THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 900 Session of 2023

INTRODUCED BY CEPHAS, M. JONES, T. DAVIS, PIELLI, KINKEAD, HOHENSTEIN, PROBST, GUENST, SANCHEZ, MADDEN, DELLOSO, HILL-EVANS, SCHLOSSBERG, HANBIDGE, PARKER, WAXMAN, FIEDLER, CEPEDA-FREYTIZ, HOWARD, SAPPEY, KINSEY, STEHR, KHAN, BULLOCK, WARREN, INNAMORATO, SHUSTERMAN, KAZEEM, KRAJEWSKI, MAYES, TAKAC, OTTEN AND GREEN, APRIL 12, 2023

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 21, 2023

AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration, further providing for State recording system for application of restraints to pregnant prisoners or detainees; in county correctional institutions, further providing for county recording system for application of restraints to pregnant prisoners or detainees; providing for Department of Human Services facilities; and, in miscellaneous provisions, further providing for healthy birth for incarcerated women and providing for restrictive housing prohibited for pregnant or postpartum incarcerated individuals and detainees, for cavity search and inspection restrictions, for training and education requirement, for family consideration in placement and visitation, for feminine hygiene and incontinence products and for postpartum recovery.

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

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

§ 1104. State recording system [for application of restraints] relating to pregnant [prisoners] and postpartum
incarcerated individuals or detainees.

(a) General rule.--[A correctional institution as defined by section 5905(e) (relating to healthy birth for incarcerated women) shall report each restraint applied to a pregnant prisoner or detainee. The report must be in writing and must note the number of restraints. Individual, separate written findings for each restraint must accompany the report. This shall include reports from the following:] A correctional institution shall, in writing, report each restraint applied to a pregnant, laboring or postpartum individual in the correctional institution's custody, as well as any instance where a pregnant, laboring or postpartum individual is placed in restrictive housing. The report shall note the number and type of restraints or, in the case of restrictive housing, the length of time the individual was placed in restrictive housing. The provisions of this subsection shall apply to any person tasked with transporting or housing incarcerated individuals or detainees. As it relates to restraints, the report need not include when handcuffs are used on an incarcerated individual or detainee that are associated with placement while in restrictive housing. Reports shall be made as follows:

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

(2) A correctional institution that is operated, supervised or licensed by the Department of [Public Welfare Human Services pursuant to the [Public Welfare] Human Services Code shall make the report to the Secretary of
(b) Contents of written findings.--Written findings report.--Reports of each restraint or placement of an incarcerated individual or detainee in restrictive housing as required under subsection (a) must include the following:

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

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

(2.1) The circumstances that led to the determination that:

(i) the incarcerated individual or detainee represented a substantial risk of imminent flight; or

(ii) other extraordinary medical or security circumstances dictated that the incarcerated individual or detainee be restrained or placed in restrictive housing to ensure the safety and security of the incarcerated individual or detainee, the staff of the correctional institution or medical facility, other incarcerated individuals or detainees or the public.

(3) The date and time restraints were applied or the restrictive housing placement occurred and the length of time the incarcerated individual or detainee was kept in restraints or restrictive housing.

(4) The badge number or identification number of the

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following:

(i) The custodian or staff member who applied the
restraints or placed the individual into restrictive
housing.

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

(5) The number and type of restraints used or the
location and description of the restrictive housing.

(6) Any visible injury of the incarcerated individual or
detainee resulting from placement in the restraints that is
documented by the correctional institution.

(c) Staff presence during labor.--Other than licensed
medical professionals, only female staff shall be present in the
room during the examination, labor or delivery of the pregnant
incarcerated individual. If male staff, other than licensed
medical professionals, remain present during the examination,
labor or delivery of the pregnant incarcerated individual, that
information and the reasons for the presence shall be reported
to the department or the Department of Human Services, as
applicable.

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

(e) Failure to submit report.--If a correctional institution
fails to submit a report under this section within 30 days after
the end of the fiscal year, the department or the Department of
Human Services, as applicable, shall obtain a certification, to be created by the department or the Department of Human Services, as applicable, from the correctional institution verifying that the correctional institution had zero instances of use of restraints, placement in restrictive housing or male staff presence, other than licensed medical professionals, during medical examinations or appointments of pregnant incarcerated individuals under the provisions of this section.

