

HB 900 -- Redline

Printer's No. PN0959 to Printer's No. PN2406 -- An Act amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration, further providing for State recording system for application of restraints to pregnant prisoners or detainees; in county correctional institutions, further providing for county recording system for application of restraints to pregnant prisoners or detainees; providing for Department of Human Services facilities; and, in miscellaneous provisions, further providing for healthy birth for incarcerated women and providing for restrictive housing prohibited for pregnant or postpartum incarcerated individuals and detainees, for cavity search and inspection restrictions, for training and education requirement, for feminine hygiene and incontinence products and for postpartum recovery.

Deletions ~~struck~~ · Insertions underlined

SENATE AMENDED PRIOR PRINTER'S ~~NO.~~NOS.

~~882~~882, 959 PRINTER'S NO.

~~959~~2406 THE GENERAL ASSEMBLY OF PENNSYLVANIA HOUSE BILL Session of No.

DAVIS, PIELLI, KINKEAD, HOHENSTEIN, PROBST, GUENST, SANCHEZ, MADDEN, DELLOSO, HILL- EVANS, SCHLOSSBERG, HANBIDGE, PARKER, WAXMAN, FIEDLER, ~~CEPEDA-FREYITZ, HOWARD, SAPPEY, KINSEY, STEHR, KHAN, BULLOCK, WARREN, INNAMORATO, SHUSTERMAN, KAZEEM, KRAJEWSKI, MAYES, MAYES, OCK, TAKAC, OTTENOTTEN, AND GREEN, APRIL FINK, 12, O'MARA, 2023 FLEMING, AS FRANKEL, REPORTED DAWKINS, FROM WEBSTER, COMMITTEE DALEY, ONE. JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 21, 2023 AN ACT Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration, further providing for State recording system for application of restraints to pregnant prisoners or detainees;~~

NELSON, McNEILL AND BRIGGS, APRIL 12, 2023 SENATOR BAKER, JUDICIARY, IN SENATE, AS AMENDED, DECEMBER 11, 2023 AN ACT Amending Title 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in general administration, further providing for State recording system for application of restraints to pregnant prisoners or detainees;

and, in miscellaneous provisions, ~~further and~~ providing for ~~healthy restrictive birth housing prohibited for incarcerated pregnant women or and postpartum providing incarcerated for individuals restrictive and housing detainees, prohibited for pregnant~~ cavity search and inspection restrictions, for training and education requirement, ~~for family consideration in placement <-- and visitation,~~ for feminine hygiene and incontinence products and for postpartum recovery.

~~As it relates to restraints, the report need not <-- include when handcuffs are used on an incarcerated individual or detainee that are associated with placement while in restrictive housing.~~

(2) A correctional institution that is operated, supervised or licensed by the Department of [Public Welfare] Human Services pursuant to the [Public Welfare] Human Services Code shall make the report to the Secretary of ~~20230HB0900PN0959 - 2 -~~ [Public Welfare] Human Services.

(b) Contents of [written findings.--Written findings] 20230HB0900PN2406 - 2 - report.--Reports of each restraint or placement of an ~~<--~~ incarcerated individual or detainee A PREGNANT, LABORING OR <-- POSTPARTUM INDIVIDUAL in restrictive housing as required under subsection (a) must include the following:

(i) the incarcerated individual or detainee ~~<--~~ PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL represented a ~~<--~~ substantial risk of imminent flight;

or (ii) other extraordinary medical or security circumstances dictated that the incarcerated individual ~~<--~~ or detainee PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL ~~<--~~ be restrained or placed in restrictive housing to ensure the safety and security of the incarcerated individual or ~~detainee, <-- detainee~~ PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL, the ~~<--~~ staff of the correctional institution or medical facility, other incarcerated individuals or detainees or the public.

(3) The date and time restraints were applied or the restrictive housing placement occurred and the length of time the incarcerated individual or detainee PREGNANT, LABORING OR <-- 20230HB0900PN2406 - 3 - POSTPARTUM INDIVIDUAL was kept in restraints or restrictive housing.

(4) The badge number or identification number of the ~~20230HB0900PN0959 - 3 -~~ following:

(6) Any visible injury of the incarcerated individual or ~~<--~~ detainee PREGNANT, LABORING OR POSTPARTUM INDIVIDUAL ~~<--~~ resulting from placement in the restraints that is documented by the correctional institution.

No identifying 20230HB0900PN2406 - 4 - information, such as names or dates of birth, shall be posted.

(e) Failure to submit report.--If a correctional institution fails to submit a report under this section within 30 days after the end of the fiscal year, the department or the Department of ~~20230HB0900PN0959 - 4 -~~ Human Services, as applicable, shall obtain a certification, to be created by the department or the Department of Human Services, as applicable, from the correctional institution verifying that the correctional institution had zero instances of use of restraints, placement in restrictive housing or male staff presence, other than licensed medical professionals, during medical examinations or

appointments of pregnant incarcerated individuals under the provisions of this section.

