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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 707 Session of  
2021

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INTRODUCED BY CAPPELLETTI, SAVAL, HUGHES, FONTANA, SANTARSIERO,  
COSTA, STREET, COLLETT, MUTH, KEARNEY, KANE AND COMMITTA,  
MAY 25, 2021

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REFERRED TO JUDICIARY, MAY 25, 2021

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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.