

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1275 Session of 2020

INTRODUCED BY BARTOLOTTA, A. WILLIAMS, FARNESE, LEACH, COLLETT, HAYWOOD, KEARNEY, COSTA, PHILLIPS-HILL, SCHWANK, TARTAGLIONE, BROWNE, DINNIMAN AND K. WARD, AUGUST 24, 2020

REFERRED TO JUDICIARY, AUGUST 24, 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, for postpartum recovery and for human
 11 trafficking education.

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

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

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

19 (a) General rule.--[A correctional institution as defined by
 20 section 5905(e) (relating to healthy birth for incarcerated
 21 women) shall report each restraint applied to a pregnant
 22 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] One of the following:

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

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

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

23 (3) The name of the custodian or staff member that
24 applied the restraints or placed the individual into
25 restrictive housing.

26 (4) The number of restraints used.

27 (5) Any physical effects on the incarcerated or detained
28 individual or the unborn child of an incarcerated or detained
29 individual resulting from placement in the restraints or
30 restrictive housing.

1 (6) 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 escorting the
5 individual must report the use to the receiving institution,
6 including the names of the police officers escorting the
7 individual. The receiving institution must then file a
8 written report pursuant to this subsection.

9 (c) Staff presence during labor.--Staff accompanying
10 incarcerated women to the hospital for medical treatment related
11 to pregnancy shall be female whenever practicable or if
12 preferred by the incarcerated woman.

13 (d) Report required.--If staff remain present during the
14 examination, labor or delivery of the pregnant incarcerated
15 woman, a report shall be submitted consistent with the
16 provisions of section 5905(d) (relating to healthy birth for
17 incarcerated women), containing the following information:

18 (1) The name of the staff who remained in the room
19 during the medical procedure or appointment.

20 (2) The names of the medical personnel who made the
21 request of the staff and the reason provided for the request
22 or, if the request was made by the pregnant woman, the
23 signature of the pregnant woman verifying the request.

24 (3) The duration during which the staff remained
25 present.

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

1 be posted.

2 (f) Failure to comply with written findings.--If a
3 correctional institution fails to submit a report under this
4 section by the end of the fiscal year, the Secretary of Human
5 Services shall obtain a certification from the correctional
6 institution verifying that the institution had zero instances of
7 use of restraints, placement in restrictive housing or staff
8 presence during medical examinations or appointments of pregnant
9 incarcerated women under the provisions of this section.

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

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

18 "Postpartum recovery." The eight-week period, or longer as
19 determined by the health care professional responsible for the
20 health and safety of the incarcerated or detained person,
21 following childbirth.

22 "Restraints." Any physical or mechanical device used to
23 restrict or control the movement of a prisoner's body, limbs or
24 both.

25 "Restrictive housing." Any type of detention that involves
26 removal from the general incarcerated population for purposes of
27 discipline or administrative purposes, whether voluntary or
28 involuntary, and the inability to leave a room or cell for the
29 vast majority of the day.

30 "Staff." An individual who is employed by a correctional

1 facility.

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

3 § 5905.1. Restrictive housing prohibited for pregnant or
4 postpartum inmates and detainees.

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

13 (b) Alternative discipline.--Forms of discipline for
14 pregnant and postpartum incarcerated or detained individuals
15 shall be limited, to the greatest extent possible, as follows:

16 (1) The pregnant or postpartum incarcerated or detained
17 individual may be sanctioned by restricting telephone use,
18 visiting privileges and commissary privileges, but not by
19 restricting time the pregnant or postpartum incarcerated or
20 detained individual spends out of the individual's cell.

21 (2) If telephone usage is limited under paragraph (1),
22 the restriction shall be reviewed every seven days. An
23 exception for the limited purpose of the individual under
24 this subsection planning for the delivery, care and custody
25 of the child, legal calls or the child's care and custody
26 shall be provided to the pregnant or postpartum incarcerated
27 or detained individual.

28 (c) Hearing.--An informal hearing with a meaningful
29 opportunity for the pregnant or postpartum incarcerated or
30 detained individual to be heard shall be conducted within 24

1 hours of any violation of the correctional institution's rules
2 or regulations under subsection (a), if the privileges of a
3 pregnant or postpartum incarcerated or detained individual are
4 restricted. The department shall develop written procedures
5 relating to the implementation of this subsection, including due
6 process procedure for inmates.

7 (d) Conduct of hearing.--No individual involved in the
8 incident that is the subject of the hearing may conduct the
9 hearing. Nothing in this subsection shall waive any right of the
10 pregnant or postpartum incarcerated or detained individual to a
11 formal hearing.

12 (e) Exceptions.--A pregnant or postpartum incarcerated or
13 detained individual may be placed in restrictive housing only as
14 a temporary response to behavior that poses a serious and
15 immediate risk of physical harm to the pregnant or postpartum
16 incarcerated or detained individual, another incarcerated or
17 detained individual or the unborn child of the pregnant
18 incarcerated or detained individual. The following shall apply:

19 (1) The decision to place a pregnant or postpartum
20 incarcerated or detained individual in restrictive housing
21 under this subsection must be approved by the warden or
22 individual in charge of the correctional institution and a
23 health care practitioner.

24 (2) The rationale for the decision under this subsection
25 must be documented as required by section 1104 (relating to
26 State recording system for application of restraints and
27 restrictive housing to pregnant and postpartum inmates or
28 detainees).

29 (3) No period of restrictive housing in excess of seven
30 days may be approved unless a documented assessment of the

1 pregnant or postpartum incarcerated or detained individual by
2 a health care practitioner finds good cause for extending the
3 time spent in restrictive housing and is approved by the
4 warden or individual in charge of the facility. A copy of the
5 assessment under this paragraph shall be placed in the
6 inmate's or detainee's medical file and any other file
7 maintained on the inmate with 24 hours of the placement of
8 the pregnant or postpartum incarcerated or detained
9 individual in restrictive housing under this subsection.