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

"RESTRICTIVE HOUSING." PLACEMENT IN AN AREA OR GROUP OF ~~---~~ CELLS DESIGNATED TO HOUSE INDIVIDUALS ASSIGNED TO DISCIPLINARY OR ADMINISTRATIVE CUSTODY IN WHICH OUT OF CELL TIME IS LIMITED 20230HB0900PN2406 - 5 - TO LESS THAN TWO HOURS PER DAY.

(a) General rule.--[The application of restraints to a ~~20230HB0900PN0959 - 5 -~~ pregnant prisoner or detainee occurring pursuant to section 5905 (relating to healthy birth for incarcerated women) shall constitute an incident that qualifies as an extraordinary occurrence that must be reported to the department in the County Extraordinary Occurrence Monthly Report.] Each of the following shall constitute an incident that qualifies as an extraordinary occurrence that must be reported to the department in the County Extraordinary Occurrence Monthly Report in accordance with sections 5905 (relating to healthy birth for incarcerated women) and 5905.1 (relating to restrictive housing prohibited for pregnant or postpartum incarcerated individuals and detainees):

(b) Information to be included in County Extraordinary Occurrence Monthly Report.-- 20230HB0900PN2406 - 6 - [(1) Any and all incidents where the application of restraints to a pregnant prisoner or detainee pursuant to section 5905 occurred must be included in the County Extraordinary Occurrence Monthly Report that is submitted to the department.

An indication of the incidents must be noted on the designated report form or other available approved method, if applicable, and individual, separate written findings must accompany the form for each incident that ~~20230HB0900PN0959 - 6 -~~ occurred.

or (B) other extraordinary medical or security 20230HB0900PN2406 - 7 - circumstances dictated that the incarcerated individual or detainee be restrained or placed in restrictive housing to ensure the safety and security of the incarcerated individual or detainee, the staff of the correctional institution or medical facility, other incarcerated individuals or detainees or the public.

(ii) The date and time restraints were applied or ~~20230HB0900PN0959 - 7 -~~ the restrictive housing placement occurred and the length of time the incarcerated individual or detainee was kept in restraints or restrictive housing.

(i) The justification for performing a cavity search 20230HB0900PN2406 - 8 - or male staff inspection of a female incarcerated individual or detainee in a state of undress.

~~20230HB0900PN0959 - 8 -~~ (6) The nonidentifying data contained in the written reports submitted to the department or the Department of Human Services shall be posted annually on the publicly accessible Internet website of the department or the Department of Human Services.

20230HB0900PN2406 - 9 - 5701.

~~Family(Reserved).--consideration in placement and visitation.~~

~~---5706. (RESERVED).~~

~~---5706.~~

~~20230HB0900PN0959 - 9 -~~ 5708.

(iv) Has an intellectual disability, a mental 20230HB0900PN2406 - 10 - illness or a serious emotional disturbance, with a transfer plan to move to an adult setting by 21 years of age.

~~20230HB0900PN0959 - 10 -~~ "Department." The Department of Human Services of the Commonwealth.

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

20230HB0900PN2406 - 11 - (2) Operated in a 24-hour living setting in which care is provided for one or more children who are not relatives of the facility operator.

~~20230HB0900PN0959 - 11 -~~ "Menstrual hygiene products." As follows:

(1) Products ~~RELATING~~ relating TO to ~~BODILY~~ bodily FUNCTIONS functions THAT that ARE are used ~~---~~ during menstruation.

"SECLUSION." AS FOLLOWS:

~~---~~ (1) THE REMOVAL OF A RESIDENT FROM THE RESIDENT'S IMMEDIATE ENVIRONMENT AND RESTRICTING THE RESIDENT ALONE IN A ROOM OR AREA.

(2) THE TERM DOES NOT INCLUDE AN OCCASION WHEN:

(I) AN EMPLOYEE OF A FACILITY REMAINS IN THE SECLUSION AREA WITH THE RESIDENT.

(II) A RESIDENT IS VOLUNTARILY RESTRICTED TO AN AREA OR ROOM.

(III) ALL RESIDENTS ARE REQUIRED TO BE IN THEIR ROOMS OR ANOTHER ROOM OR AREA AS PART OF THE PROGRAM SCHEDULE.

20230HB0900PN2406 - 12 - "State of undress." A state where a child is partially or fully naked, either in the shower, toilet areas, a medical examination room or while a body cavity search is being conducted.

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

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

(4) Responds by fully integrating knowledge about trauma ~~20230HB0900PN0959 - 12 -~~ into policies, procedures, practices and relationships.

