

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 900 Session of
2023

INTRODUCED BY CEPHAS, M. JONES, T. DAVIS, PIELLI, KINKEAD,
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TAKAC, OTTEN, GREEN, FINK, O'MARA, FLEMING, FRANKEL, DAWKINS,
WEBSTER, DALEY, E. NELSON, McNEILL AND BRIGGS, APRIL 12, 2023

SENATOR BAKER, JUDICIARY, IN SENATE, AS AMENDED,
DECEMBER 11, 2023

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; providing for Department of Human
8 Services facilities; and, in miscellaneous provisions,
9 further providing for healthy birth for incarcerated women
10 and providing for restrictive housing prohibited for pregnant
11 or postpartum incarcerated individuals and detainees, for
12 cavity search and inspection restrictions, for training and
13 education requirement, for feminine hygiene and incontinence
14 products and for postpartum recovery.

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

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

20 § 1104. State recording system [for application of restraints]

1 relating to pregnant [prisoners] and postpartum
2 incarcerated individuals or detainees.

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

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

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

30 (b) Contents of [written findings.--Written findings]

1 report.--Reports of each restraint or placement of an <--
2 incarcerated individual or detainee A PREGNANT, LABORING OR <--
3 POSTPARTUM INDIVIDUAL in restrictive housing as required under
4 subsection (a) must include the following:

5 [(1) the circumstances that led to the determination
6 that the prisoner or detainee represented a substantial risk
7 of 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 (2.1) The circumstances that led to the determination
15 that:

16 (i) the incarcerated individual or detainee <--
17 PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL represented a <--
18 substantial risk of imminent flight; or

19 (ii) other extraordinary medical or security
20 circumstances dictated that the incarcerated individual <--
21 or detainee PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL <--
22 be restrained or placed in restrictive housing to ensure
23 the safety and security of the incarcerated individual or <--
24 detainee PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL, the <--
25 staff of the correctional institution or medical
26 facility, other incarcerated individuals or detainees or
27 the public.

28 (3) The date and time restraints were applied or the
29 restrictive housing placement occurred and the length of time
30 the incarcerated individual or detainee PREGNANT, LABORING OR <--

1 POSTPARTUM INDIVIDUAL was kept in restraints or restrictive
2 housing.

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

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

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

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

13 (6) Any visible injury of the incarcerated individual or <--
14 detainee PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL <--
15 resulting from placement in the restraints that is documented
16 by the correctional institution.

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

26 (d) Availability of reports.--The nonidentifying data
27 contained in the written reports submitted to the department or
28 the Department of Human Services shall be posted on the
29 department's or the Department of Human Services' publicly
30 accessible Internet website annually. No identifying

1 information, such as names or dates of birth, shall be posted.

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

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

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

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

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

25 ~~"Restrictive housing." Any type of detention that involves~~ <--
26 ~~removal from the general incarcerated population for purposes of~~
27 ~~discipline or administrative purpose.~~

28 "RESTRICTIVE HOUSING." PLACEMENT IN AN AREA OR GROUP OF <--
29 CELLS DESIGNATED TO HOUSE INDIVIDUALS ASSIGNED TO DISCIPLINARY
30 OR ADMINISTRATIVE CUSTODY IN WHICH OUT OF CELL TIME IS LIMITED

1 TO LESS THAN TWO HOURS PER DAY.

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

5 § 1758. County recording system for [application of restraints
6 to pregnant prisoners] pregnant and postpartum
7 incarcerated individuals or detainees.

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

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

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

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

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

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

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

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

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

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

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

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

30 (B) other extraordinary medical or security

1 circumstances dictated that the incarcerated
2 individual or detainee be restrained or placed in
3 restrictive housing to ensure the safety and security
4 of the incarcerated individual or detainee, the staff
5 of the correctional institution or medical facility,
6 other incarcerated individuals or detainees or the
7 public.

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

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

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

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

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

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

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

30 (i) The justification for performing a cavity search

1 or male staff inspection of a female incarcerated
2 individual or detainee in a state of undress.

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

5 (5) The report for the presence of male staff during
6 labor or delivery of the pregnant incarcerated individual or
7 detainee shall include the reasons for the presence of male
8 staff.

9 (6) The nonidentifying data contained in the written
10 reports submitted to the department or the Department of
11 Human Services shall be posted annually on the publicly
12 accessible Internet website of the department or the
13 Department of Human Services. No identifying information,
14 such as names or dates of birth, shall be posted.

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

26 * * *

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

28 CHAPTER 57

29 DEPARTMENT OF HUMAN SERVICES FACILITIES

30 Sec.

- 1 5701. Definitions.
- 2 5702. Seclusion prohibited for pregnant or postpartum child.
- 3 5703. Body cavity search and inspection restrictions.
- 4 5704. Training and education requirement.
- 5 5705. (Reserved).
- 6 5706. Menstrual hygiene and incontinence products.
- 7 5707. Postpartum recovery.
- 8 5708. Reports relating to pregnant or postpartum child.
- 9 § 5701. Definitions.

