

HOUSE BILL 787

E4

8lr1871
CF SB 629

By: **Delegates Dumais, Queen, Anderson, Angel, Atterbeary, Barkley, Barron, Clippinger, Cullison, Davis, Fraser-Hidalgo, Frick, Gibson, Hayes, Hettleman, Hill, Jalisi, Kaiser, Kelly, Korman, Kramer, Lam, J. Lewis, R. Lewis, Lierman, Luedtke, McIntosh, A. Miller, Moon, Morales, Morhaim, Mosby, Patterson, Pena-Melnyk, Platt, Reznik, Robinson, Rosenberg, Sample-Hughes, Sanchez, Valderrama, Waldstreicher, A. Washington, M. Washington, Wilkins, and K. Young**

Introduced and read first time: February 1, 2018

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 27, 2018

CHAPTER _____

1 AN ACT concerning

2 **Correctional Facilities – Pregnant Inmates – Medical Care**

3 FOR the purpose of requiring each local correctional facility and each correctional facility
4 in the Department of Public Safety and Correctional Services to have a certain policy
5 in place regarding the medical care of pregnant inmates that addresses certain
6 matters; requiring the managing official of each correctional facility to provide the
7 written policy to an inmate at a certain time; requiring the Maryland Commission
8 on Correctional Standards to review each correctional facility's policy during regular
9 inspections; and generally relating to pregnant inmates.

10 BY repealing and reenacting, with amendments,
11 Article – Correctional Services
12 Section 9–601
13 Annotated Code of Maryland
14 (2017 Replacement Volume)

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

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.



Article – Correctional Services

1
2 9–601.

3 (a) (1) In this section the following words have the meanings indicated.

4 (2) “Labor” means, as determined by the medical professional responsible
5 for the care of the inmate or detainee, the period of time before a birth during which
6 contractions are of sufficient frequency, intensity, and duration to bring about effacement
7 and progressive dilation of the cervix.

8 (3) “Physical restraint” means a restraint or device used to control or bind
9 the movement of any part of an individual’s body or limbs.

10 (4) “Postpartum recovery” means the period immediately following
11 delivery as determined by the medical professional responsible for the care of the inmate,
12 including the entire period during which the inmate is in the hospital or infirmary after a
13 birth.

14 (b) If a representation is made to the managing official of a correctional facility in
15 the Department that an inmate in the correctional facility is pregnant and about to give
16 birth, the managing official:

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

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

21 (c) Without notice, the Governor may:

22 (1) parole the inmate;

23 (2) commute the inmate’s sentence; or

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

26 (d) If the Governor suspends the execution of an inmate’s sentence, the managing
27 official of the correctional facility:

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

1 (2) shall require the inmate to be returned to the correctional facility as
2 soon after giving birth as the inmate's health allows, as determined by the medical
3 professional responsible for the care of the inmate.

4 (e) A physical restraint may not be used on an inmate while the inmate is in labor
5 or during delivery, except as determined by the medical professional responsible for the
6 care of the inmate.

7 (f) (1) Subject to paragraph (2) of this subsection, a physical restraint may not
8 be used on an inmate known to be pregnant or in postpartum recovery.

9 (2) A physical restraint may be used on an inmate known to be pregnant
10 or in postpartum recovery if:

11 (i) the managing official of a correctional facility, the managing
12 official's designee, or a local sheriff makes an individualized determination, which shall be
13 recorded on the transport or medical record of the inmate, that a physical restraint is
14 required to ensure the safety and security of the inmate, the staff of the correctional facility
15 or medical facility, other inmates, or the public according to policies and procedures adopted
16 by the Department and the managing official of a local correctional facility or the managing
17 official of the agency designated to transport inmates; and

18 (ii) the physical restraint is the least restrictive necessary and does
19 not include waist or leg restraints.

20 (3) Notwithstanding paragraph (2) of this subsection, if a doctor, nurse, or
21 other health professional treating an inmate known to be pregnant or in postpartum
22 recovery requests that physical restraints not be used, the correctional officer or other law
23 enforcement officer accompanying the inmate shall immediately remove all physical
24 restraints.

25 (4) The Department and the managing official of each local correctional
26 facility or the managing official of the agency designated to transport inmates shall develop
27 a policy for use at each correctional facility that:

28 (i) requires a physical restraint used on a pregnant inmate during
29 transport to be the least restrictive necessary; and

30 (ii) establishes a method for reporting the use of physical restraints
31 on pregnant inmates.

