

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 138 Session of 2021

INTRODUCED BY BARTOLOTTA, PHILLIPS-HILL, KEARNEY, STREET,
TARTAGLIONE, COLLETT, SCHWANK, COSTA AND KANE,
JANUARY 28, 2021

REFERRED TO JUDICIARY, JANUARY 28, 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; and, in
5 miscellaneous provisions, providing for restrictive housing
6 prohibited for pregnant or postpartum inmates and detainees,
7 for cavity search and inspection restrictions, for training
8 and education requirement, for family consideration in
9 placement and visitation, for feminine hygiene and
10 incontinence products, for postpartum recovery and for human
11 trafficking education.

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

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

16 § 1104. State recording system for application of restraints
17 and restrictive housing to pregnant [prisoners] and
18 postpartum inmates or detainees.

19 (a) General rule.--[A correctional institution as defined by
20 section 5905(e) (relating to healthy birth for incarcerated
21 women) shall report each restraint applied to a pregnant
22 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:] A correctional
4 institution shall, in writing, report each restraint applied to
5 a pregnant, laboring or postpartum individual in the
6 correctional institution's custody, as well as any instance
7 where a pregnant, laboring or postpartum individual is placed in
8 restrictive housing. The report shall note the number of
9 restraints or, in the case of restrictive housing, the length of
10 time the individual was placed in restrictive housing.
11 Individual, separate written findings for each restraint and
12 placement of an individual in restrictive housing must accompany
13 the report. The provisions of this subsection shall apply to
14 county constables, police, sheriffs and other law enforcement
15 personnel. The report shall include reports from the following:

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

21 (2) A correctional institution that is operated,
22 supervised or licensed by the Department of [Public Welfare]
23 Human Services pursuant to the [Public Welfare] Humans
24 Services Code shall make the report to the Secretary of
25 [Public Welfare] Human Services.

26 (b) Contents of written findings.--Written findings of each
27 restraint or placement of an incarcerated or detained individual
28 in restrictive housing as required under subsection (a) must
29 include [the following]:

30 (1) One of the following:

1 (i) the circumstances that led to the determination
2 that the [prisoner] inmate or detainee represented a
3 substantial risk of imminent flight[; or]. For the
4 purpose of this paragraph, substantial risk of imminent
5 flight shall be established by a showing of real and
6 considerable risk of escaping by the incarcerated
7 individual with the intent to avoid continued
8 incarceration. An individual's history of escape attempts
9 and flight to avoid continued incarceration may be
10 relevant to the determination, but history alone cannot
11 meet the requirement; or

12 [(2)] (ii) the circumstances that led to the
13 determination that other extraordinary medical or
14 security circumstances dictated the [prisoner] inmate or
15 detainee be restrained to ensure the safety and security
16 of the [prisoner] inmate or detainee, the staff of the
17 correctional institution or medical facility, other
18 [prisoners] inmates or detainees or the public.

19 (2) The date and time restraints were applied or the
20 restrictive housing placement occurred, and the length of
21 time the incarcerated or detained individual was kept in
22 restraints or restrictive housing.

23 (3) The name of the custodian or staff member that
24 applied the restraints or placed the individual into
25 restrictive housing.

26 (4) The number of restraints used.

27 (5) Any physical effects on the incarcerated or detained
28 individual or the unborn child of an incarcerated or detained
29 individual resulting from placement in the restraints or
30 restrictive housing.

1 (6) Instances of restraints being used for transport to
2 or from a correctional institution. If restraints are applied
3 to a pregnant or postpartum individual or detainee en route
4 between facilities, the law enforcement escorting the
5 individual must report the use to the receiving institution,
6 including the names of the police officers escorting the
7 individual. The receiving institution must then file a
8 written report pursuant to this subsection.

9 (c) Staff presence during labor.--Staff accompanying
10 incarcerated women to the hospital for medical treatment related
11 to pregnancy shall be female whenever practicable or if
12 preferred by the incarcerated woman.

13 (d) Report required.--If staff remain present during the
14 examination, labor or delivery of the pregnant incarcerated
15 woman, a report shall be submitted consistent with the
16 provisions of section 5905(d), containing the following
17 information:

18 (1) The name of the staff who remained in the room
19 during the medical procedure or appointment.

20 (2) The names of the medical personnel who made the
21 request of the staff and the reason provided for the request
22 or, if the request was made by the pregnant woman, the
23 signature of the pregnant woman verifying the request.

24 (3) The duration during which the staff remained
25 present.