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

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

"Postpartum." The eight-week period, or longer as determined by the health care professional responsible for the health and safety of the incarcerated individual or detainee, following childbirth.

"Restraints." Any physical or mechanical device used to restrict or control the movement of an incarcerated individual's body, limbs or both.

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

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

§ 1758. County recording system for application of restraints to pregnant prisoners pregnant and postpartum incarcerated individuals or detainees.

(a) General rule.--[The application of restraints to a
pregnant prisoner or detainee occurring pursuant to section 5905
(relating to healthy birth for incarcerated women) shall
constitute an incident that qualifies as an extraordinary
occurrence that must be reported to the department in the County
Extraordinary Occurrence Monthly Report.] Each of the following
shall constitute an incident that qualifies as an extraordinary
occurrence that must be reported to the department in the County
Extraordinary Occurrence Monthly Report in accordance with
sections 5905 (relating to healthy birth for incarcerated women)
and 5905.1 (relating to restrictive housing prohibited for
pregnant or postpartum incarcerated individuals and detainees):

(1) The application of restraints or placement in
restrictive housing for a pregnant or postpartum incarcerated
individual or detainee.

(2) An invasive body cavity search of a pregnant or
postpartum incarcerated individual or detainee or inspection
of a female incarcerated individual or detainee in a state of
undress.

(3) The presence of male staff during labor or delivery
of the pregnant incarcerated individual or detainee.

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

[(1) Any and all incidents where the application of
restraints to a pregnant prisoner or detainee pursuant to
section 5905 occurred must be included in the County
Extraordinary Occurrence Monthly Report that is submitted to
the department. An indication of the incidents must be noted
on the designated report form or other available approved
method, if applicable, and individual, separate written
findings must accompany the form for each incident that
occurred.

(2) Written findings of each incident as required under paragraph (1) must include the following:

(i) the circumstances that led to the determination that the prisoner or detainee represented a substantial risk of imminent flight; or

(ii) the circumstances that led to the determination that other extraordinary medical or security circumstances dictated the prisoner or detainee be restrained to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees or the public.

(3) The report for application of restraints or placement in restrictive housing for a pregnant or postpartum incarcerated individual or detainee shall require the following information:

(i) The circumstances that led to the determination that:

(A) the incarcerated individual or detainee represented a substantial risk of imminent flight; or

(B) other extraordinary medical or security circumstances dictated that the incarcerated individual or detainee be restrained or placed in restrictive housing to ensure the safety and security of the incarcerated individual or detainee, the staff of the correctional institution or medical facility, other incarcerated individuals or detainees or the public.

(ii) The date and time restraints were applied or
the restrictive housing placement occurred and the length
of time the incarcerated individual or detainee was kept
in restraints or restrictive housing.

(iii) The badge number or identification number of
the following:

(A) The custodian or staff member who applied
the restraints or placed the individual into
restrictive housing.

(B) Any superior officers approving or advising
the application of restraints or placement in
restrictive housing.

(iv) The number and type of restraints used or the
location and description of the restrictive housing.

(v) Any visible injury of the incarcerated
individual or detainee resulting from placement in the
restraints that is documented by the correctional
institution.

(4) The report for an invasive body cavity search of a
pregnant or postpartum incarcerated individual or detainee or
inspection of a female incarcerated individual or detainee in
a state of undress shall contain the following information:

(i) The justification for performing a cavity search
or male staff inspection of a female incarcerated
individual or detainee in a state of undress.

(ii) The identification of any contraband that was
found on the incarcerated individual or detainee.

(5) The report for the presence of male staff during
labor or delivery of the pregnant incarcerated individual or
detainee shall include the reasons for the presence of male
staff.
(6) The nonidentifying data contained in the written reports submitted to the department or the Department of Human Services shall be posted annually on the publicly accessible Internet website of the department or the Department of Human Services. No identifying information, such as names or dates of birth, shall be posted.

(7) If a correctional institution fails to submit a report under this section within 30 days after the end of the fiscal year, the department or the Department of Human Services, as applicable, shall obtain a certification, to be created by the department or the Department of Human Services, as applicable, from the correctional institution verifying that the institution had zero instances of use of restraints, placement in restrictive housing or male staff presence, other than licensed medical professionals, during medical examinations or appointments of pregnant incarcerated individuals under the provisions of this section.

