

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 900 Session of 2023

INTRODUCED BY CEPHAS, M. JONES, T. DAVIS, PIELLI, KINKEAD, HOHENSTEIN, PROBST, GUENST, SANCHEZ, MADDEN, DELLOSO, HILL-EVANS, SCHLOSSBERG, HANBIDGE, PARKER, WAXMAN, FIEDLER, CEPEDA-FREYTIZ, HOWARD, SAPPEY, KINSEY, STEHR, KHAN, BULLOCK, WARREN, INNAMORATO, SHUSTERMAN, KAZEEM, KRAJEWSKI, MAYES, TAKAC, OTTEN AND GREEN, APRIL 12, 2023

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 12, 2023

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; providing for Department of Human
 8 Services facilities; and, in miscellaneous provisions,
 9 further providing for healthy birth for incarcerated women
 10 and providing for restrictive housing prohibited for pregnant
 11 or postpartum incarcerated individuals and detainees, for
 12 cavity search and inspection restrictions, for training and
 13 education requirement, for family consideration in placement
 14 and visitation, for feminine hygiene and incontinence
 15 products and for postpartum recovery.

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

18 Section 1. Sections 1104 and 1758 heading, (a) and (b) of
 19 Title 61 of the Pennsylvania Consolidated Statutes are amended
 20 to read:

21 § 1104. State recording system [for application of restraints]
 22 relating to pregnant [prisoners] and postpartum

1 incarcerated individuals or detainees.

2 (a) General rule.--[A correctional institution as defined by
3 section 5905(e) (relating to healthy birth for incarcerated
4 women) shall report each restraint applied to a pregnant
5 prisoner or detainee. The report must be in writing and must
6 note the number of restraints. Individual, separate written
7 findings for each restraint must accompany the report. This
8 shall include reports from the following:] A correctional
9 institution shall, in writing, report each restraint applied to
10 a pregnant, laboring or postpartum individual in the
11 correctional institution's custody, as well as any instance
12 where a pregnant, laboring or postpartum individual is placed in
13 restrictive housing. The report shall note the number and type
14 of restraints or, in the case of restrictive housing, the length
15 of time the individual was placed in restrictive housing. The
16 provisions of this subsection shall apply to any person tasked
17 with transporting or housing incarcerated individuals or
18 detainees. As it relates to restraints, the report need not
19 include when handcuffs are used on an incarcerated individual or
20 detainee that are associated with placement while in restrictive
21 housing. Reports shall be made as follows:

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

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

1 [Public Welfare] Human Services.

2 (b) Contents of [written findings.--Written findings]
3 report.--Reports of each restraint or placement of an
4 incarcerated individual or detainee in restrictive housing as
5 required under subsection (a) must include the following:

6 [(1) the circumstances that led to the determination
7 that the prisoner or detainee represented a substantial risk
8 of 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 (2.1) The circumstances that led to the determination
16 that:

17 (i) the incarcerated individual or detainee
18 represented a substantial risk of imminent flight; or

19 (ii) other extraordinary medical or security
20 circumstances dictated that the incarcerated individual
21 or detainee be restrained or placed in restrictive
22 housing to ensure the safety and security of the
23 incarcerated individual or detainee, the staff of the
24 correctional institution or medical facility, other
25 incarcerated individuals or detainees or the public.

26 (3) The date and time restraints were applied or the
27 restrictive housing placement occurred and the length of time
28 the incarcerated individual or detainee was kept in
29 restraints or restrictive housing.

30 (4) The badge number or identification number of the

1 following:

2 (i) The custodian or staff member who applied the
3 restraints or placed the individual into restrictive
4 housing.

5 (ii) Any superior officers approving or advising the
6 application of restraints or placement in restrictive
7 housing.

8 (5) The number and type of restraints used or the
9 location and description of the restrictive housing.

10 (6) Any visible injury of the incarcerated individual or
11 detainee resulting from placement in the restraints that is
12 documented by the correctional institution.

13 (c) Staff presence during labor.--Other than licensed
14 medical professionals, only female staff shall be present in the
15 room during the examination, labor or delivery of the pregnant
16 incarcerated individual. If male staff, other than licensed
17 medical professionals, remain present during the examination,
18 labor or delivery of the pregnant incarcerated individual, that
19 information and the reasons for the presence shall be reported
20 to the department or the Department of Human Services, as
21 applicable.

22 (d) Availability of reports.--The nonidentifying data
23 contained in the written reports submitted to the department or
24 the Department of Human Services shall be posted on the
25 department's or the Department of Human Services' publicly
26 accessible Internet website annually. No identifying
27 information, such as names or dates of birth, shall be posted.

