

HOUSE BILL 829

E4

3lr0525

By: Delegates M. Washington, B. Robinson, A. Kelly, Anderson, Barve, Bobo, Braveboy, Carr, Carter, Clippinger, Conaway, Cullison, Dumais, Frush, Glenn, Griffith, Gutierrez, Hixson, Huckler, Jones, Kaiser, Lee, Luedtke, McComas, McIntosh, A. Miller, Mizeur, Pena-Melnyk, Reznik, S. Robinson, Rosenberg, Summers, and Waldstreicher

Introduced and read first time: February 6, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2013

CHAPTER _____

1 AN ACT concerning

2 **Correctional Services – Pregnant Detainees and Inmates – Restraint**
3 **Restrictions ~~and Reporting~~**

4 FOR the purpose of requiring that the medical professional responsible for the care of
5 a certain inmate determine when the inmate's health allows the inmate to be
6 returned to a correctional facility after giving birth; ~~prohibiting, with certain~~
7 ~~exceptions, a physical restraint from being used on a certain inmate when the~~
8 ~~inmate is known to be in a certain trimester of pregnancy; providing that this~~
9 ~~Act does not prevent a certain person from filing a certain complaint; requiring~~
10 ~~the security officer of a certain correctional facility to make and maintain~~
11 ~~certain written findings in certain circumstances; providing that it is the policy~~
12 of the State that restraint of pregnant inmates during labor and delivery should
13 not be used unless determined necessary by an attending medical professional,
14 facility security staff, or correctional staff; providing certain requirements and
15 considerations in the use of a restraint of a pregnant inmate; requiring the
16 security officer of a local correctional facility to take certain actions when a
17 certain representation concerning an inmate is made; ~~providing for restrictions~~
18 ~~on the use of a physical restraint on a certain inmate in a local correctional~~
19 ~~facility; requiring the Department of Juvenile Services to adopt certain~~
20 ~~regulations; requiring the Commissioner of Corrections and the managing~~
21 ~~official of each municipal and county correctional institution to provide a certain~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 ~~report to the General Assembly and the Governor on or before a certain date~~
2 ~~each year~~; and generally relating to pregnant inmates and the use of restraints.

3 BY repealing and reenacting, with amendments,
4 Article – Correctional Services
5 Section 9–601
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2012 Supplement)

8 BY adding to
9 Article – Correctional Services
10 Section 9–601.1 and 11–206
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2012 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Human Services
15 Section 9–237(a)
16 Annotated Code of Maryland
17 (2007 Volume and 2012 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Human Services
20 Section 9–237(c)
21 Annotated Code of Maryland
22 (2007 Volume and 2012 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Correctional Services**

26 9–601.

27 (a) If a representation is made to the managing official of a correctional
28 facility in the Department that an inmate in the correctional facility is pregnant and
29 about to give birth, the managing official:

30 (1) a reasonable time before the anticipated birth, shall make an
31 investigation; and

32 (2) if the facts require, shall recommend through the Maryland Parole
33 Commission that the Governor exercise executive clemency.

34 (b) Without notice, the Governor may:

35 (1) parole the inmate;

1 (2) commute the inmate's sentence; or

2 (3) suspend the execution of the inmate's sentence for a definite period
3 or from time to time.

4 (c) If the Governor suspends the execution of an inmate's sentence, the
5 managing official of the correctional facility:

6 (1) a reasonable time before the anticipated birth, shall have the
7 inmate transferred from the correctional facility to another facility that provides
8 comfortable accommodations, maintenance, and medical care under supervision and
9 safeguards that the managing official determines necessary to prevent the inmate's
10 escape from custody; and

11 (2) shall require the inmate to be returned to the correctional facility
12 as soon after giving birth as the inmate's health allows, AS DETERMINED BY THE
13 MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE.