26 (e) Availability of written findings.--The nonidentifying
27 data contained in the written reports submitted to the Secretary
28 of Corrections and the Secretary of Human Services shall be
29 posted on the Governor's publicly accessible Internet website
30 annually. No identifying information, such as names or dates of

1 birth, shall be posted.

2 (f) Failure to comply with written findings.--If a
3 correctional institution fails to submit a report under this
4 section by the end of the fiscal year, the Secretary of Human
5 Services shall obtain a certification from the correctional
6 institution verifying that the institution had zero instances of
7 use of restraints, placement in restrictive housing or staff
8 presence during medical examinations or appointments of pregnant
9 incarcerated women under the provisions of this section.

10 (g) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection unless the context clearly indicates otherwise:

13 "Correctional institution." As defined in section 5905(e).

14 "Incarcerated individuals." Individuals who are incarcerated
15 in a correctional facility in this Commonwealth. The term
16 includes detainees, inmates and prisoners.

17 "Postpartum recovery." The eight-week period, or longer as
18 determined by the healthcare professional responsible for the
19 health and safety of the incarcerated or detained person,
20 following childbirth.

21 "Restraints." Any physical or mechanical device used to
22 restrict or control the movement of a prisoner's body, limbs or
23 both.

24 "Restrictive housing." Any type of detention that involves
25 removal from the general incarcerated population for purposes of
26 discipline or administrative purposes, whether voluntary or
27 involuntary, and the inability to leave a room or cell for the
28 vast majority of the day.

29 "Staff." An individual who is employed by a correctional
30 facility.

1 Section 2. Title 61 is amended by adding sections to read:

2 § 5905.1. Restrictive housing prohibited for pregnant or
3 postpartum inmates and detainees.

4 (a) Restrictive housing prohibited.--Except as provided
5 under subsection (e), a pregnant or postpartum incarcerated or
6 detained individual may not be involuntarily placed in
7 restrictive housing in any correctional institution in this
8 Commonwealth. Pregnant or postpartum incarcerated or detained
9 individuals who violate the rules and regulations of a
10 correctional institution shall be issued an informal resolution
11 of misconduct.

12 (b) Alternative discipline.--Forms of discipline for
13 pregnant and postpartum incarcerated or detained individuals
14 shall be limited, to the greatest extent possible, as follows:

15 (1) The pregnant or postpartum incarcerated or detained
16 individual may be sanctioned by restricting telephone use,
17 visiting privileges and commissary privileges, but not by
18 restricting time the pregnant or postpartum incarcerated or
19 detained individual spends out of the individual's cell.

20 (2) If telephone usage is limited under paragraph (1),
21 the restriction shall be reviewed every seven days. An
22 exception for the limited purpose of the individual under
23 this subsection planning for the delivery, care and custody
24 of the child, legal calls or the child's care and custody
25 shall be provided to the pregnant or postpartum incarcerated
26 or detained individual.

27 (c) Hearing.--An informal hearing with a meaningful
28 opportunity for the pregnant or postpartum incarcerated or
29 detained individual to be heard shall be conducted within 24
30 hours of any violation of the correctional institution's rules

1 or regulations under subsection (a), if the privileges of a
2 pregnant or postpartum incarcerated or detained individual are
3 restricted. The department shall develop written procedures
4 relating to the implementation of this subsection, including due
5 process procedure for inmates.

6 (d) Conduct of hearing.--No individual involved in the
7 incident that is the subject of the hearing may conduct the
8 hearing. Nothing in this subsection shall waive any right of the
9 pregnant or postpartum incarcerated or detained individual to a
10 formal hearing.

11 (e) Exceptions.--A pregnant or postpartum incarcerated or
12 detained individual may be placed in restrictive housing only as
13 a temporary response to behavior that poses a serious and
14 immediate risk of physical harm to the pregnant or postpartum
15 incarcerated or detained individual, another incarcerated or
16 detained individual or the unborn child of the pregnant
17 incarcerated or detained individual. The following shall apply:

18 (1) The decision to place a pregnant or postpartum
19 incarcerated or detained individual in restrictive housing
20 under this subsection must be approved by the warden or
21 individual in charge of the correctional institution and a
22 health care practitioner.

23 (2) The rationale for the decision under this subsection
24 must be documented as required by section 1104 (relating to
25 State recording system for application of restraints and
26 restrictive housing to pregnant and postpartum inmates or
27 detainees).