* * *

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

CHAPTER 57

DEPARTMENT OF HUMAN SERVICES FACILITIES

Sec.

5701. Definitions.

5702. Seclusion prohibited for pregnant or postpartum child.

5703. Body cavity search and inspection restrictions.

5704. Training and education requirement.

5705. Family consideration in placement and visitation.

(RESERVED).

5706. Menstrual hygiene and incontinence products.

5707. Postpartum recovery.
5708. Reports relating to pregnant or postpartum child.

§ 5701. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Body cavity search." An invasive search of a child conducted by staff in search of contraband, excluding the nose, ears and mouth.

"Child." As follows:

(1) An individual who resides in an entity licensed or operated by the department and meets one of the following conditions:

(i) Is under 18 years of age.

(ii) Is under 21 years of age and committed an act of delinquency before reaching 18 years of age and remains under the jurisdiction of the juvenile court.

(iii) Was adjudicated dependent before reaching 18 years of age and while engaged in instruction or treatment, requests the court to retain jurisdiction until the instruction or treatment is completed, but a child may not remain in a course of instruction or treatment past 21 years of age.

(iv) Has an intellectual disability, a mental illness or a serious emotional disturbance, with a transfer plan to move to an adult setting by 21 years of age.

(2) The term does not include a child in foster care as provided in 42 U.S.C. Ch. 7 Subch. IV (relating to grants to states for aid and services to needy families with children and for child-welfare services).
"Department." The Department of Human Services of the Commonwealth.

"Exclusion." As follows:

(1) The removal of a resident from the resident's immediate environment and restricting the resident alone in a room or area.

(2) The term does not include an occasion when:

(i) An employee of a facility remains in the exclusion area with the resident.

(ii) A resident is voluntarily restricted to an area or room.

(iii) All residents are required to be in their rooms or another room or area as part of the program schedule.

"Facility." Except as exempted by regulation, a premise or part of a premise serving children who are adjudicated either dependent or delinquent and meeting one of the following conditions:

(1) Operated for a portion of a 24-hour day in which alternative education, intervention or support programs are provided to one or more children to prevent a child's placement in a more restrictive setting or to facilitate the child's reunification with the child's family.

(2) Operated in a 24-hour living setting in which care is provided for one or more children who are not relatives of the facility operator.

"Health care professional." An individual who is licensed, certified or otherwise authorized or permitted by the laws of this Commonwealth to administer health care in the ordinary course of business or in the practice of a profession.
"Menstrual hygiene products." As follows:

(1) Products RELATING TO BODILY FUNCTIONS THAT ARE used during menstruation.

(2) The term includes tampons and sanitary pads.

"Postpartum." An eight-week period or a longer period as determined by the health care professional responsible for the health and safety of the child following childbirth.

"Restraints." Any physical or mechanical device used to restrict or control the movement of a child's body or limbs or both.

"Staff." An individual who is employed by a facility.

"State of undress." A state where a child is partially or fully naked, either in the shower, toilet areas, a medical examination room or while a body cavity search is being conducted.

"Substantial risk of imminent flight." As follows:

(1) A showing of real and considerable risk of escaping by a child from a facility.

(2) A child's history of escape attempts and flight to avoid the facility may be relevant to the determination but history alone does not satisfy the requirement.

"Trauma-informed care." A strengths-based approach to service delivery and organizational structure that:

(1) Realizes the widespread impact of trauma, including historical trauma.

(2) Understands potential paths to recovery.

(3) Recognizes the signs and symptoms of trauma in a child, parent, legal guardian, staff or another involved in the system.

(4) Responds by fully integrating knowledge about trauma
(5) Seeks to actively prevent retraumatization.

§ 5702. Seclusion prohibited for pregnant or postpartum child.

(a) Seclusion prohibited. GENERAL RULE.--Except as provided under subsection (c), a pregnant or postpartum child may not be involuntarily placed in seclusion in any facility in this Commonwealth.

(b) Alternative discipline.--Forms of discipline for a pregnant or postpartum child shall be limited to sanctions, including restrictions on telephone usage or visitation or other common forms of alternative discipline used in the United States.

(c) Exceptions.--A pregnant or postpartum child may be placed in exclusion only as a temporary response to behavior that poses a serious and immediate risk of physical harm to the pregnant or postpartum child, another child, the unborn child of the pregnant child or staff. The following apply:

(1) The decision to place a pregnant or postpartum child in exclusion under this subsection must be approved by the individual in charge of the facility.

