

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 814 Session of 2019

INTRODUCED BY LEACH, BREWSTER, FONTANA, MENSCH, HUGHES, STREET, COSTA, K. WARD, TARTAGLIONE, HAYWOOD AND A. WILLIAMS, AUGUST 7, 2019

REFERRED TO JUDICIARY, AUGUST 7, 2019

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
 2 Consolidated Statutes, in general administration of
 3 correctional institutions, further providing for State
 4 recording system for application of restraints to pregnant
 5 prisoners or detainees; in county correctional institutions,
 6 further providing for county recording system for application
 7 of restraints to pregnant prisoners or detainees; and, in
 8 miscellaneous provisions, further providing for healthy birth
 9 for incarcerated women and providing for family
 10 considerations in inmate placement and visitation, for
 11 inspections by staff of correctional institutions, for access
 12 to feminine hygiene products and for training and educational
 13 programming.

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

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

18 § 1104. State recording system for application of restraints,
 19 restrictive housing and body cavity searches to
 20 pregnant prisoners or detainees.

21 (a) General rule.--A correctional institution as defined by
 22 section 5905(e) (relating to healthy birth for incarcerated
 23 women) shall report each restraint, restrictive housing and body

1 cavity search applied to a pregnant prisoner or detainee. The
2 report must be in writing and must note the number of
3 restraints, restrictive housing and body cavity searches.
4 Individual, separate written findings for each restraint,
5 restrictive housing and body cavity search must accompany the
6 report. This shall include reports from the following:

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

12 (2) A correctional institution that is operated,
13 supervised or licensed by the Department of [Public Welfare]
14 Human Services pursuant to the [Public Welfare] Human
15 Services Code shall make the report to the Secretary of
16 [Public Welfare] Human Services.

17 (b) Contents of written findings.--Written findings of each
18 restraint, restrictive housing and body cavity search as
19 required under subsection (a) must include the following:

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

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

29 (3) whether any contraband was recovered while
30 conducting a body cavity search.

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

3 § 1758. County recording system for application of restraints,
4 restrictive housing and body cavity searches to
5 pregnant prisoners or detainees.

6 (a) General rule.--The application of restraints,
7 restrictive housing and body cavity searches to a pregnant
8 prisoner or detainee occurring pursuant to section 5905
9 (relating to healthy birth for incarcerated women) shall
10 constitute an incident that qualifies as an extraordinary
11 occurrence that must be reported to the department in the County
12 Extraordinary Occurrence Monthly Report.

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

15 (1) Any and all incidents where the application of
16 restraints, restrictive housing and body cavity searches to a
17 pregnant prisoner or detainee pursuant to section 5905
18 occurred must be included in the County Extraordinary
19 Occurrence Monthly Report that is submitted to the
20 department. An indication of the incidents must be noted on
21 the designated report form or other available approved
22 method, if applicable, and individual, separate written
23 findings must accompany the form for each incident that
24 occurred.

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

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

30 (ii) the circumstances that led to the determination

1 that other extraordinary medical or security
2 circumstances dictated the prisoner or detainee be
3 restrained to ensure the safety and security of the
4 prisoner or detainee, the staff of the correctional
5 institution or medical facility, other prisoners or
6 detainees or the public[.]; or

7 (iii) whether any contraband was recovered while
8 conducting a body cavity search.

9 * * *

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

11 § 5905. Healthy birth for incarcerated women.

12 (a) Duties of correctional institution.--Consistent with
13 established policy and practice, it shall be the duty and
14 responsibility of the correctional institution to provide
15 adequate personnel to monitor the pregnant prisoner or detainee
16 during transport to and from the medical facility and during her
17 stay at the medical facility.

18 (b) Restraint, restrictive housing and body cavity searches
19 of pregnant prisoners and detainees.--

20 (1) Unless provided in paragraph (2), a correctional
21 institution shall not apply restraints, restrictive housing
22 or body cavity searches to a prisoner or detainee known to be
23 pregnant during any stage of pregnancy, including labor, any
24 pregnancy-related medical distress, any period of delivery,
25 any period of postpartum recovery as defined in subsection
26 (e) or transport to a medical facility as a result of any of
27 the preceding conditions or transport to a medical facility
28 after the beginning of the second trimester of pregnancy. No
29 correctional institution staff other than a licensed
30 healthcare professional shall conduct invasive body cavity

1 searches of pregnant inmates unless provided in paragraph
2 (2).

3 (2) Paragraph (1) shall not bar reasonable restraint,
4 restrictive housing or body cavity searches provided the
5 correctional institution staff assigned to the prisoner or
6 detainee makes an individualized determination that the
7 prisoner or detainee presents a substantial risk of imminent
8 flight, has a reasonable belief that the prisoner or detainee
9 is concealing contraband, or some other extraordinary medical
10 or security circumstance dictates that the prisoner or
11 detainee be restrained, placed in restrictive housing or
12 subject to a body cavity search to ensure the safety and
13 security of the prisoner or detainee, the staff of the
14 correctional institution or medical facility, other prisoners
15 or detainees or the public. The assigned correctional
16 institution staff shall report the incident to the
17 correctional institution in a reasonable amount of time, not
18 to exceed 72 hours, after the restraint, restrictive housing
19 or body cavity search occurs. If the assigned correctional
20 institution staff is not employed by the correctional
21 institution, then the assigned correctional institution staff
22 shall report the restraint to the correctional institution in
23 a reasonable amount of time, not to exceed 72 hours, after
24 the incident occurs.

25 (3) If restraint or restrictive housing is applied under
26 paragraph (2), at no time shall the prisoner or detainee be
27 left unattended by a correctional institution staff with the
28 ability to release the prisoner or detainee from the
29 restraint or restrictive housing should a release become
30 medically necessary.