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

~~GENERAL RULE.--~~Except as provided ~~---~~ under subsection (c), a pregnant or postpartum child may not be involuntarily placed in seclusion in any facility in this Commonwealth.

~~20230HB0900PN2406 - 13 -~~ (c) Exceptions.--A pregnant or postpartum child may be placed in ~~exclusion~~seclusion ~~SECLUSION~~ only as a temporary response to ~~---~~ behavior that poses a serious and immediate risk of physical harm to the pregnant or postpartum child, another child, the unborn child of the pregnant child or staff.

(1) The decision to place a pregnant or postpartum child in ~~exclusion~~seclusion ~~SECLUSION~~ under this subsection must be approved ~~---~~ by the individual in charge of the facility.

(2) The rationale for the decision to use ~~exclusion~~seclusion ~~---~~ ~~SECLUSION~~ must be documented as required by section 5708 ~~---~~ (relating to reports relating to pregnant or postpartum child).

(3) No period of ~~exclusion~~seclusion ~~SECLUSION~~ in excess of seven ~~---~~ days may be approved.

~~20230HB0900PN0959 - 13 -~~ Sec. 5703.

(b) Documentation requirement.--If a health care professional is required to perform an invasive body cavity search on a pregnant child, or the child's stated preference regarding the gender of the staff present in the room during a ~~20230HB0900PN2406 - 14 -~~ search while the child is in a state of undress is not met, staff shall submit a written report to the individual in charge of the facility within 72 hours following the body cavity search or inspection.

~~20230HB0900PN0959 - 14 -~~ (1) The general care of a pregnant child.

(3) The impact of being placed in restrictive housing ~~---~~ SECLUSION on a pregnant child.

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

(1) The exemption under this subsection shall apply only ~~20230HB0900PN2406 - 15 -~~ to the facility, not the individual staff of the facility.

~~20230HB0900PN0959 - 15 -~~ (5) General health of the unborn baby.

~~20230HB0900PN2406 - 16 -~~ (ii) Training on how and when to refer a child to the proper health care professionals, including preventive health care and mental health care.

~~Family(Reserved).--consideration in placement and visitation.~~

~~---Sec. (a)5706. Visitation.--~~Except as provided under subsection (b), the facility shall make efforts to authorize visitation for a child.

The following apply:

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

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

~~(b) Exceptions.--~~Visitation rights shall not be authorized ~~20230HB0900PN0959 - 16 -~~ under subsection (a):

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

~~(2) In instances where the minor child was the victim of a criminal offense under 18 Pa.C.S. (relating to crimes and offenses).~~

~~(RESERVED).~~

~~---Sec. 5706.~~

(a) Restraints during postpartum recovery.--No restraints shall be used on any child who has given birth within the last 30 days and is in postpartum recovery, unless the department has a reasonable belief that the child will harm the child, the ~~20230HB0900PN0959~~20230HB0900PN2406 - 17 - child's newborn or another individual or pose a substantial risk of imminent flight.

(b) Contents of report.--Reports of each restraint or placement of a child as required under subsection

(a) must ~~20230HB0900PN0959~~20230HB0900PN2406 - 18 - include the following:

(a) Duties of correctional institution.--Consistent with established policy and practice, it shall be the duty and responsibility of the correctional institution to provide adequate personnel to monitor the pregnant [prisoner] ~~20230HB0900PN0959~~20230HB0900PN2406 - 19 - incarcerated individual or detainee during transport to and from the medical facility and during her stay at the medical facility.

(b) Restraint of pregnant [prisoners] incarcerated individuals and detainees.-- (1) Unless provided in paragraph (2), a correctional institution shall not apply restraints, ~~excluding~~including ~~INCLUDING~~ ~~---~~ handcuffs, to [a prisoner] an incarcerated individual or detainee known to be pregnant ~~during~~during any stage of labor[, ~~---~~ any ~~pregnancy-related~~pregnancy- related medical distress, any period of delivery,]

or ~~during~~ any period of postpartum as defined in ~~---~~ [subsection (e) or transport to a medical facility as a result of any of the preceding conditions or transport to a medical facility after the beginning of the second trimester of pregnancy.] section 1104(f) (relating to State recording system relating to pregnant and postpartum incarcerated individuals or detainees).

The assigned correctional institution staff shall report the ~~20230HB09000PN0959~~20230HB0900PN2406 - 20 - incident to the correctional institution in a reasonable amount of time after the restraint occurs.

~~20230HB09000PN0959~~20230HB0900PN2406 - 21 - (1) The correctional institution staff accompanying the [prisoner] incarcerated individual or detainee shall [immediately] promptly remove all restraints upon request of a doctor, nurse or other health care professional.

