AN ACT

Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration of correctional institutions, 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; and, in miscellaneous provisions, further providing for healthy birth for incarcerated women and providing for family considerations in inmate placement and visitation, for inspections by staff of correctional institutions, for access to feminine hygiene products and for training and educational programming.

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

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

§ 1104. State recording system for application of restraints, restrictive housing and body cavity searches to pregnant prisoners 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, restrictive housing and body cavity searches to pregnant prisoners or detainees.
cavity search applied to a pregnant prisoner or detainee. The report must be in writing and must note the number of restraints, restrictive housing and body cavity searches. Individual, separate written findings for each restraint, restrictive housing and body cavity search must accompany the report. This shall include reports from the following:

(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 [Public Welfare] Human Services.

(b) Contents of written findings.--Written findings of each restraint, restrictive housing and body cavity search 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[.]; [or]

(3) whether any contraband was recovered while conducting a body cavity search.
Section 2. Section 1758(a) and (b) of Title 61 are amended to read:

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

(a) General rule.--The application of restraints, restrictive housing and body cavity searches 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.

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

(1) Any and all incidents where the application of restraints, restrictive housing and body cavity searches 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[.]; or

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

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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 or detainee during transport to and from the medical facility and during her stay at the medical facility.

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

(1) Unless provided in paragraph (2), a correctional institution shall not apply restraints, restrictive housing or body cavity searches to a prisoner or detainee known to be pregnant during any stage of pregnancy, including labor, any pregnancy-related medical distress, any period of delivery, any period of postpartum recovery 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. No correctional institution staff other than a licensed healthcare professional shall conduct invasive body cavity
searches of pregnant inmates unless provided in paragraph (2).

(2) Paragraph (1) shall not bar reasonable restraint, restrictive housing or body cavity searches provided the correctional institution staff assigned to the prisoner or detainee makes an individualized determination that the prisoner or detainee presents a substantial risk of imminent flight, has a reasonable belief that the prisoner or detainee is concealing contraband, or some other extraordinary medical or security circumstance dictates that the prisoner or detainee be restrained, placed in restrictive housing or subject to a body cavity search 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. The assigned correctional institution staff shall report the incident to the correctional institution in a reasonable amount of time, not to exceed 72 hours, after the restraint, restrictive housing or body cavity search occurs. If the assigned correctional institution staff is not employed by the correctional institution, then the assigned correctional institution staff shall report the restraint to the correctional institution in a reasonable amount of time, not to exceed 72 hours, after the incident occurs.

(3) If restraint or restrictive housing is applied under paragraph (2), at no time shall the prisoner or detainee be left unattended by a correctional institution staff with the ability to release the prisoner or detainee from the restraint or restrictive housing 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 the prisoner or detainee is in the second or third trimester of pregnancy.

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

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

(2) Leg or waist restraints shall not be used if the prisoner or detainee is in labor.

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

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

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

(c.3) Bonding period and nutritional and hygiene products for newborn.--Following the delivery of a newborn by an inmate, the correctional institution shall permit the newborn to remain with the inmate for 72 hours. During that time, the correctional institution shall make available the necessary nutritional and hygiene products, including diapers, to care for the newborn. If the inmate qualifies as indigent, the products shall be provided.
without cost.

(d) Annual report.--No later than August 1 of each year, the secretary and the Secretary of [Public Welfare] Human Services shall each submit to the Governor's Office a written report containing information regarding the use of restraints, restrictive housing and body cavity searches 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] Human Services shall report on pregnant prisoners or detainees in the custody of correctional institutions 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. 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] Human Services, 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:

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

"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.

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

"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.

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

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

"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.

"Restraint." Any physical hold or mechanical device used to
control the movement of a prisoner's or detainee's body and
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.

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

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

§ 5905.1 Family considerations in inmate placement and visitation.

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

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

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

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

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

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

§ 5905.2 Inspections by staff of correctional institutions.
(a) Inspections where female inmate is in state of undress.--

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

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

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

§ 5905.3 Access to feminine hygiene products.

A correctional institution shall ensure that sufficient menstrual hygiene products are available at the facility for all female inmates who have an active menstrual cycle. The menstrual hygiene products shall be provided as needed and at no cost to the female inmates.
§ 5905.4  Training and educational programming.

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

(1) General care of pregnant women.
(2) The impact of restraints on pregnant inmates and fetuses.
(3) The impact of being placed in restrictive housing on pregnant inmates.
(4) The impact of invasive searches on pregnant inmates.

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

(1) Prenatal care.
(2) Pregnancy-specific hygiene.
(3) Parenting skills.
(4) The impact of alcohol and drugs on the fetus.
(5) General health of a child.

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