14 ~~(D) (1) (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS~~
15 ~~PARAGRAPH, A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN~~
16 ~~TO BE IN THE 2ND OR 3RD TRIMESTER OF PREGNANCY, INCLUDING DURING~~
17 ~~LABOR, TRANSPORT TO A MEDICAL FACILITY OR BIRTHING CENTER, DELIVERY,~~
18 ~~AND POSTPARTUM RECOVERY.~~

19 ~~(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH,~~
20 ~~A PHYSICAL RESTRAINT MAY BE USED IF A SECURITY OFFICER MAKES AN~~
21 ~~INDIVIDUALIZED DETERMINATION, RECORDED ON THE TRANSPORT OR~~
22 ~~MEDICAL RECORD OF THE INMATE AT THE TIME THE DETERMINATION IS MADE,~~
23 ~~THAT THERE IS A SUBSTANTIAL FLIGHT RISK OR SECURITY CIRCUMSTANCE~~
24 ~~THAT DICTATES A PHYSICAL RESTRAINT BE USED TO ENSURE THE SAFETY AND~~
25 ~~SECURITY OF THE INMATE, THE STAFF OF THE CORRECTIONAL INSTITUTION OR~~
26 ~~MEDICAL FACILITY, OTHER INMATES, OR THE PUBLIC.~~

27 ~~(III) 1. IF THE DOCTOR, NURSE, OR OTHER HEALTH~~
28 ~~PROFESSIONAL TREATING THE INMATE REQUESTS THAT A PHYSICAL~~
29 ~~RESTRAINT NOT BE USED DUE TO MEDICAL RISK.~~

30 ~~2. A PHYSICAL RESTRAINT REQUIRED TO BE USED~~
31 ~~UNDER THIS SECTION SHALL BE THE LEAST RESTRICTIVE THAT IS PRACTICAL~~
32 ~~FOR THE CIRCUMSTANCE.~~

33 ~~3. NO LEG OR WAIST RESTRAINTS MAY BE USED.~~

1 ~~4. NO PHYSICAL RESTRAINT MAY BE USED ON AN~~
 2 ~~INMATE IN LABOR OR DURING CHILDBIRTH.~~

3 ~~(2) (i) IF A PHYSICAL RESTRAINT IS USED, THE SECURITY~~
 4 ~~OFFICER SHALL MAKE WRITTEN FINDINGS REGARDING THE USE, INCLUDING:~~

5 ~~1. THE TYPE OF RESTRAINT USED;~~

6 ~~2. THE CIRCUMSTANCES THAT NECESSITATED THE~~
 7 ~~USE OF THE RESTRAINT; AND~~

8 ~~3. THE LENGTH OF TIME THE RESTRAINT WAS USED.~~

9 ~~(H) THE WRITTEN FINDINGS DESCRIBED IN SUBPARAGRAPH~~
 10 ~~(i) OF THIS PARAGRAPH SHALL BE MAINTAINED BY THE FACILITY FOR A~~
 11 ~~MINIMUM OF 5 YEARS.~~

12 ~~[(d)] (E) (1)~~ The expenses of an inmate's accommodation, maintenance,
 13 and medical care incurred as a result of the inmate's transfer under subsection (c)(1) of
 14 this section shall be paid:

15 (i) by the inmate;

16 (ii) by relatives or friends of the inmate; or

17 (iii) from any available fund that may be used to pay the hospital
 18 expenses of an inmate in the correctional facility.

19 (2) If money is not available under any of the sources identified in
 20 paragraph (1) of this subsection to pay the specified expenses:

21 (i) the county from which the inmate was committed is
 22 responsible for payment of the expenses; and

23 (ii) the managing official of the correctional facility to which the
 24 inmate was committed shall collect payment in accordance with Title 16 of the Health
 25 – General Article.

26 ~~[(e)] (F) (1)~~ After receiving proof from the father or other relative of the
 27 child of the ability to properly care for the child, the Department may order that the
 28 father or other relative take custody of the child.

29 (2) The father or other relative of the child that receives custody under
 30 paragraph (1) of this subsection shall maintain and care for the child at the father's or
 31 other relative's expense until the inmate is released from the correctional facility or
 32 the child, as provided by law, is adopted.

1 (3) If the father or other relative of the child is unable to properly
2 maintain and care for the child, the Department shall place the child in the care of the
3 Department of Human Resources.

4 ~~[(f)] (c)~~ Notwithstanding any other provision of this section, the
5 Department may allow an inmate to participate in programming and to retain custody
6 of the newborn child in or out of custody if:

7 (1) the environment and program is consistent with the best interests
8 of the child and consistent with public safety; and

9 (2) the custody is not inconsistent with the parental rights of any
10 individual who is not detained or confined in a correctional facility.