28 (3) No period of restrictive housing in excess of seven
29 days may be approved unless a documented assessment of the
30 pregnant or postpartum incarcerated or detained individual by

1 a health care practitioner finds good cause for extending the
2 time spent in restrictive housing and is approved by the
3 warden or individual in charge of the facility. A copy of the
4 assessment under this paragraph shall be placed in the
5 inmate's or detainee's medical file and any other file
6 maintained on the inmate within 24 hours of the placement of
7 the pregnant or postpartum incarcerated or detained
8 individual in restrictive housing under this subsection.

9 (f) Definition.--As used in this section, the term "health
10 care practitioner" shall mean an individual licensed in this
11 Commonwealth as a physician, certified registered nurse
12 practitioner, registered nurse, nurse midwife or physician
13 assistant.

14 § 5908. Cavity search and inspection restrictions.

15 (a) Cavity search and inspection restrictions.--To the
16 greatest extent possible:

17 (1) No staff other than a licensed health care
18 professional shall conduct an invasive body cavity search of
19 a pregnant incarcerated individual or detainee.

20 (2) A correctional institution shall limit inspections
21 by male staff where a female incarcerated individual or
22 detainee is in a state of undress.

23 (b) Documentation requirement.--If staff is required to
24 perform an invasive cavity search on a pregnant incarcerated
25 individual or detainee, or male staff is required to conduct an
26 inspection on a female incarcerated individual or detainee in a
27 state of undress, a written report shall be submitted to the
28 correctional institution within 72 hours following the cavity
29 search or inspection. The report under this subsection shall:

30 (1) include the justification for performing the cavity

1 search or male staff inspection; and

2 (2) note if any contraband was found on the incarcerated
3 individual or detainee.

4 (c) Bed assignments.--The department may not assign a
5 pregnant incarcerated individual to any bed that is elevated
6 more than three feet from the floor of the facility.

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

10 "Body cavity search." An invasive search of incarcerated or
11 detained individuals, conducted by staff in search of
12 contraband.

13 "Staff." An individual who is employed or contracted by a
14 correctional facility.

15 "State of undress." A state where an incarcerated or
16 detained female is partially or fully naked, either in the
17 shower, toilet areas, a medical examination room or while a body
18 cavity search is being conducted.

19 § 5909. Training and education requirement.

20 (a) Correction institution staff training.--The department
21 and the Department of Human Services shall jointly develop and
22 provide both correctional institutions and county correctional
23 institutions with a training program for staff who have contact
24 with a pregnant, laboring or postpartum incarcerated or detained
25 individual. The training program shall be related to the
26 physical and mental health of the pregnant or postpartum
27 incarcerated or detained individual and unborn child, including:

28 (1) The general care of a pregnant individual.

29 (2) The impact of restraints on a pregnant individual
30 and unborn child.

1 (3) The impact of being placed in restrictive housing on
2 a pregnant individual.

3 (4) The impact of invasive searches on a pregnant
4 individual.

5 (5) Any other pertinent information the department or
6 the Department of Human Services finds appropriate or
7 necessary.

8 (b) Correctional institution staff training exceptions.--If
9 the correctional institution or county correctional institution
10 prohibits the placement of pregnant women as a matter of law,
11 that institution may submit a written exemption reporting that
12 there is no risk of staff interacting with pregnant women housed
13 in the institution. The exemption under this subsection shall
14 apply only to the correctional institution, not the individual
15 staff of the institution. All correctional institution staff
16 that come in contact with pregnant incarcerated women must
17 complete the training under this section. If correctional
18 institution staff work at more than one institution, the staff
19 must receive the required training at the nonexempt institution.

20 (c) Education programming for pregnant incarcerated
21 individuals.--The department and the Department of Human
22 Services shall jointly develop and provide both correctional
23 institutions and county correctional institutions with
24 educational programming for pregnant or postpartum incarcerated
25 or detained individuals. The educational programming shall be
26 related to:

27 (1) Medical screenings related to female reproductive
28 and overall health, including preventive screenings.

29 (2) Prenatal care.

30 (3) Pregnancy-specific hygiene.

- 1 (4) Parenting skills.
2 (5) The impact of alcohol and drugs on the unborn child.
3 (6) General health of the child.
4 (7) Any other pertinent information the department or
5 the Department of Human Services finds appropriate or
6 necessary.

7 (d) Trauma-informed care.--The following shall apply:

8 (1) The warden of a correctional institution shall
9 ensure that the correctional institution provides to all
10 incarcerated individuals and detainees quality trauma-
11 informed care as specified by the Substance Abuse and Mental
12 Health Services Administration of the United States
13 Department of Health and Human Services.

14 (2) Trauma-informed care for an individual shall begin
15 immediately upon the individual's intake and assessment at a
16 correctional institution.