28 (e) Failure to submit report.--If a correctional institution
29 fails to submit a report under this section within 30 days after
30 the end of the fiscal year, the department or the Department of

1 Human Services, as applicable, shall obtain a certification, to
2 be created by the department or the Department of Human
3 Services, as applicable, from the correctional institution
4 verifying that the correctional institution had zero instances
5 of use of restraints, placement in restrictive housing or male
6 staff presence, other than licensed medical professionals,
7 during medical examinations or appointments of pregnant
8 incarcerated individuals under the provisions of this section.

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

12 "Correctional institution." As defined in section 5905(e)
13 (relating to healthy birth for incarcerated women).

14 "Postpartum." The eight-week period, or longer as determined
15 by the health care professional responsible for the health and
16 safety of the incarcerated individual or detainee, following
17 childbirth.

18 "Restraints." Any physical or mechanical device used to
19 restrict or control the movement of an incarcerated individual's
20 body, limbs or both.

21 "Restrictive housing." Any type of detention that involves
22 removal from the general incarcerated population for purposes of
23 discipline or administrative purpose.

24 "Staff." An individual who is employed or contracted by a
25 correctional institution, the department or the Department of
26 Human Services.

27 § 1758. County recording system for [application of restraints
28 to pregnant prisoners] pregnant and postpartum
29 incarcerated individuals or detainees.

30 (a) General rule.--[The application of restraints to a

1 pregnant prisoner or detainee occurring pursuant to section 5905
2 (relating to healthy birth for incarcerated women) shall
3 constitute an incident that qualifies as an extraordinary
4 occurrence that must be reported to the department in the County
5 Extraordinary Occurrence Monthly Report.] Each of the following
6 shall constitute an incident that qualifies as an extraordinary
7 occurrence that must be reported to the department in the County
8 Extraordinary Occurrence Monthly Report in accordance with
9 sections 5905 (relating to healthy birth for incarcerated women)
10 and 5905.1 (relating to restrictive housing prohibited for
11 pregnant or postpartum incarcerated individuals and detainees):

12 (1) The application of restraints or placement in
13 restrictive housing for a pregnant or postpartum incarcerated
14 individual or detainee.

15 (2) An invasive body cavity search of a pregnant or
16 postpartum incarcerated individual or detainee or inspection
17 of a female incarcerated individual or detainee in a state of
18 undress.

19 (3) The presence of male staff during labor or delivery
20 of the pregnant incarcerated individual or detainee.

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

23 [(1) Any and all incidents where the application of
24 restraints to a pregnant prisoner or detainee pursuant to
25 section 5905 occurred must be included in the County
26 Extraordinary Occurrence Monthly Report that is submitted to
27 the department. An indication of the incidents must be noted
28 on the designated report form or other available approved
29 method, if applicable, and individual, separate written
30 findings must accompany the form for each incident that

1 occurred.

2 (2) Written findings of each incident as required under
3 paragraph (1) must include the following:

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

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

14 (3) The report for application of restraints or
15 placement in restrictive housing for a pregnant or postpartum
16 incarcerated individual or detainee shall require the
17 following information:

18 (i) The circumstances that led to the determination
19 that:

20 (A) the incarcerated individual or detainee
21 represented a substantial risk of imminent flight; or

22 (B) other extraordinary medical or security
23 circumstances dictated that the incarcerated
24 individual or detainee be restrained or placed in
25 restrictive housing to ensure the safety and security
26 of the incarcerated individual or detainee, the staff
27 of the correctional institution or medical facility,
28 other incarcerated individuals or detainees or the
29 public.

30 (ii) The date and time restraints were applied or

1 the restrictive housing placement occurred and the length
2 of time the incarcerated individual or detainee was kept
3 in restraints or restrictive housing.

4 (iii) The badge number or identification number of
5 the following:

6 (A) The custodian or staff member who applied
7 the restraints or placed the individual into
8 restrictive housing.

9 (B) Any superior officers approving or advising
10 the application of restraints or placement in
11 restrictive housing.

12 (iv) The number and type of restraints used or the
13 location and description of the restrictive housing.

14 (v) Any visible injury of the incarcerated
15 individual or detainee resulting from placement in the
16 restraints that is documented by the correctional
17 institution.

18 (4) The report for an invasive body cavity search of a
19 pregnant or postpartum incarcerated individual or detainee or
20 inspection of a female incarcerated individual or detainee in
21 a state of undress shall contain the following information:

22 (i) The justification for performing a cavity search
23 or male staff inspection of a female incarcerated
24 individual or detainee in a state of undress.

25 (ii) The identification of any contraband that was
26 found on the incarcerated individual or detainee.

27 (5) The report for the presence of male staff during
28 labor or delivery of the pregnant incarcerated individual or
29 detainee shall include the reasons for the presence of male
30 staff.

1 (6) The nonidentifying data contained in the written
2 reports submitted to the department or the Department of
3 Human Services shall be posted annually on the publicly
4 accessible Internet website of the department or the
5 Department of Human Services. No identifying information,
6 such as names or dates of birth, shall be posted.