32 (g) (1) The expenses of an inmate's accommodation, maintenance, and medical
33 care incurred as a result of the inmate's transfer under subsection (d)(1) of this section shall
34 be paid:

35 (i) by the inmate;

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

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

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

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

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

11 (h) (1) After receiving proof from the father or other relative of the child of the
12 ability to properly care for the child, the Department may order that the father or other
13 relative take custody of the child.

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

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

21 (i) Notwithstanding any other provision of this section, the Department may
22 allow an inmate to participate in programming and to retain custody of the newborn child
23 in or out of custody if:

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

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

28 **(J) (1) THIS SUBSECTION APPLIES TO LOCAL CORRECTIONAL FACILITIES**
29 **AND CORRECTIONAL FACILITIES IN THE DEPARTMENT.**

30 **(2) EACH CORRECTIONAL FACILITY SHALL HAVE A WRITTEN POLICY**
31 **IN PLACE REGARDING THE MEDICAL CARE OF PREGNANT INMATES THAT**
32 **ADDRESSES:**

1 (I) PROCEDURES FOR PROVIDING PREGNANCY TESTING TO ALL
2 FEMALE INMATES, INCLUDING ON INTAKE;

3 (II) ACCESS TO PRENATAL CARE, INCLUDING:

4 1. ROUTINE APPOINTMENTS, LABORATORY WORK, AND
5 ULTRASOUNDS;

6 2. PROCEDURES AND SCHEDULES FOR PROVIDING
7 PREGNANT INMATES WITH LABORATORY AND TESTING RESULTS; AND

8 3. NUTRITIONAL NEEDS AND COUNSELING;

9 (III) HIGH-RISK PREGNANCIES, INCLUDING MATERNAL
10 SUBSTANCE ABUSE DISORDER;

11 (IV) MISCARRIAGE MANAGEMENT, INCLUDING:

12 1. PROCEDURES FOR EVALUATING THE APPROPRIATE
13 LEVEL OF CARE;

14 2. PROTOCOL FOR ON-SITE AND OFF-SITE
15 MISCARRIAGE MANAGEMENT;

16 3. EMERGENCY MISCARRIAGE MANAGEMENT; AND

17 4. FOLLOW-UP CARE;

18 (V) ACCESS TO ABORTION CARE, INCLUDING:

19 1. INFORMATION ABOUT ABORTION PROVIDERS; AND

20 2. TRANSPORTATION;

21 (VI) ACCESS TO CHILD PLACEMENT RESOURCES, INCLUDING:

22 1. INFORMATION ABOUT ADOPTION OR REFERRAL TO
23 ADOPTION RESOURCES, INCLUDING KINSHIP ADOPTION, OPEN AND CLOSED
24 ADOPTION, AND AGENCY AND PRIVATE ADOPTION;

25 2. FOSTER CARE; AND

26 3. KINSHIP CARE;

27 ~~(VI)~~ (VII) LABOR AND DELIVERY, INCLUDING:

1 1. THE FACILITY WHERE LABOR AND DELIVERY SHALL
2 OCCUR;

3 2. TRANSPORTATION; AND

4 3. TRANSMITTAL OF MEDICAL RECORDS TO THE
5 FACILITY FOR LABOR AND DELIVERY;

6 ~~(VII)~~ (VIII) POSTPARTUM RECOVERY CARE, INCLUDING:

7 1. TRANSPORTATION TO THE CORRECTIONAL FACILITY
8 FROM THE LABOR AND DELIVERY FACILITY;

9 2. ACCESS TO HYGIENE PRODUCTS;

10 3. A SCHEDULE FOR POSTPARTUM RECOVERY CARE;

11 AND

12 4. ACCOMMODATIONS FOR PUMPING AND STORAGE OF
13 BREAST MILK;

14 ~~(VIII)~~ (IX) ELIGIBILITY AND ACCESS TO BEHAVIORAL HEALTH
15 COUNSELING AND SOCIAL SERVICES DURING THE PRENATAL AND POSTPARTUM
16 RECOVERY PERIODS; AND

17 ~~(IX)~~ (X) USE OF RESTRAINTS DURING PREGNANCY,
18 TRANSPORTATION, LABOR AND DELIVERY, AND POSTPARTUM RECOVERY.

19 (3) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY SHALL
20 PROVIDE THE WRITTEN POLICY REQUIRED UNDER THIS SUBSECTION TO AN INMATE
21 AT THE TIME OF A POSITIVE PREGNANCY TEST RESULT.

22 (4) THE MARYLAND COMMISSION ON CORRECTIONAL STANDARDS
23 SHALL REVIEW EACH CORRECTIONAL FACILITY'S POLICY REQUIRED UNDER THIS
24 SUBSECTION DURING REGULAR INSPECTIONS.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2018.