(2) The rationale for the decision to use exclusion must be documented as required by section 5708 (relating to reports relating to pregnant or postpartum child).

(3) No period of exclusion in excess of seven days may be approved.

(d) Bed assignments.--The facility may not assign a pregnant child to any bed that is elevated more than three feet from the floor of the facility.
§ 5703. Body cavity search and inspection restrictions.
   (a) Body cavity search and inspection restrictions.--To the greatest extent possible:
   (1) Only a health care professional shall conduct an invasive body cavity search of a pregnant child.
   (2) If a search is required, staff shall accommodate the child's stated preference regarding the gender of the staff to be present in the room during the search except in cases of exigent circumstances as determined by the facility director or designee.
   (b) Documentation requirement.--If a health care professional is required to perform an invasive body cavity search on a pregnant child, or the child's stated preference regarding the gender of the staff present in the room during a search while the child is in a state of undress is not met, staff shall submit a written report to the individual in charge of the facility within 72 hours following the body cavity search or inspection. The report under this subsection shall:
   (1) Include the justification for performing the body cavity search or failing to honor the child's stated preference regarding the gender of the staff performing the inspection.
   (2) Note if any contraband was found on the child.
   (3) Be sent to the department.

§ 5704. Training and education requirement.
   (a) Facility staff training.--The facility shall provide or arrange a training program for staff who have contact with a pregnant, laboring or postpartum child. The training program shall be related to the physical and mental health of the pregnant or postpartum child and unborn baby, including:
(1) The general care of a pregnant child.

(2) The impact of restraints on a pregnant child and
unborn baby.

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

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

(5) Any other pertinent information the department finds
appropriate or necessary.

(b) Facility staff training exceptions.--If the facility
prohibits the placement of a pregnant child as a matter of
policy, the facility may submit a written exemption reporting
that there is no risk of staff interacting with a pregnant child
housed in the facility. The following apply:

(1) The exemption under this subsection shall apply only
to the facility, not the individual staff of the facility.

(2) All facility staff that come in contact with a
pregnant child shall complete the training under this
section.

(3) If facility staff work at more than one institution,
the staff must receive the required training at the nonexempt
facility.

(c) Education programming for a pregnant child.--The
facility shall develop and provide educational programming for a
pregnant or postpartum child. The educational programming shall
be related to:

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

(2) Prenatal care.

(3) Pregnancy-specific hygiene.

(4) The impact of alcohol and drugs on the unborn baby.
(5) General health of the unborn baby.

(6) Any other pertinent information the department finds appropriate or necessary.

(d) Trauma-informed care.--

(1) The individual in charge of a facility shall, as necessary, ensure that the facility provides quality trauma-informed care to a child.

(2) Trauma-informed care for a child shall begin immediately upon the child's intake and assessment at a facility.

(3) Facility staff shall have no fewer than four hours of professional training related to trauma-informed care, which shall include the following:

   (i) Training to identify a child with trauma.

   (ii) Training on how and when to refer a child to the proper health care professionals, including preventive health care and mental health care.

   (iii) Training on how to interact with and empower a child who has experienced trauma.

§ 5705. Family consideration in placement and visitation. <---

(a) Visitation.--Except as provided under subsection (b), the facility shall make efforts to authorize visitation for a child. The following apply:

(1) A child shall have the right to visit with family at least once every two weeks, at a time and location convenient for the family, the child and the facility, unless visits are restricted by court order.

(2) The right under paragraph (1) shall not restrict more frequent family visits.

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

(1) For a parent who has been deemed by the department as unsafe or ineligible for visitation.

(2) In instances where the minor child was the victim of a criminal offense under 18 Pa.C.S. (relating to crimes and offenses). (RESERVED).

§ 5706. Menstrual hygiene and incontinence products.

(a) Issuance of menstrual hygiene products.--

(1) A facility shall supply menstrual hygiene products each month to a child who is menstruating at no cost to the child regardless of financial means.

(2) A child may not be required to show proof of need or to undergo a medical examination or obtain a medical permit, authorization or diagnosis to receive the products under subsections (b) and (c).

(b) Menstrual hygiene products provided.--A choice of at least two sizes or absorbencies of sanitary pads and tampons shall be available to a child who is menstruating in a facility or if requested from medical staff.