11 **9-601.1.**

12 **(A) GIVEN THAT PHYSICAL RESTRAINT MAY BE POTENTIALLY HARMFUL**
13 **TO AN EXPECTANT MOTHER AND FETUS, ESPECIALLY IN THE 3RD TRIMESTER**
14 **AND DURING LABOR, IT IS THE PUBLIC POLICY OF THE STATE THAT RESTRAINT**
15 **OF PREGNANT INMATES DURING LABOR AND DELIVERY SHALL NOT BE USED**
16 **UNLESS DETERMINED NECESSARY BY AN ATTENDING MEDICAL PROFESSIONAL,**
17 **FACILITY SECURITY STAFF, OR CORRECTIONAL STAFF.**

18 **(B) (1) THE APPLICATION OF RESTRAINTS DURING PREPARTUM AND**
19 **POSTPARTUM PERIODS OF THE INMATE OTHER THAN THOSE DESCRIBED IN**
20 **SUBSECTION (A) OF THIS SECTION SHALL ALSO BE AVOIDED TO THE EXTENT**
21 **POSSIBLE.**

22 **(2) WHEN RESTRAINTS ARE APPLIED TO AN INMATE DESCRIBED**
23 **IN THIS SECTION, THE RESTRAINTS SHALL BE APPLIED WITH CONSULTATION**
24 **FROM MEDICAL STAFF, FACILITY SECURITY STAFF, AND CORRECTIONAL STAFF.**

25 **(C) CORRECTIONAL STAFF, MEDICAL STAFF, HOSPITAL SECURITY**
26 **STAFF, AND THE INMATE SHALL COOPERATE FOR THE MOST SUCCESSFUL**
27 **OUTCOME OF THE INMATE'S PREGNANCY.**

28 **(D) RESTRAINTS MAY NOT BE USED ON AN INMATE KNOWN TO BE IN**
29 **THE 3RD TRIMESTER OF PREGNANCY, INCLUDING DURING LABOR, TRANSPORT**
30 **TO A MEDICAL FACILITY OR BIRTHING CENTER, DELIVERY, OR POSTPARTUM**
31 **RECOVERY, UNLESS NECESSARY TO ENSURE THE SAFETY AND SECURITY OF THE**
32 **INMATE, THE STAFF OF THE CORRECTIONAL INSTITUTION OR MEDICAL**
33 **FACILITY, OTHER INMATES, OR THE PUBLIC OR UNLESS THE RESTRAINTS ARE**
34 **REQUIRED BY THE MEDICAL FACILITY OR HOSPITAL.**

1 **(E) IF RESTRAINT IN ACCORDANCE WITH SUBSECTION (D) OF THIS**
 2 **SECTION IS NECESSARY, THE RESTRAINING SHALL BE DONE BY THE LEAST**
 3 **RESTRICTIVE MEANS NECESSARY AND IN A WAY THAT MITIGATES ADVERSE**
 4 **CLINICAL CONSEQUENCES.**

5 **(F) RESTRAINTS THAT DIRECTLY CONSTRICT THE ABDOMINAL AREA**
 6 **MAY NOT BE USED ON A PREGNANT INMATE.**

7 **11-206.**

8 **(A) IF A REPRESENTATION IS MADE TO THE SECURITY OFFICER OF A**
 9 **LOCAL CORRECTIONAL FACILITY THAT AN INMATE IN THE CUSTODY OF THE**
 10 **MANAGING OFFICIAL IS PREGNANT AND ABOUT TO GIVE BIRTH, THE SECURITY**
 11 **OFFICER SHALL:**

12 **(1) A REASONABLE TIME BEFORE THE ANTICIPATED BIRTH, MAKE**
 13 **AN INVESTIGATION; AND**

14 **(2) IF THE FACTS REQUIRE:**

15 **(i) BEFORE THE ANTICIPATED BIRTH, HAVE THE INMATE**
 16 **TRANSFERRED FROM THE LOCAL CORRECTIONAL FACILITY TO ANOTHER**
 17 **FACILITY THAT PROVIDES COMFORTABLE ACCOMMODATIONS, MAINTENANCE,**
 18 **AND MEDICAL CARE UNDER SUPERVISION AND SAFEGUARDS THAT THE**
 19 **SECURITY OFFICER DETERMINES NECESSARY TO PREVENT THE INMATE'S**
 20 **ESCAPE FROM CUSTODY; AND**

21 **(ii) RETURN THE INMATE TO THE LOCAL CORRECTIONAL**
 22 **FACILITY AS SOON AFTER GIVING BIRTH AS THE INMATE'S HEALTH ALLOWS, AS**
 23 **DETERMINED BY THE MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF**
 24 **THE INMATE.**

