

HOUSE BILL 27

E4

(PRE-FILED)

4lr0864
CF SB 656

By: **Delegates M. Washington, A. Kelly, and B. Robinson**

Requested: November 7, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 4, 2014

CHAPTER _____

1 AN ACT concerning

2 **Correctional Services – Healthy Births for Incarcerated Women Act**

3 FOR the purpose of prohibiting the use of a physical restraint on an inmate while the
4 inmate is in labor or during delivery except under certain circumstances;
5 requiring the medical professional responsible for the care of a certain inmate to
6 determine when the inmate's health allows the inmate to be returned to a
7 correctional facility after giving birth; prohibiting, with certain exceptions, a
8 physical restraint from being used on a certain inmate; ~~requiring a correctional~~
9 ~~facility to document certain use of a physical restraint~~; requiring the
10 Department of Public Safety and Correctional Services and the managing
11 official of a local correctional facility or the managing official of a certain
12 transport agency to develop a certain policy for use at each correctional facility;
13 requiring the managing official of a local correctional facility to take certain
14 actions when a certain representation concerning an inmate is made; requiring
15 the Department of Juvenile Services to adopt certain regulations relating to the
16 use of physical restraints on certain individuals; requiring the Secretary of
17 Public Safety and Correctional Services and the managing official of each local
18 correctional facility to provide a certain report to the Governor and the General
19 Assembly on or before a certain date; ~~declaring the findings of the General~~
20 ~~Assembly~~; defining certain terms; and generally relating to pregnant inmates
21 and the use of physical restraints.

22 BY repealing and reenacting, with amendments,

23 Article – Correctional Services

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 Section 9–601
 2 Annotated Code of Maryland
 3 (2008 Replacement Volume and 2013 Supplement)

4 BY adding to
 5 Article – Correctional Services
 6 Section 11–206
 7 Annotated Code of Maryland
 8 (2008 Replacement Volume and 2013 Supplement)

9 BY repealing and reenacting, without amendments,
 10 Article – Human Services
 11 Section 9–237(a)
 12 Annotated Code of Maryland
 13 (2007 Volume and 2013 Supplement)

14 BY repealing and reenacting, with amendments,
 15 Article – Human Services
 16 Section 9–237(c)
 17 Annotated Code of Maryland
 18 (2007 Volume and 2013 Supplement)

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

21 **Article – Correctional Services**

22 9–601.

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 24 MEANINGS INDICATED.

25 (2) “LABOR” MEANS, AS DETERMINED BY THE MEDICAL
 26 PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE OR DETAINEE,
 27 THE PERIOD OF TIME BEFORE A BIRTH DURING WHICH CONTRACTIONS ARE OF
 28 SUFFICIENT FREQUENCY, INTENSITY, AND DURATION TO BRING ABOUT
 29 EFFACEMENT AND PROGRESSIVE DILATION OF THE CERVIX.

30 (3) “PHYSICAL RESTRAINT” MEANS A RESTRAINT OR
 31 MECHANICAL DEVICE USED TO CONTROL OR BIND THE MOVEMENT OF ANY PART
 32 OF AN INDIVIDUAL’S BODY OR LIMBS, ~~INCLUDING FLEX CUFFS, SOFT~~
 33 ~~RESTRAINTS, HARD METAL HANDCUFFS, A BLACK BOX, CHUBB CUFFS, LEG~~
 34 ~~IRONS, BELLY CHAINS, TETHER CHAINS, SECURITY CHAINS, OR A CONVEX~~
 35 ~~SHIELD.~~

1 (4) “POSTPARTUM RECOVERY” MEANS, THE PERIOD
2 IMMEDIATELY FOLLOWING DELIVERY AS DETERMINED BY THE MEDICAL
3 PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE, ~~THE PERIOD~~
4 ~~IMMEDIATELY FOLLOWING DELIVERY~~, INCLUDING THE ENTIRE PERIOD DURING
5 WHICH THE INMATE IS IN THE HOSPITAL OR INFIRMARY AFTER A BIRTH.

6 **~~(B) THE GENERAL ASSEMBLY FINDS THAT:~~**

7 **~~(1) THE USE OF PHYSICAL RESTRAINT ON A PREGNANT WOMAN~~**
8 **~~CAN POSE UNDUE HEALTH RISKS TO THE WOMAN AND HER PREGNANCY;~~**

9 **~~(2) THE MAJORITY OF FEMALE INMATES IN THE STATE ARE~~**
10 **~~NONVIOLENT OFFENDERS;~~**

11 **~~(3) THE USE OF PHYSICAL RESTRAINTS ON INMATES INCREASES~~**
12 **~~THE POTENTIAL FOR PHYSICAL HARM TO THE INMATE FROM AN ACCIDENTAL~~**
13 **~~TRIP OR FALL, WHICH COULD NEGATIVELY IMPACT THE PREGNANCY OF A~~**
14 **~~PREGNANT INMATE;~~**

