

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2223 Session of
2020

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SANCHEZ, GALLOWAY, INNAMORATO, ROEBUCK AND KULIK,
JANUARY 15, 2020

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 15, 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; in county
5 correctional institutions, further providing for county
6 recording system for application of restraints to pregnant
7 prisoners or detainees; and, in miscellaneous provisions,
8 further providing for healthy birth for incarcerated women.

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

11 Section 1. Sections 1104, 1758 heading, (a) and (b)(1) and
12 5905 of Title 61 of the Pennsylvania Consolidated Statutes are
13 amended to read:

14 § 1104. State recording system for application of restraints to
15 pregnant, laboring or postpartum prisoners or
16 detainees.

17 (a) General rule.--[A correctional institution as defined by
18 section 5905(e) (relating to healthy birth for incarcerated

1 women) shall report each restraint applied to a pregnant
2 prisoner or detainee. The report must be in writing and must
3 note the number of restraints. Individual, separate written
4 findings for each restraint must accompany the report. This
5 shall include reports from the following:] Each custodian, as
6 defined by section 5905(e) (relating to healthy birth for
7 incarcerated prisoners and detainees), who applies restraints to
8 a pregnant, laboring or postpartum prisoner or detainee shall,
9 on a form prepared by the department, submit a written report of
10 the application of restraints to a staff person appointed by the
11 officer in charge of a correctional institution within two days
12 of use of the restraint on a pregnant, laboring or postpartum
13 prisoner or detainee. The staff person appointed under this
14 section shall deliver each written report of the use of
15 restraints to the officer in charge within two days of receiving
16 the report under this section. The officer in charge shall
17 deliver the reports in the following manner:

18 (1) [A] The officer in charge of a correctional
19 institution that is not operated, supervised or licensed by
20 the Department of [Public Welfare pursuant to] Human Services
21 under the act of June 13, 1967 (P.L.31, No.21), known as the
22 [Public Welfare] Human Services Code, shall [make the report]
23 deliver the reports on a monthly basis to the secretary
24 within 30 days of the end of the previous month.

25 (2) [A] The officer in charge of a correctional
26 institution that is operated, supervised or licensed by the
27 Department of [Public Welfare pursuant to] Human Services
28 under the [Public Welfare] Human Services Code shall [make
29 the report] deliver the reports on a monthly basis to the
30 Secretary of [Public Welfare] Human Services within 30 days

1 of the end of the previous month.

2 (b) Contents of written [findings] reports.--Written
3 [findings of each restraint as] reports required under
4 subsection (a) must include the following[:

5 (1) the circumstances that led to the determination that
6 the prisoner or detainee represented a substantial risk of
7 imminent flight; or

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

14 for each restraint applied:

15 (1) the date and time restraints were applied and
16 removed;

17 (2) the number and type of restraints applied;

18 (3) the name of the prisoner or detainee on which
19 restraints were applied;

20 (4) the gestational period of the pregnant prisoner or
21 detainee;

22 (5) the name of the correctional institution of the
23 prisoner or detainee;

24 (6) the name of the staff member who applied the
25 restraints; and

26 (7) the staff member's justification for the
27 individualized determination to use restraints, including the
28 underlying facts that led to the determination:

29 (i) that the prisoner or detainee represented a
30 substantial risk of imminent flight that could not be

1 reasonably prevented by other means; or
2 (ii) that the prisoner or detainee posed an
3 extraordinary, immediate and serious threat to
4 themselves, the staff of the correctional institution or
5 medical or other facility, other prisoners or detainees
6 or the public.

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 prisoners and
12 detainees).

13 "Custodian." As defined in section 5905(e).

14 "Officer in charge." As defined in section 5905(e).

15 § 1758. County recording system for application of restraints
16 to pregnant, laboring or postpartum prisoners or
17 detainees.

18 (a) General rule.--The application of restraints to a
19 pregnant, laboring or postpartum prisoner or detainee [occurring
20 pursuant] subject to section 5905 (relating to healthy birth for
21 incarcerated [women] prisoners and detainees) shall constitute
22 an incident that qualifies as an extraordinary occurrence that
23 must be reported to the department in the County Extraordinary
24 Occurrence Monthly Report. The provisions of this subsection
25 shall apply to county constables, police, sheriffs or other law
26 enforcement personnel.