25 **~~(B) (1) (i) EXCEPT AS PROVIDED IN § 9-601(D) OF THIS ARTICLE,~~**
 26 **~~A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN TO BE IN THE~~**
 27 **~~2ND OR 3RD TRIMESTER OF PREGNANCY, INCLUDING DURING LABOR,~~**
 28 **~~TRANSPORT TO A MEDICAL FACILITY OR BIRTHING CENTER, DELIVERY, AND~~**
 29 **~~POSTPARTUM RECOVERY.~~**

30 **~~(ii) IF A PHYSICAL RESTRAINT IS USED, THE MANAGING~~**
 31 **~~OFFICIAL SHALL MAKE AND MAINTAIN WRITTEN FINDINGS REGARDING THE~~**
 32 **~~USE, INCLUDING:~~**

33 **~~1. THE TYPE OF RESTRAINT USED;~~**

1 ~~2. THE CIRCUMSTANCES THAT NECESSITATED THE~~
2 ~~USE OF THE RESTRAINT; AND~~

3 ~~3. THE LENGTH OF TIME THE RESTRAINT WAS USED.~~

4 ~~(2) THE WRITTEN FINDINGS DESCRIBED IN PARAGRAPH (1)(II) OF~~
5 ~~THIS SUBSECTION SHALL BE MAINTAINED BY THE FACILITY FOR A MINIMUM OF~~
6 ~~5 YEARS.~~

7 **Article – Human Services**

8 9–237.

9 (a) The Department shall adopt regulations that set standards for juvenile
10 detention facilities operated by the Department and by private agencies under
11 contract with the Department.

12 (c) The standards shall include provisions establishing:

13 (1) a policy that eliminates the unnecessary use of detention and that
14 prioritizes diversion and appropriate nonsecure alternatives;

15 (2) criteria for the placement of a child in a particular juvenile
16 detention facility;

17 (3) population limits for each juvenile detention facility that may not
18 be exceeded except in emergency circumstances;

19 (4) a requirement that staffing ratios and levels of services be
20 maintained during emergencies;

21 (5) specifications for the architectural structure of a juvenile detention
22 facility;

23 (6) staff qualifications and training, including training in recognizing
24 and reporting child abuse and neglect;

25 (7) the ratio of staff to children in a juvenile detention facility;

26 (8) the rights of children in a juvenile detention facility, including the
27 right to privacy, visitors, telephone use, and mail delivery;

28 (9) prohibitions against the use of excessive force against a child;

29 [and]

1 (10) internal auditing and monitoring of programs and facilities in the
2 juvenile services system; AND

3 (11) PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINTS
4 WHEN A JUVENILE IS KNOWN TO BE IN THE ~~2ND OR~~ 3RD TRIMESTER OF
5 PREGNANCY, INCLUDING DURING LABOR, TRANSPORT TO A MEDICAL FACILITY
6 OR BIRTHING CENTER, DELIVERY, AND POSTPARTUM RECOVERY UNLESS
7 NECESSARY TO ~~PREVENT THE JUVENILE FROM INJURING THE CHILD, MEDICAL~~
8 ~~PERSONNEL, OR JUVENILE SERVICES STAFF~~ ENSURE THE SAFETY AND
9 SECURITY OF THE JUVENILE, MEDICAL PERSONNEL, JUVENILE SERVICES
10 STAFF, OTHER JUVENILES, OR THE PUBLIC OR UNLESS THE RESTRAINT IS
11 REQUIRED BY THE MEDICAL FACILITY OR HOSPITAL CONSISTENT WITH
12 EVOLVING BEST PRACTICES AND STANDARDS.

13 ~~SECTION 2. AND BE IT FURTHER ENACTED, That, on or before 30 days~~
14 ~~before the end of each fiscal year, the Commissioner of Corrections and the managing~~
15 ~~official of each municipal and county correctional institution in which a pregnant~~
16 ~~inmate has been physically restrained during the previous fiscal year shall report to~~
17 ~~the Governor and, in accordance with § 2-1246 of the State Government Article, the~~
18 ~~General Assembly on each instance of physical restraint, including the written~~
19 ~~findings required to be reported in accordance with this Act.~~

20 SECTION ~~2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect July 1, 2013.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.