

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1876 Session of
2019

INTRODUCED BY DALEY, HARRIS, McCLINTON, CEPHAS, FRANKEL,
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WARREN AND GALLOWAY, SEPTEMBER 25, 2019

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 25, 2019

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, in general administration, further
3 providing for State recording system for application of
4 restraints to pregnant prisoners or detainees; in county
5 correctional institutions, further providing for county
6 recording system for application of restraints to pregnant
7 prisoners or detainees; and, in miscellaneous provisions,
8 further providing for healthy birth for incarcerated women.

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

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

13 § 1104. State recording system for application of restraints to
14 pregnant, laboring or postpartum prisoners or
15 detainees.

16 (a) General rule.--[A correctional institution as defined by
17 section 5905(e) (relating to healthy birth for incarcerated
18 women) shall report each restraint applied to a pregnant
19 prisoner or detainee. The report must be in writing and must

1 note the number of restraints. Individual, separate written
2 findings for each restraint must accompany the report. This
3 shall include reports from the following:] Each custodian who
4 applies restraints to a pregnant, laboring or postpartum
5 prisoner or detainee shall, on a form prepared by the
6 department, submit a written report of the application of
7 restraints to a staff person appointed by the officer in charge
8 of a correctional institution within two days of use of the
9 restraint on a pregnant, laboring or postpartum prisoner or
10 detainee. The staff person appointed under this section shall
11 deliver each written report of the use of restraints to the
12 officer in charge within two days of receiving the report under
13 this section. The written report must note the date and time
14 restraints were applied, the number of restraints, the prisoner
15 or detainee's name, the name of the correctional institution,
16 the name of the staff member who applied the restraints and the
17 staff member's explanation for the use of restraints.
18 Individual, separate written findings for the use of each
19 restraint, as specified under subsection (b), must accompany the
20 report. The officer in charge shall deliver the reports in the
21 following manner:

22 (1) [A] The officer in charge of a correctional
23 institution that is not operated, supervised or licensed by
24 the Department of [Public Welfare pursuant to] Human Services
25 under the act of June 13, 1967 (P.L.31, No.21), known as the
26 [Public Welfare] Human Services Code, shall [make the report]
27 deliver the reports to the secretary.

28 (2) [A] The officer in charge of a correctional
29 institution that is operated, supervised or licensed by the
30 Department of [Public Welfare pursuant to] Human Services

1 under the [Public Welfare] Human Services Code shall [make
2 the report] deliver the reports to the Secretary of [Public
3 Welfare] Human Services.

4 (b) Contents of written findings.--Written findings of each
5 restraint as required under subsection (a) must include the
6 following:

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

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

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

19 "Correctional institution." As defined in section 5905(e)
20 (relating to healthy birth for incarcerated prisoners and
21 detainees).

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

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

24 Section 2. Section 1758 heading, (a) and (b)(1) of Title 61
25 are amended to read:

26 § 1758. County recording system for application of restraints
27 to pregnant, laboring or postpartum prisoners or
28 detainees.

29 (a) General rule.--The application of restraints to a
30 pregnant, laboring or postpartum prisoner or detainee [occurring

1 [pursuant] subject to section 5905 (relating to healthy birth for
2 incarcerated [women] prisoners and detainees) shall constitute
3 an incident that qualifies as an extraordinary occurrence that
4 must be reported to the department in the County Extraordinary
5 Occurrence Monthly Report. The provisions of this subsection
6 shall apply to county constables, police, sheriffs or other law
7 enforcement personnel.

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

10 (1) Any and all incidents where the application of
11 restraints to a pregnant, laboring or postpartum prisoner or
12 detainee [pursuant] subject to section 5905 occurred must be
13 included in the County Extraordinary Occurrence Monthly
14 Report that is submitted to the department. [An indication of
15 the incidents must be noted on the designated report form or
16 other available approved method, if applicable, and
17 individual, separate written findings must accompany the form
18 for each incident that occurred.] The report must note the
19 date and time restraints were applied, the number of
20 restraints, the prisoner or detainee's name, the name of the
21 correctional institution, the name of the staff member who
22 applied the restraints and the staff member's explanation for
23 the use of restraints. Individual, separate written findings
24 for each restraint, as provided under paragraph (2), must
25 accompany the report.

26 * * *

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

28 § 5905. Healthy birth for incarcerated [women] prisoners and
29 detainees.

30 (a) Duties of correctional institution.--[Consistent with

1 established policy and practice, it] It shall be the duty and
2 responsibility of the correctional institution and officers in
3 charge to:

4 (1) provide adequate personnel to monitor [the] a
5 pregnant prisoner or detainee in the correctional
6 institution:

7 (i) during transport to and from [the] a medical
8 facility, court or other destination; and

9 (ii) during [her] a pregnant prisoner or detainee's
10 stay at [the] a medical facility[.], court or other
11 destination;

12 (2) provide annual training on the requirements of this
13 section to all personnel who will monitor pregnant prisoners
14 or detainees;

15 (3) adopt and implement a written policy consistent with
16 and reiterating the requirements of this section; and

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

24 (b) Restraint of pregnant, laboring and postpartum prisoners
25 and detainees.--

26 (1) Unless provided in paragraph (2), a correctional
27 institution and its personnel shall not apply restraints to a
28 prisoner or detainee:

