

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

A BILL ENTITLED

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:

17 **Article – Correctional Services**

18 9–601.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

18 (c) Without notice, the Governor may:

19 (1) parole the inmate;

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

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

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

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

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

33 (e) A physical restraint may not be used on an inmate while the inmate is in labor
34 or during delivery, except as determined by the medical professional responsible for the

1 care of the inmate.

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

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

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

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

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

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

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

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

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

30 (i) by the inmate;

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

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

34 (2) If money is not available under any of the sources identified in

1 paragraph (1) of this subsection to pay the specified expenses:

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

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

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

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

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

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

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

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

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

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

29 **(I) PROCEDURES FOR PROVIDING PREGNANCY TESTING TO ALL**
30 **FEMALE INMATES, INCLUDING ON INTAKE;**

31 **(II) ACCESS TO PRENATAL CARE, INCLUDING:**

32 **1. ROUTINE APPOINTMENTS, LABORATORY WORK, AND**
33 **ULTRASOUNDS;**

1 **3. A SCHEDULE FOR POSTPARTUM RECOVERY CARE;**
2 **AND**

3 **4. ACCOMMODATIONS FOR PUMPING AND STORAGE OF**
4 **BREAST MILK;**

5 **(VIII) ELIGIBILITY AND ACCESS TO BEHAVIORAL HEALTH**
6 **COUNSELING AND SOCIAL SERVICES DURING THE PRENATAL AND POSTPARTUM**
7 **RECOVERY PERIODS; AND**

8 **(IX) USE OF RESTRAINTS DURING PREGNANCY,**
9 **TRANSPORTATION, LABOR AND DELIVERY, AND POSTPARTUM RECOVERY.**

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

13 **(4) THE MARYLAND COMMISSION ON CORRECTIONAL STANDARDS**
14 **SHALL REVIEW EACH CORRECTIONAL FACILITY'S POLICY REQUIRED UNDER THIS**
15 **SUBSECTION DURING REGULAR INSPECTIONS.**

16 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**
17 **October 1, 2018.**