7 (7) If a correctional institution fails to submit a
8 report under this section within 30 days after the end of the
9 fiscal year, the department or the Department of Human
10 Services, as applicable, shall obtain a certification, to be
11 created by the department or the Department of Human
12 Services, as applicable, from the correctional institution
13 verifying that the institution had zero instances of use of
14 restraints, placement in restrictive housing or male staff
15 presence, other than licensed medical professionals, during
16 medical examinations or appointments of pregnant incarcerated
17 individuals under the provisions of this section.

18 * * *

19 Section 2. Title 61 is amended by adding a chapter to read:

20 CHAPTER 57

21 DEPARTMENT OF HUMAN SERVICES FACILITIES

22 Sec.

23 5701. Definitions.

24 5702. Seclusion prohibited for pregnant or postpartum child.

25 5703. Body cavity search and inspection restrictions.

26 5704. Training and education requirement.

27 5705. Family consideration in placement and visitation.

28 5706. Menstrual hygiene and incontinence products.

29 5707. Postpartum recovery.

30 5708. Reports relating to pregnant or postpartum child.

1 § 5701. Definitions.

2 The following words and phrases when used in this chapter
3 shall have the meanings given to them in this section unless the
4 context clearly indicates otherwise:

5 "Body cavity search." An invasive search of a child
6 conducted by staff in search of contraband, excluding the nose,
7 ears and mouth.

8 "Child." As follows:

9 (1) An individual who resides in an entity licensed or
10 operated by the department and meets one of the following
11 conditions:

12 (i) Is under 18 years of age.

13 (ii) Is under 21 years of age and committed an act
14 of delinquency before reaching 18 years of age and
15 remains under the jurisdiction of the juvenile court.

16 (iii) Was adjudicated dependent before reaching 18
17 years of age and while engaged in instruction or
18 treatment, requests the court to retain jurisdiction
19 until the instruction or treatment is completed, but a
20 child may not remain in a course of instruction or
21 treatment past 21 years of age.

22 (iv) Has an intellectual disability, a mental
23 illness or a serious emotional disturbance, with a
24 transfer plan to move to an adult setting by 21 years of
25 age.

26 (2) The term does not include a child in foster care as
27 provided in 42 U.S.C. Ch. 7 Subch. IV (relating to grants to
28 states for aid and services to needy families with children
29 and for child-welfare services).

30 "Department." The Department of Human Services of the

1 Commonwealth.

2 "Exclusion." As follows:

3 (1) The removal of a resident from the resident's
4 immediate environment and restricting the resident alone in a
5 room or area.

6 (2) The term does not include an occasion when:

7 (i) An employee of a facility remains in the
8 exclusion area with the resident.

9 (ii) A resident is voluntarily restricted to an area
10 or room.

11 (iii) All residents are required to be in their
12 rooms or another room or area as part of the program
13 schedule.

14 "Facility." Except as exempted by regulation, a premise or
15 part of a premise serving children who are adjudicated either
16 dependent or delinquent and meeting one of the following
17 conditions:

18 (1) Operated for a portion of a 24-hour day in which
19 alternative education, intervention or support programs are
20 provided to one or more children to prevent a child's
21 placement in a more restrictive setting or to facilitate the
22 child's reunification with the child's family.

23 (2) Operated in a 24-hour living setting in which care
24 is provided for one or more children who are not relatives of
25 the facility operator.

26 "Health care professional." An individual who is licensed,
27 certified or otherwise authorized or permitted by the laws of
28 this Commonwealth to administer health care in the ordinary
29 course of business or in the practice of a profession.

30 "Menstrual hygiene products." As follows:

1 (1) Products used during menstruation.

2 (2) The term includes tampons and sanitary pads.

3 "Postpartum." An eight-week period or a longer period as
4 determined by the health care professional responsible for the
5 health and safety of the child following childbirth.

6 "Restraints." Any physical or mechanical device used to
7 restrict or control the movement of a child's body or limbs or
8 both.

9 "Staff." An individual who is employed by a facility.

10 "State of undress." A state where a child is partially or
11 fully naked, either in the shower, toilet areas, a medical
12 examination room or while a body cavity search is being
13 conducted.

14 "Substantial risk of imminent flight." As follows:

15 (1) A showing of real and considerable risk of escaping
16 by a child from a facility.

17 (2) A child's history of escape attempts and flight to
18 avoid the facility may be relevant to the determination but
19 history alone does not satisfy the requirement.

20 "Trauma-informed care." A strengths-based approach to
21 service delivery and organizational structure that:

22 (1) Realizes the widespread impact of trauma, including
23 historical trauma.

24 (2) Understands potential paths to recovery.