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

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

16 "Child." As follows:

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

20 (i) Is under 18 years of age.

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

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

30 (iv) Has an intellectual disability, a mental

1 illness or a serious emotional disturbance, with a
2 transfer plan to move to an adult setting by 21 years of
3 age.

4 (2) The term does not include a child in foster care as
5 provided in 42 U.S.C. Ch. 7 Subch. IV (relating to grants to
6 states for aid and services to needy families with children
7 and for child-welfare services).

8 "Department." The Department of Human Services of the
9 Commonwealth.

10 ~~"Exclusion." As follows:~~

<--

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

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

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

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

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

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

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

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

4 "Health care professional." An individual who is licensed,
5 certified or otherwise authorized or permitted by the laws of
6 this Commonwealth to administer health care in the ordinary
7 course of business or in the practice of a profession.

8 "Menstrual hygiene products." As follows:

9 (1) Products relating to bodily functions that are used
10 during menstruation.

11 (2) The term includes tampons and sanitary pads.

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

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

18 "SECLUSION." AS FOLLOWS:

<--

19 (1) THE REMOVAL OF A RESIDENT FROM THE RESIDENT'S
20 IMMEDIATE ENVIRONMENT AND RESTRICTING THE RESIDENT ALONE IN A
21 ROOM OR AREA.

22 (2) THE TERM DOES NOT INCLUDE AN OCCASION WHEN:

23 (I) AN EMPLOYEE OF A FACILITY REMAINS IN THE
24 SECLUSION AREA WITH THE RESIDENT.

25 (II) A RESIDENT IS VOLUNTARILY RESTRICTED TO AN AREA
26 OR ROOM.

27 (III) ALL RESIDENTS ARE REQUIRED TO BE IN THEIR
28 ROOMS OR ANOTHER ROOM OR AREA AS PART OF THE PROGRAM
29 SCHEDULE.

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

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

5 "Substantial risk of imminent flight." As follows: <--

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

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

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

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

15 (2) Understands potential paths to recovery.

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

19 (4) Responds by fully integrating knowledge about trauma
20 into policies, procedures, practices and relationships.

21 (5) Seeks to actively prevent retraumatization.

22 § 5702. Seclusion prohibited for pregnant or postpartum child.

23 (a) General rule.--Except as provided under subsection (c),
24 a pregnant or postpartum child may not be involuntarily placed
25 in seclusion in any facility in this Commonwealth.

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

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

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

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

12 (3) No period of seclusion in excess of seven days may
13 be approved.

14 (d) Bed assignments.--The facility may not assign a pregnant
15 child to any bed that is elevated more than three feet from the
16 floor of the facility.
17 § 5703. Body cavity search and inspection restrictions.

18 (a) Body cavity search and inspection restrictions.--To the
19 greatest extent possible:

20 (1) Only a health care professional shall conduct an
21 invasive body cavity search of a pregnant child.

22 (2) If a search is required, staff shall accommodate the
23 child's stated preference regarding the gender of the staff
24 to be present in the room during the search except in cases
25 of exigent circumstances as determined by the facility
26 director or designee.

27 (b) Documentation requirement.--If a health care
28 professional is required to perform an invasive body cavity
29 search on a pregnant child, or the child's stated preference
30 regarding the gender of the staff present in the room during a

1 search while the child is in a state of undress is not met,
2 staff shall submit a written report to the individual in charge
3 of the facility within 72 hours following the body cavity search
4 or inspection. The report under this subsection shall:

5 (1) Include the justification for performing the body
6 cavity search or failing to honor the child's stated
7 preference regarding the gender of the staff performing the
8 inspection.

9 (2) Note if any contraband was found on the child.

10 (3) Be sent to the department.

11 § 5704. Training and education requirement.

12 (a) Facility staff training.--The facility shall provide or
13 arrange a training program for staff who have contact with a
14 pregnant, laboring or postpartum child. The training program
15 shall be related to the physical and mental health of the
16 pregnant or postpartum child and unborn baby, including:

17 (1) The general care of a pregnant child.

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

20 (3) The impact of being placed in ~~restrictive housing~~ <--
21 SECLUSION on a pregnant child. <--

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

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

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

30 (1) The exemption under this subsection shall apply only

1 to the facility, not the individual staff of the facility.

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

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

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

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

14 (2) Prenatal care.

15 (3) Pregnancy-specific hygiene.

16 (4) The impact of alcohol and drugs on the unborn baby.

17 (5) General health of the unborn baby.

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

20 (d) Trauma-informed care.--

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

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

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

30 (i) Training to identify a child with trauma.

