the 72-hour
20 period under subsection (b), the department or the Department of
21 Human Services, as applicable, shall make available the
22 necessary nutritional and hygiene products to care for the
23 newborn.

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

27 "Licensed medical professional." An individual licensed to
28 practice medicine in this Commonwealth.

29 "Postpartum recovery." The eight-week period, or longer as
30 determined by the health care professional responsible for the

1 health and safety of the incarcerated or detained person,
2 following childbirth.

3 "Substantial risk of imminent flight." A showing of real and
4 considerable risk of escaping by the incarcerated individual
5 with the intent to avoid continued incarceration. An
6 individual's history of escape attempts and flight to avoid
7 continued incarceration may be relevant to the determination,
8 but history alone cannot meet the requirement.

9 Section 3. This act shall apply to an entity under the
10 authority of the Commonwealth or any county or municipality that
11 has the power to detain and restrain an individual under the
12 laws of this Commonwealth, including, but not limited to, State
13 correctional institutions, county correctional institutions,
14 juvenile detention facilities, police departments, constable's
15 offices, sheriff's offices and private entities performing
16 contracts for the Commonwealth or a county or municipality of
17 the Commonwealth.

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