25 (3) Recognizes the signs and symptoms of trauma in a
26 child, parent, legal guardian, staff or another involved in
27 the system.

28 (4) Responds by fully integrating knowledge about trauma
29 into policies, procedures, practices and relationships.

30 (5) Seeks to actively prevent retraumatization.

1 § 5702. Seclusion prohibited for pregnant or postpartum child.

2 (a) Seclusion prohibited.--Except as provided under
3 subsection (c), a pregnant or postpartum child may not be
4 involuntarily placed in seclusion in any facility in this
5 Commonwealth.

6 (b) Alternative discipline.--Forms of discipline for a
7 pregnant or postpartum child shall be limited to sanctions,
8 including restrictions on telephone usage or visitation or other
9 common forms of alternative discipline used in the United
10 States.

11 (c) Exceptions.--A pregnant or postpartum child may be
12 placed in exclusion only as a temporary response to behavior
13 that poses a serious and immediate risk of physical harm to the
14 pregnant or postpartum child, another child, the unborn child of
15 the pregnant child or staff. The following apply:

16 (1) The decision to place a pregnant or postpartum child
17 in exclusion under this subsection must be approved by the
18 individual in charge of the facility.

19 (2) The rationale for the decision to use exclusion must
20 be documented as required by section 5708 (relating to
21 reports relating to pregnant or postpartum child).

22 (3) No period of exclusion in excess of seven days may
23 be approved.

24 (d) Bed assignments.--The facility may not assign a pregnant
25 child to any bed that is elevated more than three feet from the
26 floor of the facility.

27 § 5703. Body cavity search and inspection restrictions.

28 (a) Body cavity search and inspection restrictions.--To the
29 greatest extent possible:

30 (1) Only a health care professional shall conduct an

1 invasive body cavity search of a pregnant child.

2 (2) If a search is required, staff shall accommodate the
3 child's stated preference regarding the gender of the staff
4 to be present in the room during the search except in cases
5 of exigent circumstances as determined by the facility
6 director or designee.

7 (b) Documentation requirement.--If a health care
8 professional is required to perform an invasive body cavity
9 search on a pregnant child, or the child's stated preference
10 regarding the gender of the staff present in the room during a
11 search while the child is in a state of undress is not met,
12 staff shall submit a written report to the individual in charge
13 of the facility within 72 hours following the body cavity search
14 or inspection. The report under this subsection shall:

15 (1) Include the justification for performing the body
16 cavity search or failing to honor the child's stated
17 preference regarding the gender of the staff performing the
18 inspection.

19 (2) Note if any contraband was found on the child.

20 (3) Be sent to the department.

21 § 5704. Training and education requirement.

22 (a) Facility staff training.--The facility shall provide or
23 arrange a training program for staff who have contact with a
24 pregnant, laboring or postpartum child. The training program
25 shall be related to the physical and mental health of the
26 pregnant or postpartum child and unborn baby, including:

27 (1) The general care of a pregnant child.

28 (2) The impact of restraints on a pregnant child and
29 unborn baby.

30 (3) The impact of being placed in restrictive housing on

1 a pregnant child.

2 (4) The impact of invasive searches on a pregnant child.

3 (5) Any other pertinent information the department finds
4 appropriate or necessary.

5 (b) Facility staff training exceptions.--If the facility
6 prohibits the placement of a pregnant child as a matter of
7 policy, the facility may submit a written exemption reporting
8 that there is no risk of staff interacting with a pregnant child
9 housed in the facility. The following apply:

10 (1) The exemption under this subsection shall apply only
11 to the facility, not the individual staff of the facility.

12 (2) All facility staff that come in contact with a
13 pregnant child shall complete the training under this
14 section.

15 (3) If facility staff work at more than one institution,
16 the staff must receive the required training at the nonexempt
17 facility.

18 (c) Education programming for a pregnant child.--The
19 facility shall develop and provide educational programming for a
20 pregnant or postpartum child. The educational programming shall
21 be related to:

22 (1) Medical screenings related to reproductive and
23 overall health, including preventive screenings.

24 (2) Prenatal care.

25 (3) Pregnancy-specific hygiene.

26 (4) The impact of alcohol and drugs on the unborn baby.

27 (5) General health of the unborn baby.

28 (6) Any other pertinent information the department finds
29 appropriate or necessary.

30 (d) Trauma-informed care.--

1 (1) The individual in charge of a facility shall, as
2 necessary, ensure that the facility provides quality trauma-
3 informed care to a child.

4 (2) Trauma-informed care for a child shall begin
5 immediately upon the child's intake and assessment at a
6 facility.

7 (3) Facility staff shall have no fewer than four hours
8 of professional training related to trauma-informed care,
9 which shall include the following:

10 (i) Training to identify a child with trauma.

11 (ii) Training on how and when to refer a child to
12 the proper health care professionals, including
13 preventive health care and mental health care.

