

HOUSE BILL 1634

E3

6lr3842
CF SB 1072

By: **Delegate Jalisi**

Introduced and read first time: March 7, 2016

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Juveniles – Restraint and Searches – Limitations**

3 FOR the purpose of prohibiting the use of mechanical restraints by the Department of
4 Juvenile Services on a child in the Department's custody except under certain
5 circumstances; prohibiting the use of physical restraint by the Department on
6 certain pregnant children and during labor, delivery, or postpartum recovery except
7 under certain circumstances; authorizing a facility superintendent or the
8 superintendent's superior to allow the search of a child under certain circumstances;
9 authorizing a facility superintendent or the superintendent's superior to allow the
10 use of mechanical restraints on a child under certain circumstances; authorizing a
11 facility superintendent or the superintendent's superior to allow the use of physical
12 restraint on certain pregnant children and during labor, delivery, or postpartum
13 recovery under certain circumstances; allowing certain mechanical restraints to be
14 used on a child; limiting the length of time the Department may use certain
15 mechanical restraints on a child; and generally relating to the restraint and searches
16 of a juvenile.

17 BY repealing and reenacting, with amendments,
18 Article – Human Services
19 Section 9–227 and 9–237(c)(9) and (10)
20 Annotated Code of Maryland
21 (2007 Volume and 2015 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Human Services
24 Section 9–237(a), (b), and (d)
25 Annotated Code of Maryland
26 (2007 Volume and 2015 Supplement)

27 BY repealing
28 Article – Human Services

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 9–237(c)(11)
2 Annotated Code of Maryland
3 (2007 Volume and 2015 Supplement)

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

6 **Article – Human Services**

7 9–227.

8 (a) Each facility described in § 9–226 of this subtitle shall operate under the
9 control and general management of the Department.

10 (b) The Department shall:

11 (1) subject to Title 3, Subtitles 8 and 8A of the Courts Article, adopt
12 regulations that set:

13 (i) policies for detention authorization, community detention,
14 admission, transfer, discharge, and aftercare supervision; and

15 (ii) standards of care, including provisions to administer any early,
16 periodic screening diagnosis and treatment program that the Department approves for
17 establishment under 42 U.S.C., § 1396d(a)(4)(B) and to treat appropriately any condition
18 that the screening reveals;

19 (2) adopt regulations applicable to residential facilities it operates that:

20 (i) prohibit the use of locked door seclusion and restraints as
21 punishment and describe the circumstances under which locked door seclusion and
22 restraints may be used; [and]

23 (ii) prohibit abuse of a child; [and]

24 **(III) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION,**
25 **PROHIBIT THE USE OF MECHANICAL RESTRAINTS ON A CHILD;**

26 **(IV) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION,**
27 **PROHIBIT THE USE OF PHYSICAL RESTRAINT ON A CHILD KNOWN TO BE IN THE**
28 **THIRD TRIMESTER OF PREGNANCY OR IN LABOR, DELIVERY, OR POSTPARTUM**
29 **RECOVERY; AND**

30 **(V) AUTHORIZE THE FACILITY SUPERINTENDENT OR THE**
31 **SUPERINTENDENT’S SUPERIOR TO ALLOW THE SEARCH OF A CHILD ONLY WHEN**
32 **THERE IS AN INDIVIDUALIZED AND REASONABLE SUSPICION THAT THE CHILD IS**

1 **CONCEALING CONTRABAND THAT POSES A RISK TO THE SAFETY OF THE CHILD OR**
2 **ANOTHER PERSON WITHIN THE FACILITY; AND**

3 (3) adopt regulations that require each State residential program to
4 provide:

5 (i) medical and mental health assessment services;

6 (ii) alcohol abuse and drug abuse assessment services;

7 (iii) either alcohol abuse and drug abuse referral services or an
8 alcohol abuse and drug abuse treatment program that has been certified in accordance with
9 the requirements of Title 8 of the Health – General Article; and

10 (iv) a safe, humane, and caring environment.

