

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1494 Session of
2021

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SIMS AND INNAMORATO, MAY 26, 2021

REFERRED TO COMMITTEE ON JUDICIARY, MAY 26, 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. Sections 1104, 1758 heading, (a) and (b) (1) and
12 5905 of Title 61 of the Pennsylvania Consolidated Statutes are
13 amended to read:

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

17 (a) General rule.--[A correctional institution as defined by
18 section 5905(e) (relating to healthy birth for incarcerated
19 women) shall report each restraint applied to a pregnant
20 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, as
4 defined by section 5905(e) (relating to healthy birth for
5 incarcerated prisoners and detainees), who applies restraints to
6 a pregnant, laboring or postpartum prisoner or detainee shall,
7 on a form prepared by the department, submit a written report of
8 the application of restraints to a staff person appointed by the
9 officer in charge of a correctional institution within two days
10 of use of the restraint on a pregnant, laboring or postpartum
11 prisoner or detainee. The staff person appointed under this
12 section shall deliver each written report of the use of
13 restraints to the officer in charge within two days of receiving
14 the report under this section. The officer in charge shall
15 deliver the reports in the following manner:

16 (1) [A] The officer in charge of a correctional
17 institution that is not operated, supervised or licensed by
18 the Department of [Public Welfare pursuant to] Human Services
19 under the act of June 13, 1967 (P.L.31, No.21), known as the
20 [Public Welfare] Human Services Code, shall [make the report]
21 deliver the reports on a monthly basis to the secretary
22 within 30 days of the end of the previous month.

23 (2) [A] The officer in charge of a correctional
24 institution that is operated, supervised or licensed by the
25 Department of [Public Welfare pursuant to] Human Services
26 under the [Public Welfare] Human Services Code shall [make
27 the report] deliver the reports on a monthly basis to the
28 Secretary of [Public Welfare] Human Services within 30 days
29 of the end of the previous month.

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

1 [findings of each restraint as] reports required under
2 subsection (a) must include the following[:

3 (1) the circumstances that led to the determination that
4 the prisoner or detainee represented a substantial risk of
5 imminent flight; or

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

12 for each restraint applied:

13 (1) the date and time restraints were applied and
14 removed;

15 (2) the number and type of restraints applied;

16 (3) the name of the prisoner or detainee on which
17 restraints were applied;

18 (4) the gestational period of the pregnant prisoner or
19 detainee;

20 (5) the name of the correctional institution of the
21 prisoner or detainee;

22 (6) the name of the staff member who applied the
23 restraints; and

24 (7) the staff member's justification for the
25 individualized determination to use restraints, including the
26 underlying facts that led to the determination:

27 (i) that the prisoner or detainee represented a
28 substantial risk of imminent flight that could not be
29 reasonably prevented by other means; or

30 (ii) that the prisoner or detainee posed an

1 extraordinary, immediate and serious threat to
2 themselves, the staff of the correctional institution or
3 medical or other facility, other prisoners or detainees
4 or the public.

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

8 "Correctional institution." As defined in section 5905(e)
9 (relating to healthy birth for incarcerated prisoners and
10 detainees).

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

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

13 § 1758. County recording system for application of restraints
14 to pregnant, laboring or postpartum prisoners or
15 detainees.

16 (a) General rule.--The application of restraints to a
17 pregnant, laboring or postpartum prisoner or detainee [occurring
18 pursuant] subject to section 5905 (relating to healthy birth for
19 incarcerated [women] prisoners and detainees) shall constitute
20 an incident that qualifies as an extraordinary occurrence that
21 must be reported to the department in the County Extraordinary
22 Occurrence Monthly Report. The provisions of this subsection
23 shall apply to county constables, police, sheriffs or other law
24 enforcement personnel.

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

27 (1) Any and all incidents where the application of
28 restraints to a pregnant, laboring or postpartum prisoner or
29 detainee [pursuant] subject to section 5905 occurred must be
30 included in the County Extraordinary Occurrence Monthly

1 Report that is submitted to the department. [An indication of
2 the incidents must be noted on the designated report form or
3 other available approved method, if applicable, and
4 individual, separate written findings must accompany the form
5 for each incident that occurred.] The report must include the
6 following for each restraint applied:

7 (i) the date and time restraints were applied and
8 removed;

9 (ii) the number and type of restraints applied;

10 (iii) the name of the prisoner or detainee on which
11 restraints were applied;

12 (iv) the gestational period of the pregnant prisoner
13 or detainee;

14 (v) the name of the correctional institution of the
15 prisoner or detainee;

16 (vi) the name of the staff member who applied the
17 restraints; and

18 (vii) the staff member's justification for the
19 individualized determination to use restraints, including
20 the underlying facts that led to the determination:

21 (A) that the prisoner or detainee represented a
22 substantial risk of imminent flight that cannot be
23 reasonably prevented by other means; or

24 (B) that the prisoner or detainee posed an
25 extraordinary, immediate and serious threat to
26 themselves, the staff of the correctional institution
27 or medical or other facility, other prisoners or
28 detainees or the public.