14 (iii) Training on how to interact with and empower a
15 child who has experienced trauma.

16 § 5705. Family consideration in placement and visitation.

17 (a) Visitation.--Except as provided under subsection (b),
18 the facility shall make efforts to authorize visitation for a
19 child. The following apply:

20 (1) A child shall have the right to visit with family at
21 least once every two weeks, at a time and location convenient
22 for the family, the child and the facility, unless visits are
23 restricted by court order.

24 (2) The right under paragraph (1) shall not restrict
25 more frequent family visits.

26 (b) Exceptions.--Visitation rights shall not be authorized
27 under subsection (a):

28 (1) For a parent who has been deemed by the department
29 as unsafe or ineligible for visitation.

30 (2) In instances where the minor child was the victim of

1 a criminal offense under 18 Pa.C.S. (relating to crimes and
2 offenses).

3 § 5706. Menstrual hygiene and incontinence products.

4 (a) Issuance of menstrual hygiene products.--

5 (1) A facility shall supply menstrual hygiene products
6 each month to a child who is menstruating at no cost to the
7 child regardless of financial means.

8 (2) A child may not be required to show proof of need or
9 to undergo a medical examination or obtain a medical permit,
10 authorization or diagnosis to receive the products under
11 subsections (b) and (c).

12 (b) Menstrual hygiene products provided.--A choice of at
13 least two sizes or absorbencies of sanitary pads and tampons
14 shall be available to a child who is menstruating in a facility
15 or if requested from medical staff.

16 (c) Issuance of hygiene products related to bladder control
17 and incontinence.--A supply of products for bladder control and
18 incontinence, including adult diapers and protective
19 undergarments, shall be provided to a child, including a
20 postpartum child, who requires the products each month at no
21 cost to the child, regardless of financial means.

22 § 5707. Postpartum recovery.

23 (a) Restraints during postpartum recovery.--No restraints
24 shall be used on any child who has given birth within the last
25 30 days and is in postpartum recovery, unless the department
26 has a reasonable belief that the child will harm the child, the
27 child's newborn or another individual or pose a substantial risk
28 of imminent flight. If restraints are used, the staff ordering
29 the use of restraints on a child while in postpartum recovery
30 shall submit a written report to the individual in charge of the

1 facility within 72 hours following the use of the restraints,
2 containing the justification for restraining the child during
3 postpartum recovery. The report shall also be sent to the
4 department.

5 (b) Post-delivery bonding period.--Subject to hospital
6 policy, following the delivery of a newborn, the department
7 shall permit the newborn to remain with the child at the
8 hospital for 72 hours unless a health care professional has a
9 reasonable belief that the newborn remaining with the child
10 poses a health or safety risk to the newborn.

11 (c) Nutritional and hygiene products.--During the 72-hour
12 period under subsection (b), the department shall make available
13 the necessary nutritional and hygiene products to care for the
14 newborn.

15 § 5708. Reports relating to pregnant or postpartum child.

16 (a) Requirement.--A facility shall, in writing, report to
17 the department on each restraint applied to a pregnant, laboring
18 or postpartum child in the facility's custody. The following
19 apply:

20 (1) The report shall note the number and type of
21 restraints.

22 (2) The provisions of this subsection shall apply to any
23 person tasked with transporting or housing a pregnant or
24 postpartum child.

25 (b) Contents of report.--Reports of each restraint or
26 placement of a child as required under subsection (a) must
27 include the following:

28 (1) The circumstances that led to the determination that
29 the child represented a substantial risk of imminent flight.

30 (2) The circumstances that led to the determination that

1 other extraordinary medical or security circumstances
2 dictated that the child be restrained to ensure the safety
3 and security of the child, the staff of the facility or
4 medical facility, another child or the public.

5 (3) The date and time restraints were applied, and the
6 length of time the child was kept in restraints.

7 (4) The number and type of restraints used.

8 (5) Any physical effects on the child or the unborn baby
9 of a child resulting from placement in the restraints.

10 (c) Staff presence during labor.--If staff presence is
11 required, staff shall accommodate the child's stated preference
12 regarding the gender of the staff to be present in the room
13 during the examination, labor or delivery of the pregnant child,
14 except in cases of exigent circumstances as determined by the
15 facility director or designee.

16 (d) Availability of reports.--The nonidentifying data
17 contained in the reports submitted to the department shall be
18 posted on the department's publicly accessible Internet website
19 annually. No identifying information, such as names or dates of
20 birth, shall be posted.

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

22 § 5905. Healthy birth for incarcerated women.

23 (a) Duties of correctional institution.--Consistent with
24 established policy and practice, it shall be the duty and
25 responsibility of the correctional institution to provide
26 adequate personnel to monitor the pregnant [prisoner]
27 incarcerated individual or detainee during transport to and from
28 the medical facility and during her stay at the medical
29 facility.