17 (3) Correctional staff training.--Correctional staff
18 must have no fewer than four hours of professional training
19 related to trauma-informed care, which must include, but not
20 be limited to, the following:

21 (i) Training to identify individuals with trauma.

22 (ii) Training on how and when to refer individuals
23 to the proper health care professionals, including, but
24 not limited to, preventive health care and mental health
25 care.

26 (iii) Training on how to interact with and empower
27 incarcerated individuals who have experienced trauma.

28 (e) Definitions.--As used in this section, the term "trauma-
29 informed care" means an organizational structure and treatment
30 framework that involves recognizing, understanding and

1 responding to the effects of trauma.

2 § 5910. Family consideration in placement and visitation.

3 To the greatest extent possible, after accounting for
4 security and capacity factors, the department shall ensure that
5 primary caregivers of a minor dependent child who are
6 incarcerated shall be placed as close as possible to the
7 incarcerated individual's permanent address of record.

8 § 5911. Feminine hygiene and incontinence products.

9 (a) Issuance of feminine hygiene products related to
10 menstruation.--A supply of feminine hygiene products shall be
11 provided to all incarcerated individuals and detainees who are
12 menstruating in a correctional institution each month at no cost
13 to the incarcerated individuals and detainees, regardless of
14 financial means. Incarcerated individuals and detainees shall
15 not be required to show proof of need or to undergo a medical
16 examination or obtain a medical permit, authorization or
17 diagnosis to receive the products under this section.

18 (b) Feminine hygiene products provided.--The following
19 products shall be distributed to all incarcerated individuals
20 and detainees who are menstruating in a correctional
21 institution:

22 (1) a choice of at least two sizes or absorbencies of
23 sanitary pads; and

24 (2) a choice of at least two sizes of tampons.

25 (c) Issuance of feminine hygiene products related to bladder
26 control and incontinence.--A supply of products for bladder
27 control and incontinence shall be provided to incarcerated
28 individuals and detainees, including geriatric incarcerated
29 individuals and postpartum incarcerated individuals, who require
30 such products each month at no cost to incarcerated individuals

1 and detainees, regardless of financial means.

2 (d) Bladder control and incontinence products
3 distribution.--Adult diapers or protective undergarments shall
4 be distributed to incarcerated individuals who require them.

5 (e) Rules and regulations.--The correctional institution
6 shall promulgate rules necessary to implement and enforce the
7 provisions of this section.

8 (f) Definition.--As used in this section, the term "feminine
9 hygiene products" means products that women use during
10 menstruation. The term includes tampons and sanitary napkins.
11 § 5912. Postpartum recovery.

12 (a) Restraints during postpartum recovery.--No restraints
13 shall be used on any incarcerated or detained individual who has
14 given birth within the last 30 days and is in postpartum
15 recovery, unless the department has a reasonable belief that the
16 incarcerated or detained individual will harm themselves, their
17 newborn or another individual or pose a substantial risk of
18 imminent flight. If restraints are used, the facility employee
19 ordering the use of restraints on an incarcerated or detained
20 individual while in postpartum recovery shall submit a written
21 report to the warden of the facility within 72 hours following
22 the use of the restraints, containing the justification for
23 restraining the incarcerated or detained individual during
24 postpartum recovery.

25 (b) Nutritional and hygiene products.--Following the
26 delivery of a newborn by an incarcerated or detained individual,
27 the department shall make available for 72 hours the necessary
28 nutritional and hygiene products, including diapers, to care for
29 the newborn.

30 (c) Definition.--As used in this section, the term

1 "substantial risk of imminent flight" means a showing of real
2 and considerable risk of escaping by the incarcerated individual
3 with the intent to avoid continued incarceration. An
4 individual's history of escape attempts and flight to avoid
5 continued incarceration may be relevant to the determination,
6 but history alone cannot meet the requirement.

7 § 5913. Human trafficking education.

8 The department and the Department of Human Services shall
9 jointly develop and provide to all correctional institutions in
10 this Commonwealth a training program for female inmates related
11 to human trafficking, methods of recruitment used by individuals
12 engaged in human trafficking and resources available to victims
13 of human trafficking.

14 Section 3. This act shall apply to an entity under the
15 authority of the Commonwealth or any county or municipality that
16 has the power to detain and restrain an individual under the
17 laws of this Commonwealth, including, but not limited to, State
18 correctional institutions, county correctional institutions,
19 juvenile detention facilities, police departments, constable's
20 offices, sheriff's offices and private entities performing
21 contracts for the Commonwealth or a county or municipality of
22 the Commonwealth.

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