11 (c) (1) The Department shall adopt a policy to govern disciplinary actions and
12 grievances in its facilities.

13 (2) The policy shall:

14 (i) require preparation of a written report of any disciplinary action
15 taken against a child or of any grievance made by or on behalf of a child;

16 (ii) require that each written report be forwarded to and reviewed by
17 the administrative head of the facility; and

18 (iii) require the Department to forward in a timely manner all reports
19 of disciplinary actions, grievances, and grievance dispositions from each facility to the
20 Juvenile Justice Monitoring Unit of the Office of the Attorney General established under
21 Title 6, Subtitle 4 of the State Government Article.

22 (d) In each facility, the Department shall develop special programs that are
23 designed to meet the particular needs of its residents.

24 (e) Subject to Title 3, Subtitles 8 and 8A of the Courts Article, the Department
25 shall order any necessary changes in the policy, conduct, or management of a State
26 residential program to provide adequate care for the children and adequate services to the
27 courts.

28 **(F) (1) THE FACILITY SUPERINTENDENT OR THE SUPERINTENDENT'S**
29 **SUPERIOR MAY ALLOW THE USE OF MECHANICAL RESTRAINTS ON A CHILD,**
30 **INCLUDING DURING TRANSPORT, IF:**

31 **(I) 1. THE CHILD POSES AN IMMINENT RISK OF PHYSICAL**
32 **HARM TO THE CHILD OR ANOTHER PERSON; OR**

1 **2. THE CHILD IS ACTIVELY TRYING TO ESCAPE;**

2 **(II) ALL OTHER MEANS OF SUBDUING THE CHILD HAVE BEEN**
3 **UNSUCCESSFUL; AND**

4 **(III) THE CHILD IS NOT KNOWN TO BE IN THE THIRD TRIMESTER**
5 **OF PREGNANCY OR IN LABOR, DELIVERY, OR POSTPARTUM RECOVERY.**

6 **(2) MECHANICAL RESTRAINTS MUST BE REMOVED ONCE A CHILD**
7 **CEASES TO PRESENT AN ACTIVE RISK OF PHYSICAL HARM OR ESCAPE.**

8 **(3) ONLY HANDCUFFS, FOOT CUFFS, OR BOTH IF NOT JOINED**
9 **TOGETHER, MAY BE USED TO MECHANICALLY RESTRAIN A CHILD.**

10 **(G) THE FACILITY SUPERINTENDENT OR THE SUPERINTENDENT'S**
11 **SUPERIOR MAY ALLOW THE USE OF PHYSICAL RESTRAINT ON A CHILD KNOWN TO BE**
12 **IN THE THIRD TRIMESTER OF PREGNANCY OR IN LABOR, DELIVERY, OR**
13 **POSTPARTUM RECOVERY IF THE CHILD:**

14 **(1) POSES AN IMMINENT RISK OF PHYSICAL HARM TO THE CHILD OR**
15 **ANOTHER PERSON; OR**

16 **(2) IS ACTIVELY TRYING TO ESCAPE.**

17 9-237.

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

21 (b) The standards shall reflect the following central purposes of juvenile
22 detention:

23 (1) to protect the public;

24 (2) to provide a safe, humane, and caring environment for children; and

25 (3) to provide access to required services for children.

26 (c) The standards shall include provisions establishing:

27 (9) prohibitions against the use of excessive force against a child; **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 on an individual
4 known to be in the third trimester of pregnancy or during labor, delivery, or postpartum
5 recovery, including during all transports, unless a facility superintendent or the facility
6 superintendent's designee determines that a physical restraint is necessary to protect the
7 individual from harming herself or others or to prevent the individual's escape from
8 custody.]

9 (d) The standards shall be consistent with this title and Title 3, Subtitle 8A of the
10 Courts Article.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2016.