(c) Issuance of hygiene products related to bladder control and incontinence.--A supply of products for bladder control and incontinence, including adult diapers and protective undergarments, shall be provided to a child, including a postpartum child, who requires the products each month at no cost to the child, regardless of financial means.

§ 5707. Postpartum recovery.

(a) Restraints during postpartum recovery.--No restraints shall be used on any child who has given birth within the last 30 days and is in postpartum recovery, unless the department has a reasonable belief that the child will harm the child, the
child's newborn or another individual or pose a substantial risk of imminent flight. If restraints are used, the staff ordering the use of restraints on a child while in postpartum recovery shall submit a written report to the individual in charge of the facility within 72 hours following the use of the restraints, containing the justification for restraining the child during postpartum recovery. The report shall also be sent to the department.

(b) Post-delivery bonding period.--Subject to hospital policy, following the delivery of a newborn, the department shall permit the newborn to remain with the child at the hospital for 72 hours unless a health care professional has a reasonable belief that the newborn remaining with the child poses a health or safety risk to the newborn.

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

§ 5708. Reports relating to pregnant or postpartum child.

(a) Requirement.--A facility shall, in writing, report to the department on each restraint applied to a pregnant, laboring or postpartum child in the facility's custody. The following apply:

(1) The report shall note the number and type of restraints.

(2) The provisions of this subsection shall apply to any person tasked with transporting or housing a pregnant or postpartum child.

(b) Contents of report.--Reports of each restraint or placement of a child as required under subsection (a) must
include the following:

(1) The circumstances that led to the determination that
the child represented a substantial risk of imminent flight.

(2) The circumstances that led to the determination that
other extraordinary medical or security circumstances
dictated that the child be restrained to ensure the safety
and security of the child, the staff of the facility or
medical facility, another child or the public.

(3) The date and time restraints were applied, and the
length of time the child was kept in restraints.

(4) The number and type of restraints used.

(5) Any physical effects on the child or the unborn baby
of a child resulting from placement in the restraints.

(c) Staff presence during labor.--If staff presence is
required, staff shall accommodate the child's stated preference
regarding the gender of the staff to be present in the room
during the examination, labor or delivery of the pregnant child,
except in cases of exigent circumstances as determined by the
facility director or designee.

(d) Availability of reports.--The nonidentifying data
contained in the reports submitted to the department shall be
posted on the department's publicly accessible Internet website
annually. No identifying information, such as names or dates of
birth, shall be posted.

Section 3. Section 5905 of Title 61 is amended to read:
§ 5905. Healthy birth for incarcerated women.
(a) Duties of correctional institution.--Consistent with
established policy and practice, it shall be the duty and
responsibility of the correctional institution to provide
adequate personnel to monitor the pregnant [prisoner]
incarcerated individual or detainee during transport to and from the medical facility and during her stay at the medical facility.

(b) Restraint of pregnant incarcerated individuals and detainees.--

(1) Unless provided in paragraph (2), a correctional institution shall not apply restraints, excluding handcuffs, to an incarcerated individual or detainee known to be pregnant during any stage of labor, any pregnancy-related medical distress, any period of delivery, or during any period of postpartum as defined in subsection (e) or transport to a medical facility as a result of any of the preceding conditions or transport to a medical facility after the beginning of the second trimester of pregnancy, section 1104(f) (relating to State recording system relating to pregnant and postpartum incarcerated individuals or detainees).

(2) Paragraph (1) shall not bar reasonable restraint provided the correctional institution staff assigned to the incarcerated individual or detainee makes an individualized determination that the incarcerated individual or detainee presents a substantial risk of imminent flight or some other extraordinary medical or security circumstance dictates that the incarcerated individual or detainee be restrained to ensure the safety and security of the incarcerated individual or detainee, the staff of the correctional institution or medical facility, other incarcerated individuals or detainees or the public. The assigned correctional institution staff shall report the
incident to the correctional institution in a reasonable amount of time after the restraint occurs. [If the assigned correctional institution staff is not employed by the correctional institution, then the assigned correctional institution staff] In the case of any use of restraints on a pregnant or postpartum incarcerated individual by an individual or entity that is not employed by the correctional institution but is transporting the pregnant or postpartum incarcerated individual on behalf of the correctional institution, the individual or entity shall report the restraint to the correctional institution in a reasonable amount of time after the incident occurs. The reporting requirement shall not apply to a law enforcement agency unless the law enforcement agency is transporting pregnant or postpartum incarcerated individuals on behalf of the correctional institution.