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

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

6 § 5705. (Reserved).

7 § 5706. Menstrual hygiene and incontinence products.

8 (a) Issuance of menstrual hygiene products.--

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

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

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

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

26 § 5707. Postpartum recovery.

27 (a) Restraints during postpartum recovery.--No restraints
28 shall be used on any child who has given birth within the last
29 30 days and is in postpartum recovery, unless the department
30 has a reasonable belief that the child will harm the child, the

1 child's newborn or another individual or pose a substantial risk
2 of imminent flight. If restraints are used, the staff ordering
3 the use of restraints on a child while in postpartum recovery
4 shall submit a written report to the individual in charge of the
5 facility within 72 hours following the use of the restraints,
6 containing the justification for restraining the child during
7 postpartum recovery. The report shall also be sent to the
8 department.

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

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

19 § 5708. Reports relating to pregnant or postpartum child.

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

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

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

29 (b) Contents of report.--Reports of each restraint or
30 placement of a child as required under subsection (a) must

1 include the following:

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

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

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

11 (4) The number and type of restraints used.

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

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

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

25 Section 3. Section 5905 of Title 61 is amended to read:

26 § 5905. Healthy birth for incarcerated women.

27 (a) Duties of correctional institution.--Consistent with
28 established policy and practice, it shall be the duty and
29 responsibility of the correctional institution to provide
30 adequate personnel to monitor the pregnant [prisoner]

1 incarcerated individual or detainee during transport to and from
2 the medical facility and during her stay at the medical
3 facility.

4 (b) Restraint of pregnant [prisoners] incarcerated
5 individuals and detainees.--

6 (1) Unless provided in paragraph (2), a correctional
7 institution shall not apply restraints, including handcuffs,
8 to [a prisoner] an incarcerated individual or detainee known
9 to be pregnant during any stage of labor[, any pregnancy-
10 related medical distress, any period of delivery,] or any
11 period of postpartum as defined in [subsection (e) or
12 transport to a medical facility as a result of any of the
13 preceding conditions or transport to a medical facility after
14 the beginning of the second trimester of pregnancy.] section
15 1104(f) (relating to State recording system relating to
16 pregnant and postpartum incarcerated individuals or
17 detainees).

18 (2) Paragraph (1) shall not bar reasonable restraint
19 provided the correctional institution staff assigned to the
20 [prisoner] incarcerated individual or detainee makes an
21 individualized determination that the [prisoner] incarcerated
22 individual or detainee presents a substantial risk of
23 imminent flight or some other extraordinary medical or
24 security circumstance dictates that the [prisoner]
25 incarcerated individual or detainee be restrained to ensure
26 the safety and security of the [prisoner] incarcerated
27 individual or detainee, the staff of the correctional
28 institution or medical facility, other [prisoners]
29 incarcerated individuals or detainees or the public. The
30 assigned correctional institution staff shall report the

1 incident to the correctional institution in a reasonable
2 amount of time after the restraint occurs. [If the assigned
3 correctional institution staff is not employed by the
4 correctional institution, then the assigned correctional
5 institution staff] In the case of any use of restraints on a
6 pregnant or postpartum incarcerated individual by an
7 individual or entity that is not employed by the correctional
8 institution but is transporting the pregnant or postpartum
9 incarcerated individual on behalf of the correctional
10 institution, the individual or entity shall report the
11 restraint to the correctional institution in a reasonable
12 amount of time after the incident occurs. The reporting
13 requirement shall not apply to a law enforcement agency
14 unless the law enforcement agency is transporting pregnant or
15 postpartum incarcerated individuals on behalf of the
16 correctional institution.

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

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

28 (c) Restraints.--The following shall apply to [a prisoner]
29 an incarcerated individual or detainee who has been restrained
30 under this subsection:

1 (1) The correctional institution staff accompanying the
2 [prisoner] incarcerated individual or detainee shall
3 [immediately] promptly remove all restraints upon request of
4 a doctor, nurse or other health care professional.

5 (2) Leg or waist restraints shall not be used on any
6 [prisoner] incarcerated individual or detainee who is in
7 labor.

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

11 [(d) Annual report.--No later than August 1 of each year,
12 the secretary and the Secretary of Public Welfare shall each
13 submit to the Governor's Office a written report containing
14 information regarding the use of restraints on any pregnant
15 prisoner or detainee during the preceding fiscal year
16 specifically identifying and enumerating the circumstances that
17 led to the determination that the prisoner or detainee fell
18 under the exception in subsection (b) (2). The secretary shall
19 report on pregnant prisoners or detainees in the custody of
20 correctional institutions operated, supervised or licensed by
21 the department. The Secretary of Public Welfare shall report on
22 pregnant prisoners or detainees in the custody of correctional
23 institutions operated, supervised or licensed by the Department
24 of Public Welfare pursuant to the act of June 13, 1967 (P.L.31,
25 No.21), known as the Public Welfare Code. The reports shall not
26 contain any identifying information of any prisoner or detainee.
27 The reports shall be posted on the Governor's Internet website
28 and shall be made available for public inspection at the offices
29 of the department and the Department of Public Welfare,
30 respectively.]