The reports shall be posted on the Governor's Internet website and shall be made available for public inspection at the offices of the department and the Department of Public Welfare, respectively.]

~~20230HB09000PN0959~~20230HB0900PN2406 - 22 - (e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Restraint." Any physical hold or mechanical device used to control the movement of [a prisoner's] an incarcerated ~~20230HB09000PN0959~~20230HB0900PN2406 - 23 - individual's or detainee's body [and] or limbs[, including, but not limited to, shackles, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain or a convex shield] or both.

(2) The rationale for the decision under this subsection ~~20230HB09000PN0959~~20230HB0900PN2406 - 24 - must be documented as required by section 1104 (relating to State recording system relating to pregnant and postpartum incarcerated individuals or detainees).

There shall be a minimum of seven days 24 HOURS between each ~~---~~ restrictive placement absent extraordinary circumstances.

(b) Documentation requirement.--If staff is required to perform an invasive body cavity search on a pregnant or postpartum incarcerated individual or detainee, or male staff,

~~20230HB09000PN0959~~20230HB0900PN2406 - 25 - other than medically licensed professional male staff, is required to conduct a search on a female incarcerated individual or detainee in a state of undress, a written report shall be submitted to the correctional institution within 72 hours following the cavity search or inspection.

(a) Correctional institution staff training.--The department and the Department of Human Services shall jointly develop and ~~20230HB09000PN0959~~20230HB0900PN2406 - 26 - provide correctional institutions with a training program for staff who have contact with a pregnant, laboring or postpartum incarcerated individual or detainee.

(b) Correctional institution staff training exceptions.--If the correctional institution or county correctional institution prohibits the placement of pregnant individuals as a matter of ~~law~~, Law POLICY, that institution may submit a written exemption ~~---~~ reporting that there is no risk of staff interacting with pregnant individuals housed in the institution.

(c) Education programming for pregnant incarcerated ~~20230HB09000PN0959~~20230HB0900PN2406 - 27 - individuals.--The department and the Department of Human Services shall jointly develop and provide correctional institutions and county correctional institutions with educational programming for pregnant or postpartum incarcerated individuals or detainees.

(ii) Training on how and when to refer individuals to the proper health care professionals, including ~~20230HB09000PN0959~~20230HB0900PN2406 - 28 - preventive health care and mental health care.

~~Family consideration in placement and visitation.~~

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

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

~~(2) The visits shall not impact visitation privileges under 37 Pa. Code Sec. 93.3 (relating to inmate visiting privileges).~~

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

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

~~20230HB09000PN0959 - 29 - (1) For parents who have been deemed unsafe or ineligible for visitation through the department or the Department of Human Services until deemed safe or eligible for visitation by the department or the Department of Human Services.~~

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

~~(3) If the parent voluntarily enrolled in a detention program which prohibits visitation. Sec. 5911-5910.~~

~~20230HB0900PN2406 - 29 -~~ (a) Issuance of feminine hygiene products relating to menstruation.--A supply of feminine hygiene products shall be provided to all incarcerated individuals and detainees who are menstruating in a correctional institution each month at no cost to the incarcerated individuals and detainees, regardless of financial means.

(c) Feminine hygiene products to be requested.--A choice of at least two sizes of tampons shall be distributed to 20230HB0900PN2406 - 29 - incarcerated individuals and detainees who request a tampon from medical staff.

~~20230HB0900PN0959 - 30 -~~ (d) Issuance of feminine hygiene products relating to bladder control and incontinence.--A supply of products for bladder control and incontinence shall be provided to incarcerated individuals and detainees, including geriatric incarcerated individuals and postpartum incarcerated individuals, who require such products each month at no cost to incarcerated individuals and detainees, regardless of financial means.

Sec. ~~5912~~ 5911.

~~20230HB0900PN2406 - 30 -~~ (a) Restraints during postpartum recovery.--No restraints shall be used on any incarcerated individual or detainee who has given birth within the last 30 days and is in postpartum recovery, unless the department or the Department of Human Services, as applicable, has a reasonable belief that the incarcerated individual or detainee will harm themselves, their newborn or another individual or pose a substantial risk of imminent flight.

If restraints are used, the facility employee ordering the use of restraints on an incarcerated individual or detainee while in postpartum recovery shall submit a written 20230HB0900PN2406 - 30 - report to the chief administrator of the facility within 72 hours following the use of the restraints, containing the ~~20230HB0900PN0959 - 31 -~~ justification for restraining the incarcerated individual or detainee during postpartum recovery.

An ~~20230HB0900PN0959~~ individual's history of escape attempts and flight to avoid continued incarceration may be relevant to the determination, but history alone cannot meet the requirement.

~~20230HB0900PN0959~~ 20230HB0900PN2406 - 3231 -