27 (b) Information to be included in County Extraordinary
28 Occurrence Monthly Report.--

29 (1) Any and all incidents where the application of
30 restraints to a pregnant, laboring or postpartum prisoner or

1 detainee [pursuant] subject to section 5905 occurred must be
2 included in the County Extraordinary Occurrence Monthly
3 Report that is submitted to the department. [An indication of
4 the incidents must be noted on the designated report form or
5 other available approved method, if applicable, and
6 individual, separate written findings must accompany the form
7 for each incident that occurred.] The report must include the
8 following for each restraint applied:

9 (i) the date and time restraints were applied and
10 removed;

11 (ii) the number and type of restraints applied;

12 (iii) the name of the prisoner or detainee on which
13 restraints were applied;

14 (iv) the gestational period of the pregnant prisoner
15 or detainee;

16 (v) the name of the correctional institution of the
17 prisoner or detainee;

18 (vi) the name of the staff member who applied the
19 restraints; and

20 (vii) the staff member's justification for the
21 individualized determination to use restraints, including
22 the underlying facts that led to the determination:

23 (A) that the prisoner or detainee represented a
24 substantial risk of imminent flight that cannot be
25 reasonably prevented by other means; or

26 (B) that the prisoner or detainee posed an
27 extraordinary, immediate and serious threat to
28 themselves, the staff of the correctional institution
29 or medical or other facility, other prisoners or
30 detainees or the public.

1 * * *

2 § 5905. Healthy birth for incarcerated [women] prisoners and
3 detainees.

4 (a) Duties of correctional institution.--[Consistent with
5 established policy and practice, it] It shall be the duty and
6 responsibility of the correctional institution and officers in
7 charge to:

8 (1) provide adequate personnel to monitor [the] and
9 promptly address the medical needs of a pregnant prisoner or
10 detainee:

11 (i) in the correctional institution;

12 (ii) during transport to and from [the] a medical
13 facility, court or other location; and

14 (iii) during [her] a pregnant prisoner or detainee's
15 stay at [the] a medical facility[.], court or other
16 location;

17 (2) provide annual training on the requirements of this
18 section to all personnel who will monitor pregnant prisoners
19 or detainees, including training consistent with the
20 guidelines developed by the Department of Human Services in
21 consultation with health care professionals with expertise in
22 pregnancy and postpartum recovery, which shall include:

23 (i) the general care of a pregnant individual;

24 (ii) the impact of restraints on a pregnant
25 individual and fetus;

26 (iii) how to identify certain symptoms of pregnancy
27 and postpartum complications that require immediate
28 referral to a health care professional;

29 (iv) the restrictions on use of restraints on
30 pregnant prisoners and detainees;

1 (v) circumstances under which the exceptions under
2 subsection (b) (2) would apply;

3 (vi) in the case that an exception under subsection
4 (b) (2) applies, how to apply restraints in a way that
5 does not harm the prisoner, detainee or fetus;

6 (vii) the requirements to report and the information
7 required to be reported under sections 1104(b) (relating
8 to State recording system for application of restraints
9 to pregnant, laboring or postpartum prisoners or
10 detainees), 1758(b) (relating to county recording system
11 for the application of restraints to pregnant, laboring
12 or postpartum prisoners or detainees) and subsection (b)
13 (2.1); and

14 (viii) the right of a health care professional to
15 request that restraints not be used and the requirements
16 under subsection (c.1) to comply with such a request;

17 (3) adopt and implement a written policy consistent with
18 and reiterating the requirements of sections 1104, 1758 and
19 this section; and

20 (4) prepare and distribute written information to
21 pregnant and potentially pregnant prisoners and detainees
22 explaining their rights under this section, provided that
23 this obligation shall be satisfied by distribution of a fact
24 sheet prepared by the department or the Department of Human
25 Services that accurately sets forth the requirements of this
26 section.

27 (b) Restraint of pregnant, laboring and postpartum prisoners
28 and detainees.--

29 (1) Unless provided in paragraph (2), a correctional
30 institution and its personnel shall not apply restraints to a

1 prisoner or detainee known to be pregnant [during any stage
2 of labor, any pregnancy-related medical distress, any period
3 of delivery, any period of postpartum as defined in
4 subsection (e) or transport to a medical facility as a result
5 of any of the preceding conditions or transport to a medical
6 facility after the beginning of the second trimester of
7 pregnancy.], laboring or postpartum within the correctional
8 institution's facilities or during transport to or a stay at
9 a medical facility, courthouse or other location. A prisoner
10 or detainee is known to be pregnant, laboring or postpartum
11 on the earliest date on which the custodian:

12 (i) receives medical confirmation of a prisoner or
13 detainee's status of being pregnant, laboring or
14 postpartum;

15 (ii) sees that a prisoner or detainee is visibly
16 pregnant, laboring or postpartum; or

17 (iii) has received a credible report of the prisoner
18 or detainee's status of being pregnant, laboring or
19 postpartum or of the prisoner or detainee's symptoms of
20 being pregnant, laboring or postpartum, including a
21 report from the prisoner or detainee;

22 (2) [Paragraph] Except as provided in paragraph (4) and
23 subsections (c) and (c.1), paragraph (1) shall not bar
24 reasonable restraint provided:

25 (i) the custodian or correctional institution staff
26 assigned to the prisoner or detainee makes an
27 individualized determination that the prisoner or
28 detainee presents a substantial risk of imminent flight
29 [or some other extraordinary medical or security
30 circumstance dictates that the prisoner or detainee be

1 restrained to ensure the safety and security of the
2 prisoner or detainee,] that cannot be reasonably
3 prevented by other means or poses an extraordinary,
4 immediate and serious threat to themselves, the staff of
5 the correctional institution or medical or other
6 facility, other prisoners or detainees or the public[.

