

SENATE BILL 629

E4

8lr3209
CF HB 787

By: **Senators Kelley, Benson, Brochin, Conway, Feldman, Ferguson, Guzzone, Kagan, King, Lee, Madaleno, Manno, Muse, Nathan-Pulliam, Oaks, Ramirez, Robinson, Rosapepe, Smith, Young, ~~and Zucker~~ Zucker, and Zirkin**

Introduced and read first time: February 1, 2018

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 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:

17 **Article – Correctional Services**

18 9–601.

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.



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

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

6 (3) "Physical restraint" means a restraint or device used to control or bind
7 the movement of any part of an individual's body or limbs.

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

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

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

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

19 (c) Without notice, the Governor may:

20 (1) parole the inmate;

21 (2) commute the inmate's sentence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (i) by the inmate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 1. ROUTINE APPOINTMENTS, LABORATORY WORK, AND
3 ULTRASOUNDS;

4 2. PROCEDURES AND SCHEDULES FOR PROVIDING
5 PREGNANT INMATES WITH LABORATORY AND TESTING RESULTS; AND

6 3. NUTRITIONAL NEEDS AND COUNSELING;

7 **(III) HIGH-RISK PREGNANCIES, INCLUDING MATERNAL
8 SUBSTANCE ABUSE DISORDER;**

9 **(IV) MISCARRIAGE MANAGEMENT, INCLUDING:**

10 1. PROCEDURES FOR EVALUATING THE APPROPRIATE
11 LEVEL OF CARE;

12 2. PROTOCOL FOR ON-SITE AND OFF-SITE
13 MISCARRIAGE MANAGEMENT;

14 3. EMERGENCY MISCARRIAGE MANAGEMENT; AND

15 4. FOLLOW-UP CARE;

16 **(V) ACCESS TO ABORTION CARE, INCLUDING:**

17 1. INFORMATION ABOUT ABORTION PROVIDERS; AND

18 2. TRANSPORTATION;

19 **(VI) ACCESS TO CHILD PLACEMENT RESOURCES, INCLUDING:**

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

23 2. FOSTER CARE; AND

24 3. KINSHIP CARE;

25 ~~(VI)~~ **(VII) LABOR AND DELIVERY, INCLUDING:**

26 1. THE FACILITY WHERE LABOR AND DELIVERY SHALL
27 OCCUR;

1 2. TRANSPORTATION; AND

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

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

5 1. TRANSPORTATION TO THE CORRECTIONAL FACILITY
6 FROM THE LABOR AND DELIVERY FACILITY;

7 2. ACCESS TO HYGIENE PRODUCTS;

8 3. A SCHEDULE FOR POSTPARTUM RECOVERY CARE;
9 AND

10 4. ACCOMMODATIONS FOR PUMPING AND STORAGE OF
11 BREAST MILK;

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

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

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

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

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