1 (4) When a restraint is permitted under this section, a
2 correctional institution shall use the least restrictive
3 restraint necessary when the facility has actual or
4 constructive knowledge that [a] the prisoner or detainee is
5 in the second or third trimester of pregnancy.

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

8 (1) The correctional institution staff accompanying the
9 prisoner or detainee shall immediately remove all restraints
10 upon request of a doctor, nurse or other health care
11 professional.

12 (2) Leg or waist restraints shall not be used [on any]
13 if the prisoner or detainee [who] is in labor.

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

17 (c.1) Bed assignments.--The correctional institution shall
18 not assign a pregnant inmate to a bed that is elevated more than
19 three feet from the floor of the facility.

20 (c.2) Nutrition for pregnant inmates.--The correctional
21 institution shall ensure that a pregnant inmate is provided
22 sufficient food and dietary supplements to meet generally
23 accepted prenatal nutritional guidelines for pregnant women.

24 (c.3) Bonding period and nutritional and hygiene products
25 for newborn.--Following the delivery of a newborn by an inmate,
26 the correctional institution shall permit the newborn to remain
27 with the inmate for 72 hours. During that time, the correctional
28 institution shall make available the necessary nutritional and
29 hygiene products, including diapers, to care for the newborn. If
30 the inmate qualifies as indigent, the products shall be provided

1 without cost.

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

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

27 "Body cavity search." An invasive search on an inmate that
28 is conducted by correctional institution staff in search of
29 contraband.

30 "Correctional institution." Any entity under the authority

1 of the state or any county or municipality that has the power to
2 detain and restrain a person under the laws of this
3 Commonwealth.

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

7 "Indigent." An inmate who has less than an average of \$16 in
8 the inmate's prison account.

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

14 "Menstrual hygiene product." A product that women use during
15 their menstrual cycle. The term includes a tampon, sanitary
16 napkin and menstrual cup.

17 "Postpartum recovery." [The period following delivery before
18 a prisoner or detainee has been discharged from a medical
19 facility.] The eight-week period following delivery, or longer
20 as determined by the healthcare professional responsible for the
21 health and safety of the prisoner.

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

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

1 irons, belly chains, a security (tether) chain or a convex
2 shield.

3 "Restrictive housing." Any type of detention that involves
4 removal of a prisoner from the general inmate population,
5 whether voluntary or involuntary, and that prohibits the
6 prisoner from leaving the room or cell for the vast majority of
7 the day.

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

9 § 5905.1 Family considerations in inmate placement and
10 visitation.

11 (a) Placement.--To the greatest extent possible, after
12 accounting for security and capacity factors, the department and
13 the Department of Human Services shall place female inmates
14 within 250 miles of their permanent address of record.

15 (b) Visitation.--The correctional institution shall
16 authorize visitation of female inmates by minor dependents, with
17 the minimum following requirements:

18 (1) Opportunities for dependent children under 18 years
19 of age to visit their incarcerated mother at least two days
20 per week.

21 (2) Elimination of restrictions on the number of
22 dependent children under 18 years of age that may be
23 permitted visitation privileges.

24 (3) Authorization of contact visits for female inmates
25 with low or minimum security classifications.

26 (c) Overnight Visitation Pilot Program.--The department and
27 the Department of Human Services shall jointly establish a pilot
28 program that authorizes overnight visits for children under 10
29 years of age.

30 § 5905.2 Inspections by staff of correctional institutions.

1 (a) Inspections where female inmate is in state of
2 undress.--

3 (1) To the greatest extent possible, the department and
4 the Department of Human Services shall jointly issue rules to
5 correctional institutions that limit inspections by male
6 correctional staff where a female inmate is in a state of
7 undress.

8 (2) Nothing in this section shall be construed to limit
9 the ability of a male correctional staff from conducting
10 inspections where a female may be in a state of undress if no
11 female correctional staff are available.

12 (b) Documentation requirement.--If a male correctional staff
13 is required to conduct an inspection while a female inmate is in
14 a state of undress, the staff shall submit a written report to
15 the correctional institution within 72 hours following the
16 inspection, containing the justification for a male correctional
17 staff to inspect the female inmate. The correctional institution
18 shall include this information in the report required under
19 sections 1104 (relating to State recording system for
20 application of restraints, restrictive housing and body cavity
21 searches to pregnant prisoners or detainees) and 1758 (relating
22 to county recording system for application of restraints,
23 restrictive housing and body cavity searches to pregnant
24 prisoners or detainees).

25 § 5905.3 Access to feminine hygiene products.

26 A correctional institution shall ensure that sufficient
27 menstrual hygiene products are available at the facility for all
28 female inmates who have an active menstrual cycle. The menstrual
29 hygiene products shall be provided as needed and at no cost to
30 the female inmates.

1 § 5905.4 Training and educational programming.

2 (a) Correctional institution staff training.--The department
3 and the Department of Human Services shall jointly develop and
4 provide to all correctional institutions a training program for
5 staff who have contact with pregnant inmates related to the
6 physical and mental health of pregnant inmates and fetuses,
7 including:

8 (1) General care of pregnant women.

9 (2) The impact of restraints on pregnant inmates and
10 fetuses.

11 (3) The impact of being placed in restrictive housing on
12 pregnant inmates.

13 (4) The impact of invasive searches on pregnant inmates.

14 (b) Educational programming for pregnant inmates.--The
15 department and the Department of Human Services shall jointly
16 develop and provide to all correctional institutions educational
17 programming for pregnant inmates related to:

18 (1) Prenatal care.

19 (2) Pregnancy-specific hygiene.

20 (3) Parenting skills.

21 (4) The impact of alcohol and drugs on the fetus.

22 (5) General health of a child.

23 Section 5. This act shall take effect in 60 days.