7 The assigned correctional institution staff shall report
8 the incident to the correctional institution in a
9 reasonable amount of time after the restraint occurs. If
10 the assigned correctional institution staff is not
11 employed by the correctional institution, then the
12 assigned correctional institution staff shall report the
13 restraint to the correctional institution in a reasonable
14 amount of time after the incident occurs.]; and

15 (ii) except when prevented from doing so due to
16 exigent circumstances, the officer in charge approves the
17 use of the restraint.

18 (2.1) Whenever a prisoner or detainee is restrained
19 under paragraph (2), including in the event of exigent
20 circumstances, the assigned correctional institution staff or
21 other custodian shall report the incident to the correctional
22 institution staff assigned to receive the reports within two
23 days after the restraint occurs, on a form prepared by the
24 department for this purpose. The assigned staff person shall
25 deliver the written report to the officer in charge within
26 two days of receiving the report. This paragraph shall apply
27 even if the assigned custodian or correctional institution
28 staff is not employed by the correctional institution.

29 (3) If restraint is applied under paragraph (2), at no
30 time shall the prisoner or detainee be left unattended by a

1 correctional institution staff with the ability to release
2 the restraint should a release become medically necessary.
3 The correctional institution staff under this paragraph shall
4 be female if practicable and preferred by the prisoner or
5 detainee; however, no correctional personnel shall be present
6 in the room during the prisoner's or detainee's examination,
7 labor, delivery or childbirth unless specifically requested
8 by medical personnel.

9 (4) [When a] A restraint is permitted under [this
10 section, a correctional institution shall use] paragraph (2)
11 only if the restraint is the least restrictive [restraint
12 necessary when the facility has actual or constructive
13 knowledge that a prisoner or detainee is in the second or
14 third trimester of pregnancy] method available.

15 (c) Restraints.--The following [shall apply to a prisoner or
16 detainee who has been restrained under this subsection:

17 (1) The correctional institution staff accompanying the
18 prisoner or detainee shall immediately remove all restraints
19 upon request of a doctor, nurse or other health care
20 professional.

21 (2) Leg or waist restraints shall not be used on any
22 prisoner or detainee who is in labor.

23 (3) The type of restraint applied and the application of
24 the restraint shall be done in the least restrictive manner
25 possible.] restraints may not be used on a prisoner or
26 detainee at any time during pregnancy, labor or postpartum
27 period:

28 (1) abdomen, ankle, leg or waist restraints;

29 (2) restraint of the hands behind the back;

30 (3) four-point restraints;

1 (4) restraints attaching the prisoner or detainee to
2 another prisoner or detainee; or

3 (5) tasers and stun guns.

4 (c.1) Medical request.--Notwithstanding subsection (b) (2),
5 on the request of a health care professional who is responsible
6 for the health and safety of a prisoner or detainee, a
7 correctional official or other custodian, as applicable, shall
8 refrain from using restraints on the prisoner or detainee or
9 shall immediately remove all restraints.

10 (c.2) Duties of officer in charge.--The officer in charge
11 shall:

12 (1) review and assess the appropriateness of the use of
13 restraints under this section and shall provide an assessment
14 to the custodian who used restraints;

15 (2) maintain reports of the use of restraints under this
16 section for a minimum of five years; and

17 (3) deliver reports of the use of restraints under this
18 section to the secretary or the Secretary of Human Services
19 consistent with section 1104(a) (relating to State recording
20 system for application of restraints to pregnant, laboring or
21 postpartum prisoners or detainees).

22 (d) Annual report.--No later than August 1 of each year, the
23 secretary and the Secretary of [Public Welfare] Human Services
24 shall each submit to the Governor's Office a written report
25 containing information regarding the use of restraints on any
26 pregnant, laboring or postpartum prisoner or detainee during the
27 preceding fiscal year [specifically identifying and enumerating
28 the circumstances that led to the determination that the
29 prisoner or detainee fell under the exception in subsection (b)
30 (2).]. The following shall apply:

1 (1) For each restraint, the following information shall
2 be included:

3 (i) the date and time restraints were applied and
4 removed;

5 (ii) the number and type of restraints applied;

6 (iii) the name of the correctional institution of
7 the prisoner or detainee;

8 (iv) the job title and employer of the staff person
9 who applied the restraints; and

10 (v) the staff member's justification for the
11 individualized determination to use restraints, including
12 the particular factual circumstances that support a
13 determination that the prisoner or detainee fell under
14 the exception in subsection (b) (2).