15 **~~(4) FREEDOM FROM THE USE OF PHYSICAL RESTRAINTS IS~~**
16 **~~ESPECIALLY CRITICAL DURING LABOR, DELIVERY, AND POSTPARTUM~~**
17 **~~RECOVERY BECAUSE WOMEN OFTEN NEED TO MOVE DURING LABOR AND~~**
18 **~~RECOVERY, INCLUDING MOVING THEIR LEGS AS PART OF THE BIRTHING~~**
19 **~~PROCESS;~~**

20 **~~(5) THE USE OF PHYSICAL RESTRAINTS ON A PREGNANT WOMAN~~**
21 **~~CAN INTERFERE WITH THE MEDICAL STAFF’S ABILITY TO APPROPRIATELY~~**
22 **~~ASSIST IN CHILDBIRTH OR TO CONDUCT SUDDEN EMERGENCY PROCEDURES;~~**

23 **~~(6) THE AMERICAN MEDICAL ASSOCIATION, THE FEDERAL~~**
24 **~~BUREAU OF PRISONS, THE U.S. MARSHALS SERVICE, THE AMERICAN~~**
25 **~~CORRECTIONAL ASSOCIATION, THE AMERICAN CONGRESS OF OBSTETRICIANS~~**
26 **~~AND GYNECOLOGISTS, AND THE AMERICAN PUBLIC HEALTH ASSOCIATION~~**
27 **~~OPPOSE THE USE OF PHYSICAL RESTRAINTS ON WOMEN DURING LABOR,~~**
28 **~~DELIVERY, AND POSTPARTUM RECOVERY BECAUSE IT IS UNNECESSARY AND~~**
29 **~~DANGEROUS TO A WOMAN’S HEALTH AND WELL BEING; AND~~**

30 **~~(7) INTERNATIONAL HUMAN RIGHTS BODIES HAVE EXPRESSED~~**
31 **~~CONCERN ABOUT POLICIES THAT PERMIT THE USE OF PHYSICAL RESTRAINTS~~**
32 **~~ON PREGNANT AND BIRTHING WOMEN.~~**

33 **~~[(a)] (C) (B)~~** If a representation is made to the managing official of a
34 correctional facility in the Department that an inmate in the correctional facility is
35 pregnant and about to give birth, the managing official:

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

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

5 **[(b)] ~~(D)~~ (C)** Without notice, the Governor may:

6 (1) parole the inmate;

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

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

10 **[(c)] ~~(E)~~ (D)** If the Governor suspends the execution of an inmate's
11 sentence, the managing official of the correctional facility:

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

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

20 **~~(F)~~ (E)** **A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE**
21 **WHILE THE INMATE IS IN LABOR OR DURING DELIVERY, EXCEPT AS**
22 **DETERMINED BY THE MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF**
23 **THE INMATE.**

24 **~~(G)~~ (F)** **(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A**
25 **PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN TO BE**
26 **PREGNANT OR IN POSTPARTUM RECOVERY.**

27 **(2) A PHYSICAL RESTRAINT MAY BE USED ON AN INMATE KNOWN**
28 **TO BE PREGNANT OR IN POSTPARTUM RECOVERY IF:**

29 **(I) THE MANAGING OFFICIAL OF A CORRECTIONAL**
30 **FACILITY, THE MANAGING OFFICIAL'S DESIGNEE, OR A LOCAL SHERIFF MAKES**
31 **AN INDIVIDUALIZED DETERMINATION, CONTEMPORANEOUSLY WHICH SHALL BE**
32 **RECORDED ON THE TRANSPORT OR MEDICAL RECORD OF THE INMATE, THAT A**

1 ~~PHYSICAL RESTRAINT MUST BE USED~~ IS REQUIRED TO ENSURE THE SAFETY AND
 2 SECURITY OF THE INMATE, THE STAFF OF THE CORRECTIONAL FACILITY OR
 3 MEDICAL FACILITY, OTHER INMATES, OR THE PUBLIC ACCORDING TO POLICIES
 4 AND PROCEDURES ADOPTED BY THE DEPARTMENT AND THE MANAGING
 5 OFFICIAL OF A LOCAL CORRECTIONAL FACILITY OR THE MANAGING OFFICIAL
 6 OF THE AGENCY DESIGNATED TO TRANSPORT INMATES; AND

7 (II) THE PHYSICAL RESTRAINT IS THE LEAST RESTRICTIVE
 8 NECESSARY AND DOES NOT INCLUDE WAIST OR LEG RESTRAINTS.

9 (3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF
 10 A DOCTOR, NURSE, OR OTHER HEALTH PROFESSIONAL TREATING AN INMATE
 11 KNOWN TO BE PREGNANT OR IN POSTPARTUM RECOVERY REQUESTS THAT
 12 PHYSICAL RESTRAINTS NOT BE USED, THE CORRECTIONAL OFFICER OR OTHER
 13 LAW ENFORCEMENT OFFICER ACCOMPANYING THE INMATE SHALL
 14 IMMEDIATELY REMOVE ALL PHYSICAL RESTRAINTS.

