

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1632 Session of 2019

INTRODUCED BY T. DAVIS, KENYATTA, ULLMAN, CEPHAS, SCHLOSSBERG, SOLOMON, McCLINTON, KINSEY, HILL-EVANS, YOUNGBLOOD, SHUSTERMAN, CALTAGIRONE, DEASY, HOWARD, MADDEN, MARKOSEK, A. DAVIS, GALLOWAY, SCHWEYER, FRANKEL, FITZGERALD, ISAACSON, WEBSTER, HOHENSTEIN, ROZZI, McNEILL, HANBIDGE, OTTEN, FIEDLER, ROEBUCK AND MURT, JUNE 14, 2019

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 14, 2019

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 relating to inmate confinement,
 6 providing for restrictive housing prohibited for pregnant or
 7 postpartum inmates and detainees.

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

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

12 § 1104. State recording system for application of restraints
 13 and restrictive housing to pregnant [prisoners] and
 14 postpartum inmates or detainees.

15 (a) General rule.--A correctional institution [as defined by
 16 section 5905(e) (relating to healthy birth for incarcerated
 17 women)] shall report each restraint applied to a pregnant
 18 [prisoner] or postpartum inmate or detainee[.], as well as any

1 instance where a pregnant or postpartum inmate or detainee is
2 placed in restrictive housing. The report must be in writing and
3 must note the number of restraints[.] or, in the case of
4 restrictive housing, the length of time the inmate or detainee
5 was placed in restrictive housing. Individual, separate written
6 findings for each restraint and placement of an inmate or
7 detainee in restrictive housing must accompany the report. This
8 shall include reports from the following:

9 (1) A correctional institution that is not operated,
10 supervised or licensed by the Department of Public Welfare
11 pursuant to the act of June 13, 1967 (P.L.31, No.21), known
12 as the Public Welfare Code, shall make the report to the
13 secretary.

14 (2) A correctional institution that is operated,
15 supervised or licensed by the Department of Public Welfare
16 pursuant to the Public Welfare Code shall make the report to
17 the Secretary of Public Welfare.

18 (b) Contents of written findings.--Written findings of each
19 restraint or placement of an inmate or detainee in restrictive
20 housing as required under subsection (a) must include the
21 following:

22 (1) the circumstances that led to the determination that
23 the [prisoner] inmate or detainee represented a substantial
24 risk of imminent flight; [or]

25 (2) the circumstances that led to the determination that
26 other extraordinary medical or security circumstances
27 dictated the [prisoner] inmate or detainee be restrained to
28 ensure the safety and security of the [prisoner] inmate or
29 detainee, the staff of the correctional institution or
30 medical facility, other [prisoners] inmates or detainees or

1 the public[.];

2 (3) the length of time the inmate or detainee was kept
3 in each restraint or restricted housing; and

4 (4) any physical or mental effects on the inmate,
5 detainee or fetus resulting from placement in the restraints
6 or restrictive housing.

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

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

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

13 Section 2. Title 61 is amended by adding a section to read:

14 § 5905.1. Restrictive housing prohibited for pregnant or
15 postpartum inmates and detainees.

16 (a) Restrictive housing prohibited.--A pregnant or
17 postpartum inmate or detainee may not be involuntarily placed in
18 restrictive housing, including into involuntary medical
19 isolation or an infirmary, in any correctional institution in
20 this Commonwealth. Pregnant or postpartum inmates and detainees
21 who violate the rules and regulations of a correctional
22 institution shall be issued an informal resolution of
23 misconduct.

24 (b) Alternative discipline.--Forms of discipline for
25 pregnant and postpartum inmates and detainees shall be limited,
26 to the greatest extent possible, as follows:

27 (1) The inmate or detainee may be sanctioned by
28 restricting telephone use, visiting privileges and commissary
29 privileges, but not by restricting time the inmate or
30 detainee spends out of the inmate's cell.

1 (2) If telephone usage is limited under paragraph (1),
2 the restriction must be reviewed every seven days. An
3 exception for the limited purpose of the inmate planning for
4 the delivery, care and custody of the child and legal calls
5 related to the inmate or detainee or the child's care and
6 custody must be provided to the inmate or detainee.

7 (c) Hearing.--An informal hearing, with a meaningful
8 opportunity for the inmate or detainee to be heard, shall be
9 conducted within 24 hours of any violation of the correctional
10 institution's rules or regulations under subsection (a) if the
11 privileges of a pregnant or postpartum inmate or detainee are
12 restricted.

13 (d) Conduct of hearing.--No individual involved in the
14 incident that is the subject of the hearing may conduct the
15 hearing. Nothing in this subsection shall waive any right of the
16 inmate or detainee to a formal hearing.

17 (e) Exceptions.--A pregnant or postpartum inmate or detainee
18 may be placed in restrictive housing only as a temporary
19 response to behavior that poses a serious and immediate risk of
20 physical harm to the inmate, detainee, another inmate or the
21 fetus of the pregnant inmate or detainee. The following shall
22 apply:

23 (1) The decision to place a pregnant or postpartum
24 inmate or detainee in restrictive housing under this
25 subsection must be approved by the warden or individual in
26 charge of the correctional institution and a licensed medical
27 professional.

28 (2) The rationale for the decision under this subsection
29 must be documented as required by section 1104 (relating to
30 State recording system for application of restraints and

1 restrictive housing to pregnant and postpartum inmates or
2 detainees).

3 (3) No period of restrictive housing in excess of seven
4 days may be approved unless a documented assessment of the
5 inmate or detainee by a licensed medical professional finds
6 good cause for extending the time spent in restricted housing
7 and is approved by the warden or individual in charge of the
8 facility. A copy of the assessment under this paragraph shall
9 be placed in the inmate's or detainee's medical file and
10 disciplinary file within 24 hours of the placement of an
11 inmate or detainee in restrictive housing under this
12 subsection.

13 (f) 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 indicated otherwise:

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

18 "Licensed medical professional." The term includes a
19 physician, registered nurse or midwife.

20 "Postpartum." As defined in section 5905(e).

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