(3) If restraint is applied under paragraph (2), at no time shall the incarcerated individual or detainee be left unattended by a correctional institution staff with the ability to release the restraint should a release become medically necessary.

(4) When a restraint is permitted under this section, a correctional institution shall use the least restrictive restraint necessary when the facility has actual or constructive knowledge that an incarcerated individual or detainee is in the second or third trimester of pregnancy.

(c) Restraints.--The following shall apply to an incarcerated individual or detainee who has been restrained under this subsection:
(1) The correctional institution staff accompanying the incarcerated individual or detainee shall promptly remove all restraints upon request of a doctor, nurse or other health care professional.

(2) Leg or waist restraints shall not be used on any incarcerated individual or detainee who is in labor.

(3) The type of restraint applied and the application of the restraint shall be done in the least restrictive manner possible.

[(d) Annual report.--No later than August 1 of each year, the secretary and the Secretary of Public Welfare shall each submit to the Governor's Office a written report containing information regarding the use of restraints on any pregnant prisoner or detainee during the preceding fiscal year specifically identifying and enumerating the circumstances that led to the determination that the prisoner or detainee fell under the exception in subsection (b)(2). The secretary shall report on pregnant prisoners or detainees in the custody of correctional institutions operated, supervised or licensed by the department. The Secretary of Public Welfare shall report on pregnant prisoners or detainees in the custody of correctional institutions operated, supervised or licensed by the Department of Public Welfare pursuant to the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code. The reports shall not contain any identifying information of any prisoner or detainee. The reports shall be posted on the Governor's Internet website and shall be made available for public inspection at the offices of the department and the Department of Public Welfare, respectively.]
(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Correctional institution." Any entity under the authority of the state or any county or municipality that has the power to detain and restrain a person under the laws of this Commonwealth.

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

"Labor." The period of time before a birth during which contractions are of sufficient frequency, intensity and duration to bring about effacement and progressive dilation of the cervix. The determination of when labor has commenced shall rest solely with the medical providers of the prisoner or detainee.

"Postpartum." The period following delivery before a prisoner or detainee has been discharged from a medical facility.

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

"Incarcerated individual." An individual incarcerated or detained in a correctional institution who is accused of, convicted of, sentenced for or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release or a diversionary program.

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

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

§ 5905.1. Restrictive housing prohibited for pregnant or postpartum incarcerated individuals and detainees.

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

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

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

(1) The decision to place a pregnant or postpartum incarcerated individual or detainee in restrictive housing under this subsection must be approved by the chief administrator.

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

(3) No period of restrictive housing shall exceed seven days without additional approval and documented rationale, as required by section 1104, of the chief administrator. There shall be a minimum of seven days between each restrictive placement absent extraordinary circumstances.

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

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

§ 5908. Cavity search and inspection restrictions.

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

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

(2) A correctional institution shall limit searches by male staff, other than medically licensed professional male staff, if a female incarcerated individual or detainee is in a state of undress.

(b) Documentation requirement.--If staff is required to perform an invasive body cavity search on a pregnant or postpartum incarcerated individual or detainee, or male staff,
other than medically licensed professional male staff, is required to conduct a search on a female incarcerated individual or detainee in a state of undress, a written report shall be submitted to the correctional institution within 72 hours following the cavity search or inspection. The report under this subsection shall:

(1) include the justification for performing the cavity search or male staff inspection as required in this subsection;

(2) document and identify any contraband that was found on the incarcerated individual or detainee; and

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

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

"Body cavity search." An invasive search of incarcerated individuals or detainees, conducted by staff in search of contraband, excluding the nose, ears and mouth.

"Staff." An individual, including contracted staff, who is employed by a correctional institution, the department or the Department of Human Services, excluding any licensed medical professional.

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

§ 5909. Training and education requirement.

(a) Correctional institution staff training.--The department and the Department of Human Services shall jointly develop and
provide correctional institutions with a training program for
staff who have contact with a pregnant, laboring or postpartum
incarcerated individual or detainee. The training program shall
be related to the physical and mental health of the pregnant or
postpartum incarcerated individual or detainee and unborn child,
including:

(1) The general care of a pregnant individual.
(2) The impact of restraints on a pregnant individual
and unborn child.
(3) The impact of being placed in restrictive housing on
a pregnant individual.
(4) The impact of invasive searches on a pregnant
individual.
(5) Any other pertinent information the department or
the Department of Human Services finds appropriate or
necessary.