15 (4) ~~IF A PHYSICAL RESTRAINT IS USED ON AN INMATE UNDER~~
 16 ~~THIS SUBSECTION, THE CORRECTIONAL FACILITY SHALL DOCUMENT THE USE~~
 17 ~~OF PHYSICAL RESTRAINTS, INCLUDING:~~

18 ~~(I) THE TYPE OF PHYSICAL RESTRAINT USED;~~

19 ~~(II) THE CIRCUMSTANCES THAT NECESSITATED THE USE OF~~
 20 ~~THE PHYSICAL RESTRAINT; AND~~

21 ~~(III) THE LENGTH OF TIME THE PHYSICAL RESTRAINT WAS~~
 22 ~~USED~~ THE DEPARTMENT AND THE MANAGING OFFICIAL OF EACH LOCAL
 23 CORRECTIONAL FACILITY OR THE MANAGING OFFICIAL OF THE AGENCY
 24 DESIGNATED TO TRANSPORT INMATES SHALL DEVELOP A POLICY FOR USE AT
 25 EACH CORRECTIONAL FACILITY THAT:

26 (I) REQUIRES A PHYSICAL RESTRAINT USED ON A
 27 PREGNANT INMATE DURING TRANSPORT TO BE THE LEAST RESTRICTIVE
 28 NECESSARY; AND

29 (II) ESTABLISHES A METHOD FOR REPORTING THE USE OF
 30 PHYSICAL RESTRAINTS ON PREGNANT INMATES, INCLUDING REFERENCE TO
 31 THE CIRCUMSTANCES THAT REQUIRED USE OF THE PHYSICAL RESTRAINTS.

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

- 1 (i) by the inmate;
- 2 (ii) by relatives or friends of the inmate; or
- 3 (iii) from any available fund that may be used to pay the hospital
4 expenses of an inmate in the correctional facility.

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

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

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

12 [(e)] ~~(H)~~ (H) (1) After receiving proof from the father or other relative of the
13 child of the ability to properly care for the child, the Department may order that the
14 father or other relative take custody of the child.

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

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

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

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

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

29 **11-206.**

30 (A) IF A REPRESENTATION IS MADE TO THE MANAGING OFFICIAL OF A
31 LOCAL CORRECTIONAL FACILITY THAT AN INMATE IN THE CUSTODY OF THE
32 MANAGING OFFICIAL IS PREGNANT, THE MANAGING OFFICIAL SHALL:

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

3 (9) prohibitions against the use of excessive force against a child;
4 [and]

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

7 (11) ~~PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINT OF~~
8 ~~A PREGNANT JUVENILE EXCEPT UNDER CIRCUMSTANCES IN WHICH THE USE OF~~
9 ~~PHYSICAL RESTRAINTS ON A PREGNANT INMATE WOULD BE AUTHORIZED~~
10 ~~UNDER § 9-601 OF THE CORRECTIONAL SERVICES ARTICLE RESTRAINTS ON AN~~
11 ~~INDIVIDUAL KNOWN TO BE IN THE THIRD TRIMESTER OF PREGNANCY OR~~
12 ~~DURING LABOR, DELIVERY, OR POSTPARTUM RECOVERY, INCLUDING DURING~~
13 ~~ALL TRANSPORTS, UNLESS A FACILITY SUPERINTENDENT OR THE FACILITY~~
14 ~~SUPERINTENDENT'S DESIGNEE DETERMINES THAT A PHYSICAL RESTRAINT IS~~
15 ~~NECESSARY TO PROTECT THE INDIVIDUAL FROM HARMING HERSELF OR~~
16 ~~OTHERS OR TO PREVENT THE INDIVIDUAL'S ESCAPE FROM CUSTODY.~~

17 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before 30 days
18 before the end of each ~~fiscal year~~ calendar year until December 31, 2017, the Secretary
19 of Public Safety and Correctional Services and the managing official of each local
20 correctional facility in which a pregnant inmate has been physically restrained during
21 the previous fiscal year shall report to the Governor and, in accordance with § 2-1246
22 of the State Government Article, the General Assembly on ~~each instance of the use of~~
23 ~~physical restraints, including the documentation required to be recorded in accordance~~
24 ~~with this Act~~ the following information:

25 (a) each instance of the use of physical restraints;

26 (b) the use of restraints on inmates in the second or third trimester of
27 pregnancy or during labor, delivery, or postpartum recovery for the time period
28 between January 1 and November 30 for the reporting year;

29 (c) an explanation and text of the Pregnancy Management Manual and
30 current policy statement regarding physical restraints used on inmates;

31 (d) a listing of physical restraints and whether the physical restraint is
32 considered to be least restrictive, moderately restrictive, or most restrictive;

33 (e) for the Patuxent Institution, Maryland Correctional Institution for
34 Women, and Baltimore City Women's Detention Center:

35 (1) the number of times a physical restraint was used on a woman in
36 the facility; and

1 (2) a description of the setting in which the physical restraint was
2 used, the reason for the use of the physical restraint, the length of time that the
3 woman was restrained, and the type of restraint used, including the use of waist
4 chains and leg irons; and

5 (f) a description of corrective actions implemented by the Department for
6 any deficiencies identified with following established procedures regarding the use of
7 physical restraints on pregnant inmates.

8 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 July 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.