29 * * *

30 § 5905. Healthy birth for incarcerated [women] prisoners and

1 detainees.

2 (a) Duties of correctional institution.--[Consistent with
3 established policy and practice, it] It shall be the duty and
4 responsibility of the correctional institution and officers in
5 charge to:

6 (1) provide adequate personnel to monitor [the] and
7 promptly address the medical needs of a pregnant prisoner or
8 detainee:

9 (i) in the correctional institution;

10 (ii) during transport to and from [the] a medical
11 facility, court or other location; and

12 (iii) during [her] a pregnant prisoner or detainee's
13 stay at [the] a medical facility[.], court or other
14 location;

15 (2) provide annual training on the requirements of this
16 section to all personnel who will monitor pregnant prisoners
17 or detainees, including training consistent with the
18 guidelines developed by the Department of Human Services in
19 consultation with health care professionals with expertise in
20 pregnancy and postpartum recovery, which shall include:

21 (i) the general care of a pregnant individual;

22 (ii) the impact of restraints on a pregnant
23 individual and fetus;

24 (iii) how to identify certain symptoms of pregnancy
25 and postpartum complications that require immediate
26 referral to a health care professional;

27 (iv) the restrictions on use of restraints on
28 pregnant prisoners and detainees;

29 (v) circumstances under which the exceptions under
30 subsection (b) (2) would apply;

1 (vi) in the case that an exception under subsection
2 (b) (2) applies, how to apply restraints in a way that
3 does not harm the prisoner, detainee or fetus;

4 (vii) the requirements to report and the information
5 required to be reported under sections 1104(b) (relating
6 to State recording system for application of restraints
7 to pregnant, laboring or postpartum prisoners or
8 detainees), 1758(b) (relating to county recording system
9 for the application of restraints to pregnant, laboring
10 or postpartum prisoners or detainees) and subsection (b)
11 (2.1); and

12 (viii) the right of a health care professional to
13 request that restraints not be used and the requirements
14 under subsection (c.1) to comply with such a request;

15 (3) adopt and implement a written policy consistent with
16 and reiterating the requirements of sections 1104, 1758 and
17 this section; and

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

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

27 (1) Unless provided in paragraph (2), a correctional
28 institution and its personnel shall not apply restraints to a
29 prisoner or detainee known to be pregnant [during any stage
30 of labor, any pregnancy-related medical distress, any period

1 of delivery, any period of postpartum as defined in
2 subsection (e) or transport to a medical facility as a result
3 of any of the preceding conditions or transport to a medical
4 facility after the beginning of the second trimester of
5 pregnancy.], laboring or postpartum within the correctional
6 institution's facilities or during transport to or a stay at
7 a medical facility, courthouse or other location. A prisoner
8 or detainee is known to be pregnant, laboring or postpartum
9 on the earliest date on which the custodian:

10 (i) receives medical confirmation of a prisoner or
11 detainee's status of being pregnant, laboring or
12 postpartum;

13 (ii) sees that a prisoner or detainee is visibly
14 pregnant, laboring or postpartum; or

15 (iii) has received a credible report of the prisoner
16 or detainee's status of being pregnant, laboring or
17 postpartum or of the prisoner or detainee's symptoms of
18 being pregnant, laboring or postpartum, including a
19 report from the prisoner or detainee;

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

23 (i) the custodian or correctional institution staff
24 assigned to the prisoner or detainee makes an
25 individualized determination that the prisoner or
26 detainee presents a substantial risk of imminent flight
27 [or some other extraordinary medical or security
28 circumstance dictates that the prisoner or detainee be
29 restrained to ensure the safety and security of the
30 prisoner or detainee,] that cannot be reasonably

1 prevented by other means or poses an extraordinary,
2 immediate and serious threat to themselves, the staff of
3 the correctional institution or medical or other
4 facility, other prisoners or detainees or the public[.

5 The assigned correctional institution staff shall report
6 the incident to the correctional institution in a
7 reasonable amount of time after the restraint occurs. If
8 the assigned correctional institution staff is not
9 employed by the correctional institution, then the
10 assigned correctional institution staff shall report the
11 restraint to the correctional institution in a reasonable
12 amount of time after the incident occurs.]; and

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

16 (2.1) Whenever a prisoner or detainee is restrained
17 under paragraph (2), including in the event of exigent
18 circumstances, the assigned correctional institution staff or
19 other custodian shall report the incident to the correctional
20 institution staff assigned to receive the reports within two
21 days after the restraint occurs, on a form prepared by the
22 department for this purpose. The assigned staff person shall
23 deliver the written report to the officer in charge within
24 two days of receiving the report. This paragraph shall apply
25 even if the assigned custodian or correctional institution
26 staff is not employed by the correctional institution.