30 (b) Restraint of pregnant [prisoners] incarcerated

1 individuals and detainees.--

2 (1) Unless provided in paragraph (2), a correctional
3 institution shall not apply restraints, excluding handcuffs,
4 to [a prisoner] an incarcerated individual or detainee known
5 to be pregnant [during any stage of labor, any pregnancy-
6 related medical distress, any period of delivery,] or during
7 any period of postpartum as defined in [subsection (e) or
8 transport to a medical facility as a result of any of the
9 preceding conditions or transport to a medical facility after
10 the beginning of the second trimester of pregnancy.] section
11 1104(f) (relating to State recording system relating to
12 pregnant and postpartum incarcerated individuals or
13 detainees).

14 (2) Paragraph (1) shall not bar reasonable restraint
15 provided the correctional institution staff assigned to the
16 [prisoner] incarcerated individual or detainee makes an
17 individualized determination that the [prisoner] incarcerated
18 individual or detainee presents a substantial risk of
19 imminent flight or some other extraordinary medical or
20 security circumstance dictates that the [prisoner]
21 incarcerated individual or detainee be restrained to ensure
22 the safety and security of the [prisoner] incarcerated
23 individual or detainee, the staff of the correctional
24 institution or medical facility, other [prisoners]
25 incarcerated individuals or detainees or the public. The
26 assigned correctional institution staff shall report the
27 incident to the correctional institution in a reasonable
28 amount of time after the restraint occurs. [If the assigned
29 correctional institution staff is not employed by the
30 correctional institution, then the assigned correctional

1 institution staff] In the case of any use of restraints on a
2 pregnant or postpartum incarcerated individual by an
3 individual or entity that is not employed by the correctional
4 institution but is transporting the pregnant or postpartum
5 incarcerated individual on behalf of the correctional
6 institution, the individual or entity shall report the
7 restraint to the correctional institution in a reasonable
8 amount of time after the incident occurs. The reporting
9 requirement shall not apply to a law enforcement agency
10 unless the law enforcement agency is transporting pregnant or
11 postpartum incarcerated individuals on behalf of the
12 correctional institution.

13 (3) If restraint is applied under paragraph (2), at no
14 time shall the [prisoner] incarcerated individual or detainee
15 be left unattended by a correctional institution staff with
16 the ability to release the restraint should a release become
17 medically necessary.

18 (4) When a restraint is permitted under this section, a
19 correctional institution shall use the least restrictive
20 restraint necessary when the facility has actual or
21 constructive knowledge that [a prisoner] an incarcerated
22 individual or detainee is in the second or third trimester of
23 pregnancy.

24 (c) Restraints.--The following shall apply to [a prisoner]
25 an incarcerated individual or detainee who has been restrained
26 under this subsection:

27 (1) The correctional institution staff accompanying the
28 [prisoner] incarcerated individual or detainee shall
29 [immediately] promptly remove all restraints upon request of
30 a doctor, nurse or other health care professional.

1 (2) Leg or waist restraints shall not be used on any
2 [prisoner] incarcerated individual or detainee who is in
3 labor.

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

7 [(d) Annual report.--No later than August 1 of each year,
8 the secretary and the Secretary of Public Welfare shall each
9 submit to the Governor's Office a written report containing
10 information regarding the use of restraints on any pregnant
11 prisoner or detainee during the preceding fiscal year
12 specifically identifying and enumerating the circumstances that
13 led to the determination that the prisoner or detainee fell
14 under the exception in subsection (b) (2). The secretary shall
15 report on pregnant prisoners or detainees in the custody of
16 correctional institutions operated, supervised or licensed by
17 the department. The Secretary of Public Welfare shall report on
18 pregnant prisoners or detainees in the custody of correctional
19 institutions operated, supervised or licensed by the Department
20 of Public Welfare pursuant to the act of June 13, 1967 (P.L.31,
21 No.21), known as the Public Welfare Code. The reports shall not
22 contain any identifying information of any prisoner or detainee.
23 The reports shall be posted on the Governor's Internet website
24 and shall be made available for public inspection at the offices
25 of the department and the Department of Public Welfare,
26 respectively.]

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

30 "Correctional institution." Any entity under the authority

1 of the state or any county or municipality that has the power to
2 detain and restrain a person under the laws of this
3 Commonwealth.

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 duration
9 to bring about effacement and progressive dilation of the
10 cervix. The determination of when labor has commenced shall rest
11 solely with the medical providers of the prisoner or detainee.

12 "Postpartum." The period following delivery before a
13 prisoner or detainee has been discharged from a medical
14 facility.

15 "Prisoner." Any person incarcerated or detained in any
16 correctional institution who is accused of, convicted of,
17 sentenced for or adjudicated delinquent for violations of
18 criminal law or the terms and conditions of parole, probation,
19 pretrial release or a diversionary program.]