10 (f) Definition.--As used in this section, the term "health
11 care practitioner" shall mean an individual licensed in this
12 Commonwealth as a physician, certified registered nurse
13 practitioner, registered nurse, nurse midwife or physician
14 assistant.

15 § 5908. Cavity search and inspection restrictions.

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

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

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

24 (b) Documentation requirement.--If staff is required to
25 perform an invasive cavity search on a pregnant incarcerated
26 individual or detainee or male staff is required to conduct an
27 inspection on a female incarcerated individual or detainee in a
28 state of undress, a written report shall be submitted to the
29 correctional institution within 72 hours following the cavity
30 search or inspection. The report under this subsection shall:

1 (1) include the justification for performing the cavity
2 search or male staff inspection; and

3 (2) note if any contraband was found on the incarcerated
4 individual or detainee.

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

8 (d) 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 "Body cavity search." An invasive search of incarcerated or
12 detained individuals, conducted by staff in search of
13 contraband.

14 "Staff." An individual who is employed or contracted by a
15 correctional facility.

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

20 § 5909. Training and education requirement.

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

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

30 (2) The impact of restraints on a pregnant individual

1 and unborn child.

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

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

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

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

21 (c) Education programming for pregnant incarcerated
22 individuals.--The department and the Department of Human
23 Services shall jointly develop and provide both correctional
24 institutions and county correctional institutions with
25 educational programming for pregnant or postpartum incarcerated
26 or detained individuals. The educational programming shall be
27 related to:

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

30 (2) Prenatal care.

- 1 (3) Pregnancy-specific hygiene.
- 2 (4) Parenting skills.
- 3 (5) The impact of alcohol and drugs on the unborn child.
- 4 (6) General health of the child.
- 5 (7) Any other pertinent information the department or

6 the Department of Human Services finds appropriate or
7 necessary.

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

9 (1) The warden of a correctional institution shall
10 ensure that the correctional institution provides to all
11 incarcerated individuals and detainees quality trauma-
12 informed care as specified by the Substance Abuse and Mental
13 Health Services Administration of the United States
14 Department of Health and Human Services.

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

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

22 (i) Training to identify individuals with trauma.

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

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

29 (e) Definitions.--As used in this section, the term "trauma-
30 informed care" means an organizational structure and treatment

1 framework that involves recognizing, understanding and
2 responding to the effects of trauma.

3 § 5910. Family consideration in placement and visitation.

4 To the greatest extent possible, after accounting for
5 security and capacity factors, the department shall ensure that
6 primary caregivers of a minor dependent child who are
7 incarcerated shall be placed as close as possible to the
8 incarcerated individual's permanent address of record.

9 § 5911. Feminine hygiene and incontinence products.

10 (a) Issuance of feminine hygiene products related to
11 menstruation.--A supply of feminine hygiene products shall be
12 provided to all incarcerated individuals and detainees who are
13 menstruating in a correctional institution each month at no cost
14 to the incarcerated individuals and detainees, regardless of
15 financial means. Incarcerated individuals and detainees shall
16 not be required to show proof of need or to undergo a medical
17 examination or obtain a medical permit, authorization or
18 diagnosis to receive the products under this section.

19 (b) Feminine hygiene products provided.--The following
20 products shall be distributed to all incarcerated individuals
21 and detainees who are menstruating in a correctional
22 institution:

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

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

26 (c) Issuance of feminine hygiene products related to bladder
27 control and incontinence.--A supply of products for bladder
28 control and incontinence shall be provided to incarcerated
29 individuals and detainees, including geriatric incarcerated
30 individuals and postpartum incarcerated individuals, who require

1 such products each month at no cost to incarcerated individuals
2 and detainees, regardless of financial means.

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

6 (e) Rules and regulations.--The correctional institution
7 shall promulgate rules necessary to implement and enforce the
8 provisions of this section.

9 (f) Definition.--As used in this section, the term "feminine
10 hygiene products" means products that women use during
11 menstruation. The term includes tampons and sanitary napkins.
12 § 5912. Postpartum recovery.

13 (a) Restraints during postpartum recovery.--No restraints
14 shall be used on any incarcerated or detained individual who has
15 given birth within the last 30 days and is in postpartum
16 recovery, unless the department has a reasonable belief that the
17 incarcerated or detained individual will harm themselves, their
18 newborn or another individual or pose a substantial risk of
19 imminent flight. If restraints are used, the facility employee
20 ordering the use of restraints on an incarcerated or detained
21 individual while in postpartum recovery shall submit a written
22 report to the warden of the facility within 72 hours following
23 the use of the restraints, containing the justification for
24 restraining the incarcerated or detained individual during
25 postpartum recovery.

26 (b) Nutritional and hygiene products.--Following the
27 delivery of a newborn by an incarcerated or detained individual,
28 the department shall make available for 72 hours the necessary
29 nutritional and hygiene products, including diapers, to care for
30 the newborn.

1 (c) Definition.--As used in this section, the term
2 "substantial risk of imminent flight" means a showing of real
3 and considerable risk of escaping by the incarcerated individual
4 with the intent to avoid continued incarceration. An
5 individual's history of escape attempts and flight to avoid
6 continued incarceration may be relevant to the determination,
7 but history alone cannot meet the requirement.

8 § 5913. Human trafficking education.

9 The department and the Department of Human Services shall
10 jointly develop and provide to all correctional institutions in
11 this Commonwealth a training program for female inmates related
12 to human trafficking, methods of recruitment used by individuals
13 engaged in human trafficking and resources available to victims
14 of human trafficking.

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

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