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

1 The correctional institution staff under this paragraph shall
2 be female if practicable and preferred by the prisoner or
3 detainee; however, no correctional personnel shall be present
4 in the room during the prisoner's or detainee's examination,
5 labor, delivery or childbirth unless specifically requested
6 by medical personnel.

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

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

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

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

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

26 (1) abdomen, ankle, leg or waist restraints;

27 (2) restraint of the hands behind the back;

28 (3) four-point restraints;

29 (4) restraints attaching the prisoner or detainee to
30 another prisoner or detainee; or

1 (5) tasers and stun guns.

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

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

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

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

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

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

29 (1) For each restraint, the following information shall
30 be included:

1 (i) the date and time restraints were applied and
2 removed;

3 (ii) the number and type of restraints applied;

4 (iii) the name of the correctional institution of
5 the prisoner or detainee;

6 (iv) the job title and employer of the staff person
7 who applied the restraints; and

8 (v) the staff member's justification for the
9 individualized determination to use restraints, including
10 the particular factual circumstances that support a
11 determination that the prisoner or detainee fell under
12 the exception in subsection (b) (2).

13 (2) The secretary shall report on pregnant prisoners or
14 detainees in the custody of correctional institutions
15 operated, supervised or licensed by the department. If a
16 correctional institution fails to submit a report of
17 restraints used on pregnant, laboring or postpartum prisoners
18 or detainees during the preceding fiscal year, the secretary
19 shall:

20 (i) obtain a certification from the correctional
21 institution that the correctional institution did not use
22 any restraints on any pregnant, laboring or postpartum
23 prisoner or detainee during the preceding fiscal year;
24 and

25 (ii) include the certification under subparagraph
26 (i) in the secretary's report.

27 (3) The Secretary of [Public Welfare] Human Services
28 shall report on pregnant prisoners or detainees in the
29 custody of correctional institutions operated, supervised or
30 licensed by the Department of [Public Welfare pursuant to]

1 Human Services under the act of June 13, 1967 (P.L.31,
2 No.21), known as the [Public Welfare] Human Services Code.

3 [The reports] If a correctional institution does not submit a
4 report of restraints used on pregnant, laboring or postpartum
5 prisoners or detainees during the preceding fiscal year, then
6 the Secretary of Human Services shall:

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

11 (ii) include the certification in the Secretary of
12 Human Services' report.

13 (4) The annual reports submitted under this subsection
14 shall not contain any identifying information of any prisoner
15 or detainee.

16 (5) The annual reports submitted under this subsection
17 shall be posted on the [Governor's] department's publicly
18 accessible Internet website and shall be made available for
19 public inspection at the offices of the department and the
20 Department of [Public Welfare] Human Services, respectively.

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

22 (1) In addition to the department's inspection powers
23 and duties under section 1105(a)(2) (relating to powers and
24 duties of department), the department shall have the power
25 and duty to inspect county correctional institutions'
26 fulfillment of the requirements of this section.

27 (2) Consistent with section 402 of the act of April 9,
28 1929 (P.L.343, No.176), known as The Fiscal Code, the
29 Department of the Auditor General shall have the authority to
30 make a special audit of the department's affairs under this

1 section.

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

5 "Correctional institution." Any entity under the authority
6 of the state or any county or municipality that has the power to
7 detain and restrain a person under the laws of this
8 Commonwealth[.], including, but not limited to, State
9 correctional institutions, county correctional institutions,
10 juvenile detention facilities, police departments, constables
11 offices, sheriff's offices and private entities performing
12 contracts for the State, county or municipality.

13 "Custodian." Warden, sheriff, jailer, deputy sheriff, police
14 officer or other correctional or law enforcement officer having
15 actual custody of a pregnant, laboring or postpartum prisoner or
16 detainee.

17 "Detainee." Includes any person detained under the
18 immigration laws of the United States at any correctional
19 facility.

20 "Labor." The period of time before a birth during which
21 contractions [are of sufficient frequency, intensity and
22 duration to bring about effacement and progressive dilation of
23 the cervix. The determination of when labor has commenced shall
24 rest solely with the medical providers of the prisoner or
25 detainee.] commence, followed by delivery of the child and
26 placenta.

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

30 "Postpartum." The period of eight weeks following [delivery

1 before a prisoner or detainee has been discharged from a medical
2 facility] labor.

3 "Prisoner." Any person incarcerated or detained in any
4 correctional institution who is accused of, convicted of,
5 sentenced for or adjudicated delinquent for violations of
6 criminal law or the terms and conditions of parole, probation,
7 pretrial release or a diversionary program.

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

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