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

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

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

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

4 (a) Restrictive housing prohibited.--Except as provided
5 under subsection (c), a pregnant or postpartum incarcerated
6 individual or detainee may not be involuntarily placed in
7 restrictive housing in any correctional institution in this
8 Commonwealth.

9 (b) Alternative discipline.--Forms of discipline for
10 pregnant and postpartum incarcerated individuals or detainees
11 shall be limited to sanctions, including restrictions on
12 telephone usage or visitation or other common forms of
13 alternative discipline used in the United States.

14 (c) Exceptions.--A pregnant or postpartum incarcerated
15 individual or detainee may be placed in restrictive housing only
16 as a temporary response to behavior that poses a serious and
17 immediate risk of physical harm to the pregnant or postpartum
18 incarcerated individual or detainee, another incarcerated
19 individual or detainee, the unborn child of the pregnant
20 incarcerated individual or detainee or staff. The following
21 shall apply:

22 (1) The decision to place a pregnant or postpartum
23 incarcerated individual or detainee in restrictive housing
24 under this subsection must be approved by the chief
25 administrator.

26 (2) The rationale for the decision under this subsection
27 must be documented as required by section 1104 (relating to
28 State recording system relating to pregnant and postpartum
29 incarcerated individuals or detainees).

30 (3) No period of restrictive housing shall exceed seven

1 days without additional approval and documented rationale, as
2 required by section 1104, of the chief administrator. There
3 shall be a minimum of seven days between each restrictive
4 placement absent extraordinary circumstances.

5 (d) Bed assignments.--The correctional institution may not
6 assign a pregnant incarcerated individual or detainee to any bed
7 that is elevated more than three feet from the floor of the
8 facility.

9 (e) Definition.--As used in this section, the term
10 "postpartum" means the eight-week period, or longer as
11 determined by the health care professional responsible for the
12 health and safety of the incarcerated individual or detainee,
13 following childbirth.

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 or postpartum incarcerated individual or detainee.

20 (2) A correctional institution shall limit searches by
21 male staff, other than medically licensed professional male
22 staff, if a female incarcerated individual or detainee is in
23 a state of undress.

24 (b) Documentation requirement.--If staff is required to
25 perform an invasive body cavity search on a pregnant or
26 postpartum incarcerated individual or detainee, or male staff,
27 other than medically licensed professional male staff, is
28 required to conduct a search on a female incarcerated individual
29 or detainee in a state of undress, a written report shall be
30 submitted to the correctional institution within 72 hours

1 following the cavity search or inspection. The report under this
2 subsection shall:

3 (1) include the justification for performing the cavity
4 search or male staff inspection as required in this
5 subsection;

6 (2) document and identify any contraband that was found
7 on the incarcerated individual or detainee; and

8 (3) be sent to the department or the Department of Human
9 Services, as applicable.

10 (c) 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 "Body cavity search." An invasive search of incarcerated
14 individuals or detainees, conducted by staff in search of
15 contraband, excluding the nose, ears and mouth.

16 "Staff." An individual, including contracted staff, who is
17 employed by a correctional institution, the department or the
18 Department of Human Services, excluding any licensed medical
19 professional.

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

24 § 5909. Training and education requirement.

25 (a) Correctional institution staff training.--The department
26 and the Department of Human Services shall jointly develop and
27 provide correctional institutions with a training program for
28 staff who have contact with a pregnant, laboring or postpartum
29 incarcerated individual or detainee. The training program shall
30 be related to the physical and mental health of the pregnant or

1 postpartum incarcerated individual or detainee and unborn child,
2 including:

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

4 (2) The impact of restraints on a pregnant individual
5 and unborn child.

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

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

10 (5) Any other pertinent information the department or
11 the Department of Human Services finds appropriate or
12 necessary.

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

26 (c) Education programming for pregnant incarcerated
27 individuals.--The department and the Department of Human
28 Services shall jointly develop and provide correctional
29 institutions and county correctional institutions with
30 educational programming for pregnant or postpartum incarcerated

1 individuals or detainees. The educational programming shall be
2 related to:

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

5 (2) Prenatal care.

6 (3) Pregnancy-specific hygiene.

7 (4) The impact of alcohol and drugs on the unborn child.

8 (5) General health of the child.

9 (6) Any other pertinent information the department or
10 the Department of Human Services finds appropriate or
11 necessary.

12 (d) Trauma-informed care.--

13 (1) The chief administrator shall, as the chief
14 administrator deems necessary, ensure that the correctional
15 institution provides to incarcerated individuals and
16 detainees quality trauma-informed care.

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

20 (3) Correctional staff shall receive professional
21 training, approved by the Department of Human Services,
22 relating to trauma-informed care, which shall include the
23 following:

24 (i) Training to identify individuals with trauma.

