

HOUSE BILL 27

E4

(PRE-FILED)

4r0864
CF 4r0940

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

Requested: November 7, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Correctional Services – Healthy Births for Incarcerated Women Act

FOR the purpose of prohibiting the use of a physical restraint on an inmate while the inmate is in labor or during delivery; requiring the medical professional responsible for the care of a certain inmate to determine when the inmate's health allows the inmate to be returned to a correctional facility after giving birth; prohibiting, with certain exceptions, a physical restraint from being used on a certain inmate; requiring a correctional facility to document certain use of a physical restraint; requiring the managing official of a local correctional facility to take certain actions when a certain representation concerning an inmate is made; requiring the Department of Juvenile Services to adopt certain regulations; requiring the Secretary of Public Safety and Correctional Services and the managing official of each local correctional facility to provide a certain report to the Governor and the General Assembly on or before a certain date; declaring the findings of the General Assembly, defining certain terms; and generally relating to pregnant inmates and the use of physical restraints.

BY repealing and reenacting, with amendments,

Article – Correctional Services

Section 9–601

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY adding to

Article – Correctional Services

Section 11–206

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Human Services
 Section 9–237(a)
 Annotated Code of Maryland
 (2007 Volume and 2013 Supplement)

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

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

Article – Correctional Services

9–601.

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

(2) “LABOR” MEANS THE PERIOD OF TIME BEFORE A BIRTH DURING WHICH CONTRACTIONS ARE OF SUFFICIENT FREQUENCY, INTENSITY, AND DURATION TO BRING ABOUT EFFACEMENT AND PROGRESSIVE DILATION OF THE CERVIX.

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

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

(B) THE GENERAL ASSEMBLY FINDS THAT:

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

(2) THE MAJORITY OF FEMALE INMATES IN THE STATE ARE NONVIOLENT OFFENDERS;

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

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

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

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

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

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

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

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

[(b)] (D) Without notice, the Governor may:

(1) parole the inmate;

(2) commute the inmate's sentence; or

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

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

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

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

(F) A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE WHILE THE INMATE IS IN LABOR OR DURING DELIVERY.

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

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

(I) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY OR A LOCAL SHERIFF MAKES AN INDIVIDUALIZED DETERMINATION, CONTEMPORANEOUSLY RECORDED ON THE TRANSPORT OR MEDICAL RECORD OF THE INMATE, THAT A PHYSICAL RESTRAINT MUST BE USED TO ENSURE THE SAFETY AND SECURITY OF THE INMATE, THE STAFF OF THE CORRECTIONAL FACILITY OR MEDICAL FACILITY, OTHER INMATES, OR THE PUBLIC; AND

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

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

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

(I) THE TYPE OF PHYSICAL RESTRAINT USED;

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

(III) THE LENGTH OF TIME THE PHYSICAL RESTRAINT WAS USED.

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

(i) by the inmate;

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

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

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

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

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

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

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

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

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

- (1) the environment and program is consistent with the best interests of the child and consistent with public safety; and
- (2) the custody is not inconsistent with the parental rights of any individual who is not detained or confined in a correctional facility.

11-206.

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

(1) BEFORE THE ANTICIPATED BIRTH, HAVE THE INMATE TRANSFERRED FROM THE LOCAL CORRECTIONAL FACILITY TO ANOTHER FACILITY THAT PROVIDES COMFORTABLE ACCOMMODATIONS, MAINTENANCE, AND MEDICAL CARE UNDER SUPERVISION AND SAFEGUARDS THAT THE MANAGING OFFICIAL DETERMINES NECESSARY TO PREVENT THE INMATE'S ESCAPE FROM CUSTODY; AND

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

(B) THE USE OF PHYSICAL RESTRAINTS ON AN INMATE DURING A TRANSFER MADE UNDER THIS SECTION SHALL BE IN ACCORDANCE WITH § 9-601 OF THIS ARTICLE.

Article – Human Services

9-237.

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

(c) The standards shall include provisions establishing:

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

- (2) criteria for the placement of a child in a particular juvenile detention facility;
 - (3) population limits for each juvenile detention facility that may not be exceeded except in emergency circumstances;
 - (4) a requirement that staffing ratios and levels of services be maintained during emergencies;
 - (5) specifications for the architectural structure of a juvenile detention facility;
 - (6) staff qualifications and training, including training in recognizing and reporting child abuse and neglect;
 - (7) the ratio of staff to children in a juvenile detention facility;
 - (8) the rights of children in a juvenile detention facility, including the right to privacy, visitors, telephone use, and mail delivery;
 - (9) prohibitions against the use of excessive force against a child;
- [and]
- (10) internal auditing and monitoring of programs and facilities in the juvenile services system; AND

(11) PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINT OF A PREGNANT JUVENILE EXCEPT UNDER CIRCUMSTANCES IN WHICH THE USE OF PHYSICAL RESTRAINTS ON A PREGNANT INMATE WOULD BE AUTHORIZED UNDER § 9-601 OF THE CORRECTIONAL SERVICES ARTICLE.

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

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