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

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

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

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

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

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

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

29 "Restraint." Any physical hold or mechanical device used to
30 control the movement of [a prisoner's] an incarcerated

1 individual's or detainee's body [and] or limbs[, including, but
2 not limited to, shackles, flex cuffs, soft restraints, hard
3 metal handcuffs, a black box, Chubb cuffs, leg irons, belly
4 chains, a security (tether) chain or a convex shield] or both.

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

6 § 5905.1. Restrictive housing prohibited for pregnant or
7 postpartum incarcerated individuals and detainees.

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

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

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

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

30 (2) The rationale for the decision under this subsection

1 must be documented as required by section 1104 (relating to
2 State recording system relating to pregnant and postpartum
3 incarcerated individuals or detainees).

4 (3) No period of restrictive housing shall exceed seven
5 days without additional approval and documented rationale, as
6 required by section 1104, of the chief administrator. There
7 shall be a minimum of ~~seven days~~ 24 HOURS between each <--
8 restrictive placement absent extraordinary circumstances.

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

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

18 § 5908. Cavity search and inspection restrictions.

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

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

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

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

1 other than medically licensed professional male staff, is
2 required to conduct a search on a female incarcerated individual
3 or detainee in a state of undress, a written report shall be
4 submitted to the correctional institution within 72 hours
5 following the cavity search or inspection. The report under this
6 subsection shall:

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

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

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

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

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

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

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

28 § 5909. Training and education requirement.

29 (a) Correctional institution staff training.--The department
30 and the Department of Human Services shall jointly develop and

1 provide correctional institutions with a training program for
2 staff who have contact with a pregnant, laboring or postpartum
3 incarcerated individual or detainee. The training program shall
4 be related to the physical and mental health of the pregnant or
5 postpartum incarcerated individual or detainee and unborn child,
6 including:

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

8 (2) The impact of restraints on a pregnant individual
9 and unborn child.

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

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

14 (5) Any other pertinent information the department or
15 the Department of Human Services finds appropriate or
16 necessary.

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

30 (c) Education programming for pregnant incarcerated

1 individuals.--The department and the Department of Human
2 Services shall jointly develop and provide correctional
3 institutions and county correctional institutions with
4 educational programming for pregnant or postpartum incarcerated
5 individuals or detainees. The educational programming shall be
6 related to:

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

9 (2) Prenatal care.

10 (3) Pregnancy-specific hygiene.

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

12 (5) General health of the child.

13 (6) Any other pertinent information the department or
14 the Department of Human Services finds appropriate or
15 necessary.

16 (d) Trauma-informed care.--

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

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

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

28 (i) Training to identify individuals with trauma.

29 (ii) Training on how and when to refer individuals
30 to the proper health care professionals, including

1 preventive health care and mental health care.

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

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

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

14 § 5910. Feminine hygiene and incontinence products.

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

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

29 (c) Feminine hygiene products to be requested.--A choice of
30 at least two sizes of tampons shall be distributed to

1 incarcerated individuals and detainees who request a tampon from
2 medical staff.

3 (d) Issuance of feminine hygiene products relating to
4 bladder control and incontinence.--A supply of products for
5 bladder control and incontinence shall be provided to
6 incarcerated individuals and detainees, including geriatric
7 incarcerated individuals and postpartum incarcerated
8 individuals, who require such products each month at no cost to
9 incarcerated individuals and detainees, regardless of financial
10 means.

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

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

17 (g) Definition.--As used in this section, the term "feminine
18 hygiene products" means products that women use during
19 menstruation. The term includes tampons and sanitary napkins.
20 § 5911. Postpartum recovery.

21 (a) Restraints during postpartum recovery.--No restraints
22 shall be used on any incarcerated individual or detainee who has
23 given birth within the last 30 days and is in postpartum
24 recovery, unless the department or the Department of Human
25 Services, as applicable, has a reasonable belief that the
26 incarcerated individual or detainee will harm themselves, their
27 newborn or another individual or pose a substantial risk of
28 imminent flight. If restraints are used, the facility employee
29 ordering the use of restraints on an incarcerated individual or
30 detainee while in postpartum recovery shall submit a written

1 report to the chief administrator of the facility within 72
2 hours following the use of the restraints, containing the
3 justification for restraining the incarcerated individual or
4 detainee during postpartum recovery. The report shall also be
5 sent to the department or the Department of Human Services, as
6 applicable.

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

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

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

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

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