25 (ii) Training on how and when to refer individuals
26 to the proper health care professionals, including
27 preventive health care and mental health care.

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

30 (e) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection unless the context clearly indicates otherwise:

3 "Postpartum." The eight-week period, or longer as determined
4 by the health care professional responsible for the health and
5 safety of the incarcerated individual or detainee, following
6 childbirth.

7 "Trauma-informed care." An organizational structure and
8 treatment framework that involves recognizing, understanding and
9 responding to the effects of trauma.

10 § 5910. Family consideration in placement and visitation.

11 (a) Visitation.--The department and the Department of Human
12 Services shall make efforts to authorize visitation by a minor
13 dependent child under 18 years of age, with the minimum
14 following requirements:

15 (1) The minor dependent child shall be able to visit in
16 person the minor dependent child's parent at least once per
17 week subject to department policy and facility space,
18 staffing and administrative capacity.

19 (2) The visits shall not impact visitation privileges
20 under 37 Pa. Code § 93.3 (relating to inmate visiting
21 privileges).

22 (3) Additional visits may be permitted through virtual
23 means, subject to department policy and facility space,
24 staffing and administrative capacity.

25 (b) Exceptions.--Visitation privileges shall not be
26 authorized under subsection (a):

27 (1) For parents who have been deemed unsafe or
28 ineligible for visitation through the department or the
29 Department of Human Services until deemed safe or eligible
30 for visitation by the department or the Department of Human

1 Services.

2 (2) In instances where the minor dependent child was the
3 victim of a criminal offense under 18 Pa.C.S. (relating to
4 crimes and offenses) resulting in the incarceration or
5 detention of the parent.

6 (3) If the parent voluntarily enrolled in a detention
7 program which prohibits visitation.

8 § 5911. Feminine hygiene and incontinence products.

9 (a) Issuance of feminine hygiene products relating 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 subsection (b).

18 (b) Feminine hygiene products provided.--A choice of at
19 least two sizes or absorbencies of sanitary pads shall be
20 distributed to all incarcerated individuals and detainees who
21 are menstruating in a correctional institution or if requested
22 from medical staff.

23 (c) Feminine hygiene products to be requested.--A choice of
24 at least two sizes of tampons shall be distributed to
25 incarcerated individuals and detainees who request a tampon from
26 medical staff.

27 (d) Issuance of feminine hygiene products relating to
28 bladder control and incontinence.--A supply of products for
29 bladder control and incontinence shall be provided to
30 incarcerated individuals and detainees, including geriatric

1 incarcerated individuals and postpartum incarcerated
2 individuals, who require such products each month at no cost to
3 incarcerated individuals and detainees, regardless of financial
4 means.

5 (e) Bladder control and incontinence products
6 distribution.--Adult diapers or protective undergarments shall
7 be distributed to incarcerated individuals who require them.

8 (f) Rules and regulations.--The correctional institution
9 shall promulgate rules necessary to implement and enforce the
10 provisions of this section.

11 (g) Definition.--As used in this section, the term "feminine
12 hygiene products" means products that women use during
13 menstruation. The term includes tampons and sanitary napkins.
14 § 5912. Postpartum recovery.

15 (a) Restraints during postpartum recovery.--No restraints
16 shall be used on any incarcerated individual or detainee who has
17 given birth within the last 30 days and is in postpartum
18 recovery, unless the department or the Department of Human
19 Services, as applicable, has a reasonable belief that the
20 incarcerated individual or detainee will harm themselves, their
21 newborn or another individual or pose a substantial risk of
22 imminent flight. If restraints are used, the facility employee
23 ordering the use of restraints on an incarcerated individual or
24 detainee while in postpartum recovery shall submit a written
25 report to the chief administrator of the facility within 72
26 hours following the use of the restraints, containing the
27 justification for restraining the incarcerated individual or
28 detainee during postpartum recovery. The report shall also be
29 sent to the department or the Department of Human Services, as
30 applicable.

1 (b) Postdelivery bonding period.--Following the delivery of
2 a newborn and subject to hospital policies, including length of
3 stay, the department or the Department of Human Services shall
4 permit the child to remain with the mother at the hospital for
5 up to 72 hours unless there is a reasonable belief that the
6 child remaining with the mother presents a health or safety risk
7 to the child.

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

11 "Postpartum." The eight-week period, or longer as determined
12 by the health care professional responsible for the health and
13 safety of the incarcerated individual or detainee, following
14 childbirth.

15 "Substantial risk of imminent flight." A showing of real and
16 considerable risk of escaping by the incarcerated individual
17 with the intent to avoid continued incarceration. An
18 individual's history of escape attempts and flight to avoid
19 continued incarceration may be relevant to the determination,
20 but history alone cannot meet the requirement.

21 Section 5. This act shall take effect in 180 days.