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

(c) Education programming for pregnant incarcerated
individuals.--The department and the Department of Human Services shall jointly develop and provide correctional institutions and county correctional institutions with educational programming for pregnant or postpartum incarcerated individuals or detainees. The educational programming shall be related to:

(1) Medical screenings related to female reproductive and overall health, including preventive screenings.
(2) Prenatal care.
(3) Pregnancy-specific hygiene.
(4) The impact of alcohol and drugs on the unborn child.
(5) General health of the child.
(6) Any other pertinent information the department or the Department of Human Services finds appropriate or necessary.

(d) Trauma-informed care.--

(1) The chief administrator shall, as the chief administrator deems necessary, ensure that the correctional institution provides to incarcerated individuals and detainees quality trauma-informed care.

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

(3) Correctional staff shall receive professional training, approved by the Department of Human Services, relating to trauma-informed care, which shall include the following:

(i) Training to identify individuals with trauma.
(ii) Training on how and when to refer individuals to the proper health care professionals, including
(iii) Training on how to interact with and empower incarcerated individuals who have experienced trauma.

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

"Postpartum." The eight-week period, or longer as determined by the health care professional responsible for the health and safety of the incarcerated individual or detainee, following childbirth.

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

§ 5910. Family consideration in placement and visitation.

(a) Visitation.--The department and the Department of Human Services shall make efforts to authorize visitation by a minor dependent child under 18 years of age, with the minimum following requirements:

(1) The minor dependent child shall be able to visit in person the minor dependent child's parent at least once per week subject to department policy and facility space, staffing and administrative capacity.

(2) The visits shall not impact visitation privileges under 37 Pa. Code § 93.3 (relating to inmate visiting privileges).

(3) Additional visits may be permitted through virtual means, subject to department policy and facility space, staffing and administrative capacity.

(b) Exceptions.--Visitation privileges shall not be authorized under subsection (a).
(1) For parents who have been deemed unsafe or ineligible for visitation through the department or the Department of Human Services until deemed safe or eligible for visitation by the department or the Department of Human Services.

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

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

§ 5911. Feminine hygiene and incontinence products.

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

(b) Feminine hygiene products provided.--A choice of at least two sizes or absorbencies of sanitary pads shall be distributed to all incarcerated individuals and detainees who are menstruating in a correctional institution or if requested from medical staff.

(c) Feminine hygiene products to be requested.--A choice of at least two sizes of tampons shall be distributed to incarcerated individuals and detainees who request a tampon from medical staff.
(d) Issuance of feminine hygiene products relating to bladder control and incontinence.--A supply of products for bladder control and incontinence shall be provided to incarcerated individuals and detainees, including geriatric incarcerated individuals and postpartum incarcerated individuals, who require such products each month at no cost to incarcerated individuals and detainees, regardless of financial means.

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

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

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

§ 5912 5911. Postpartum recovery.

(a) Restraints during postpartum recovery.--No restraints shall be used on any incarcerated individual or detainee who has given birth within the last 30 days and is in postpartum recovery, unless the department or the Department of Human Services, as applicable, has a reasonable belief that the incarcerated individual or detainee will harm themselves, their newborn or another individual or pose a substantial risk of imminent flight. If restraints are used, the facility employee ordering the use of restraints on an incarcerated individual or detainee while in postpartum recovery shall submit a written report to the chief administrator of the facility within 72 hours following the use of the restraints, containing the
justification for restraining the incarcerated individual or
detainee during postpartum recovery. The report shall also be
sent to the department or the Department of Human Services, as
applicable.

(b) Postdelivery bonding period.--Following the delivery of
a newborn and subject to hospital policies, including length of
stay, the department or the Department of Human Services shall
permit the child to remain with the mother at the hospital for
up to 72 hours unless there is a reasonable belief that the
child remaining with the mother presents a health or safety risk
to the child.

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

"Postpartum." The eight-week period, or longer as determined
by the health care professional responsible for the health and
safety of the incarcerated individual or detainee, following
childbirth.

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

Section 5. This act shall take effect in 180 days.