

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 469 Session of 2021

INTRODUCED BY DALEY, McCLINTON, T. DAVIS, SCHLOSSBERG, KINSEY, ISAACSON, HOHENSTEIN, FIEDLER, SANCHEZ, RABB, A. DAVIS, GUENST, SCHWEYER, GALLOWAY, HOWARD, WEBSTER, LEE, SIMS, WARREN AND ROZZI, FEBRUARY 9, 2021

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 9, 2021

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
20 note the number of restraints. Individual, separate written

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

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

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

1 the report] deliver the reports to the Secretary of [Public
2 Welfare] Human Services.

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

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

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

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

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

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

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

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

25 § 1758. County recording system for application of restraints
26 to pregnant, laboring or postpartum prisoners or
27 detainees.

28 (a) General rule.--The application of restraints to a
29 pregnant, laboring or postpartum prisoner or detainee [occurring
30 pursuant] subject to section 5905 (relating to healthy birth for

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

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

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

25 * * *

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

27 § 5905. Healthy birth for incarcerated [women] prisoners and
28 detainees.

29 (a) Duties of correctional institution.--[Consistent with
30 established policy and practice, it] It shall be the duty and

1 responsibility of the correctional institution and officers in
2 charge to:

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

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

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

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

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

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

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

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

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

1 on the earliest date on which the custodian:

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

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

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

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

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

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

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

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

27 (i) the custodian or correctional institution staff
28 assigned to the prisoner or detainee makes an
29 individualized determination that the prisoner or
30 detainee presents a substantial risk of imminent flight

1 or some other extraordinary medical or security
2 circumstance dictates that 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[. The assigned correctional
7 institution staff shall report the incident to the
8 correctional institution in a reasonable amount of time
9 after the restraint occurs. If the assigned correctional
10 institution staff is not employed by the correctional
11 institution, then the assigned correctional institution
12 staff shall report the restraint to the correctional
13 institution in a reasonable amount of time after the
14 incident occurs.]; and

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

18 (2.1) Whenever a prisoner or detainee is restrained
19 under paragraph (2), including in the event of exigent
20 circumstances, the assigned correctional institution staff or
21 other custodian shall report the incident to the correctional
22 institution staff assigned to receive the reports within two
23 days after the restraint occurs, on a form prepared by the
24 department for this purpose. The assigned staff person shall
25 deliver the written report to the officer in charge within
26 two days of receiving the report. This paragraph shall apply
27 even if the assigned custodian or correctional institution
28 staff is not employed by the correctional institution.

29 (3) If restraint is applied under paragraph (2), at no
30 time shall the prisoner or detainee be left unattended by a

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

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

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

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

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

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

28 (4) abdomen, ankle, leg or waist restraints;

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

30 (6) four-point restraints; or

1 (7) restraints attaching the prisoner or detainee to
2 another prisoner or detainee.

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

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

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

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

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

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

30 (1) The secretary shall report on pregnant prisoners or

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

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

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

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

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

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

30 (3) The annual reports submitted under this subsection

1 shall not contain any identifying information of any prisoner
2 or detainee.

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

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

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

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

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

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

30 "Custodian." Warden, sheriff, jailer, deputy sheriff, police

1 officer or other correctional or law enforcement officer having
2 actual custody of a pregnant, laboring or postpartum prisoner or
3 detainee.

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

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

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

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

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

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

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