15 (2) The secretary shall report on pregnant prisoners or
16 detainees in the custody of correctional institutions
17 operated, supervised or licensed by the department. If a
18 correctional institution fails to submit a report of
19 restraints used on pregnant, laboring or postpartum prisoners
20 or detainees during the preceding fiscal year, the secretary
21 shall:

22 (i) obtain a certification from the correctional
23 institution that the correctional institution did not use
24 any restraints on any pregnant, laboring or postpartum
25 prisoner or detainee during the preceding fiscal year;
26 and

27 (ii) include the certification under subparagraph
28 (i) in the secretary's report.

29 (3) The Secretary of [Public Welfare] Human Services
30 shall report on pregnant prisoners or detainees in the

1 custody of correctional institutions operated, supervised or
2 licensed by the Department of [Public Welfare pursuant to]
3 Human Services under the act of June 13, 1967 (P.L.31,
4 No.21), known as the [Public Welfare] Human Services Code.

5 [The reports] If a correctional institution does not submit a
6 report of restraints used on pregnant, laboring or postpartum
7 prisoners or detainees during the preceding fiscal year, then
8 the Secretary of Human Services shall:

9 (i) obtain a certification from the correctional
10 institution that the correctional institution did not use
11 restraints on a pregnant, laboring or postpartum prisoner
12 or detainee during the preceding fiscal year; and

13 (ii) include the certification in the Secretary of
14 Human Services' report.

15 (4) The annual reports submitted under this subsection
16 shall not contain any identifying information of any prisoner
17 or detainee.

18 (5) The annual reports submitted under this subsection
19 shall be posted on the [Governor's] department's publicly
20 accessible Internet website and shall be made available for
21 public inspection at the offices of the department and the
22 Department of [Public Welfare] Human Services, respectively.

23 (d.1) Oversight.--The following shall apply:

24 (1) In addition to the department's inspection powers
25 and duties under section 1105(a)(2) (relating to powers and
26 duties of department), the department shall have the power
27 and duty to inspect county correctional institutions'
28 fulfillment of the requirements of this section.

29 (2) Consistent with section 402 of the act of April 9,
30 1929 (P.L.343, No.176), known as The Fiscal Code, the

1 Department of the Auditor General shall have the authority to
2 make a special audit of the department's affairs under this
3 section.

4 (e) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection unless the context clearly indicates otherwise:

7 "Correctional institution." Any entity under the authority
8 of the state or any county or municipality that has the power to
9 detain and restrain a person under the laws of this
10 Commonwealth[.], including, but not limited to, State
11 correctional institutions, county correctional institutions,
12 juvenile detention facilities, police departments, constables
13 offices, sheriff's offices and private entities performing
14 contracts for the State, county or municipality.

15 "Custodian." Warden, sheriff, jailer, deputy sheriff, police
16 officer or other correctional or law enforcement officer having
17 actual custody of a pregnant, laboring or postpartum prisoner or
18 detainee.

19 "Detainee." Includes any person detained under the
20 immigration laws of the United States at any correctional
21 facility.

22 "Labor." The period of time before a birth during which
23 contractions [are of sufficient frequency, intensity and
24 duration to bring about effacement and progressive dilation of
25 the cervix. The determination of when labor has commenced shall
26 rest solely with the medical providers of the prisoner or
27 detainee.] commence, followed by delivery of the child and
28 placenta.

29 "Officer in charge." The warden, captain, superintendent or
30 other individual who is responsible for the supervision of a

1 correctional institution or of another custodian.

2 "Postpartum." The period of eight weeks following [delivery
3 before a prisoner or detainee has been discharged from a medical
4 facility] labor.

5 "Prisoner." Any person incarcerated or detained in any
6 correctional institution who is accused of, convicted of,
7 sentenced for or adjudicated delinquent for violations of
8 criminal law or the terms and conditions of parole, probation,
9 pretrial release or a diversionary program.

10 "Restraint." Any physical hold [or mechanical] device or
11 chemical used to control the movement of a prisoner's or
12 detainee's body and limbs, including, but not limited to,
13 shackles, flex cuffs, soft restraints, hard metal handcuffs, a
14 black box, Chubb cuffs, leg irons, belly chains, a security
15 (tether) chain [or], a convex shield or drug or medication.

16 Section 2. This act shall take effect in 60 days.