

# SENATE BILL 189

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By: **Senators Kelley, Benson, Conway, Currie, Guzzone, Kagan, Lee, Madaleno, Manno, McFadden, Muse, Nathan-Pulliam, Pugh, Raskin, Rosapepe, and Young**

Introduced and read first time: January 20, 2016

Assigned to: Judicial Proceedings

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## 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; prohibiting the strip search of a child under certain  
8 circumstances; limiting certain instrumental searches of a child except under certain  
9 circumstances; authorizing a facility superintendent or the superintendent's  
10 superior to allow the use of mechanical restraints on a child under certain  
11 circumstances; authorizing a facility superintendent or the superintendent's  
12 superior to allow the use of physical restraint on certain pregnant children and  
13 during labor, delivery, or postpartum recovery under certain circumstances; allowing  
14 certain mechanical restraints to be used on a child; limiting the length of time the  
15 Department may use certain mechanical restraints on a child; and generally relating  
16 to the restraint and searches 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)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing  
2 Article – Human Services  
3 Section 9–237(c)(11)  
4 Annotated Code of Maryland  
5 (2007 Volume and 2015 Supplement)

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

8 **Article – Human Services**

9 9–227.

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

12 (b) The Department shall:

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

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

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

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

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

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

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

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

32 **(V) PROHIBIT THE STRIP SEARCH OF A CHILD; AND**

1                   **(VI) AUTHORIZE THE SEARCH OF A CHILD USING A SCANNER OR**  
2 **SIMILAR INSTRUMENT ONLY WHEN THERE IS AN INDIVIDUALIZED AND REASONABLE**  
3 **SUSPICION THAT THE CHILD IS CONCEALING CONTRABAND THAT POSES A RISK TO**  
4 **THE SAFETY OF THE CHILD OR ANOTHER PERSON WITHIN THE FACILITY; AND**

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

7                   (i)     medical and mental health assessment services;

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

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

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

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

15                  (2)    The policy shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 9-237.

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

23                   (b) The standards shall reflect the following central purposes of juvenile  
24 detention:

25                   (1) to protect the public;

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

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

28                   (c) The standards shall include provisions establishing:

1           (9) prohibitions against the use of excessive force against a child; **AND**

2           (10) internal auditing and monitoring of programs and facilities in the  
3 juvenile services system[; and].

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

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

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