29 (i) known to be pregnant, laboring or postpartum
30 during any stage of [labor] pregnancy[,]. A prisoner or

1 detainee is known to be pregnant, laboring or postpartum
2 on the earliest date on which the custodian:

3 (A) receives medical confirmation of an
4 incarcerated individual's status of being pregnant,
5 laboring or postpartum;

6 (B) sees that an incarcerated individual is
7 visibly pregnant, laboring or postpartum; or

8 (C) has received a credible report of the
9 incarcerated individual's status of being pregnant,
10 laboring or postpartum or of the incarcerated
11 individual's symptoms of being pregnant, laboring or
12 postpartum, including a report from the incarcerated
13 individual;

14 (ii) experiencing any pregnancy-related medical
15 distress[,];

16 (iii) in any period of labor, delivery[,] or
17 childbirth;

18 (iv) experiencing any period of postpartum as
19 defined in subsection (e); or

20 (v) during transport to or stay at a medical
21 facility [as a result of any of the preceding conditions
22 or transport to a medical facility after the beginning of
23 the second trimester of pregnancy.], courthouse or other
24 destination.

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

28 (i) the custodian or correctional institution staff
29 assigned to the prisoner or detainee makes an
30 individualized determination that the prisoner or

1 detainee presents a substantial risk of imminent flight
2 or some other extraordinary medical or security
3 circumstance dictates that the prisoner or detainee be
4 restrained to ensure the safety and security of the
5 prisoner or detainee, the staff of the correctional
6 institution or medical facility, other prisoners or
7 detainees or the public[. The assigned correctional
8 institution staff shall report the incident to the
9 correctional institution in a reasonable amount of time
10 after the restraint occurs. If the assigned correctional
11 institution staff is not employed by the correctional
12 institution, then the assigned correctional institution
13 staff shall report the restraint to the correctional
14 institution in a reasonable amount of time after the
15 incident occurs.]; and

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

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

30 (3) If restraint is applied under paragraph (2), at no

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

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

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

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

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

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

29 (4) abdomen, ankle, leg or waste restraints;

30 (5) restraint of the hands behind the back;

1 (6) four-point restraints; or
2 (7) restraints attaching the prisoner or detainee to
3 another prisoner or detainee.

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

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

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

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

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

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

1 (1) The secretary shall report on pregnant prisoners or
2 detainees in the custody of correctional institutions
3 operated, supervised or licensed by the department. If a
4 correctional institution fails to submit a report of
5 restraints used on pregnant, laboring or postpartum prisoners
6 or detainees during the preceding fiscal year, the secretary
7 shall:

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

13 (ii) include the certification under subparagraph
14 (i) in the secretary's report.

15 (2) The Secretary of [Public Welfare] Human Services
16 shall report on pregnant prisoners or detainees in the
17 custody of correctional institutions operated, supervised or
18 licensed by the Department of [Public Welfare pursuant to]
19 Human Services under the act of June 13, 1967 (P.L.31,
20 No.21), known as the [Public Welfare] Human Services Code.
21 [The reports] If a correctional institution did not submit a
22 report of restraints used on pregnant, laboring or postpartum
23 prisoners or detainees during the preceding fiscal year, then
24 the Secretary of Human Services shall:

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

29 (ii) include the certification in the Secretary of
30 Human Services' report.

1 (3) The annual reports submitted under this subsection
2 shall not contain any identifying information of any prisoner
3 or detainee.

4 (4) The annual reports submitted under this subsection
5 shall be posted on the Governor's Internet website and shall
6 be made available for public inspection at the offices of the
7 department and the Department of [Public Welfare] Human
8 Services, respectively.

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

10 (1) In addition to the department's inspection powers
11 and duties under section 1105(a)(2) (relating to powers and
12 duties of department), the department shall have the power
13 and duty to inspect county correctional institutions'
14 fulfillment of the requirements of this section.

15 (2) Consistent with section 402 of the act of April 9,
16 1929, (P.L.343, No.176), known as The Fiscal Code, the
17 Department of the Auditor General shall have the authority to
18 make a special audit of the department's affairs under this
19 section.

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

23 "Correctional institution." Any entity under the authority
24 of the state or any county or municipality that has the power to
25 detain and restrain a person under the laws of this
26 Commonwealth[.], including, but not limited to, State
27 correctional institutions, county correctional institutions,
28 juvenile detention facilities, police departments, constables
29 offices, sheriff's offices and private entities performing
30 contracts for the State, county or municipality.

1 "Custodian." Warden, sheriff, jailer, deputy sheriff, police
2 officer or other correctional or law enforcement officer having
3 actual custody of a pregnant, laboring or postpartum prisoner or
4 detainee.

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

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

15 "Officer in charge." The warden, captain, superintendent or
16 other individual who is responsible for the supervision of a
17 correctional institution or of another custodian.

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

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

26 "Restraint." Any physical hold [or], mechanical device or
27 chemical used to control the movement of a prisoner's or
28 detainee's body and limbs, including, but not limited to,
29 shackles, flex cuffs, soft restraints, hard metal handcuffs, a
30 black box, Chubb cuffs, leg irons, belly chains, a security

1 (tether) chain [or], a convex shield or drug or medication.

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