

Chapter 827

(House Bill 787)

AN ACT concerning

Correctional Facilities – Pregnant Inmates – Medical Care

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

BY repealing and reenacting, with amendments,

Article – Correctional Services

Section 9–601

Annotated Code of Maryland

(2017 Replacement Volume)

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

Article – Correctional Services

9–601.

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

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

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

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

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

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

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

(c) Without notice, the Governor may:

(1) parole the inmate;

(2) commute the inmate's sentence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) by the inmate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) ACCESS TO PRENATAL CARE, INCLUDING:

1. ROUTINE APPOINTMENTS, LABORATORY WORK, AND ULTRASOUNDS;

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

3. NUTRITIONAL NEEDS AND COUNSELING;

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

(IV) MISCARRIAGE MANAGEMENT, INCLUDING:

1. PROCEDURES FOR EVALUATING THE APPROPRIATE LEVEL OF CARE;

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

3. EMERGENCY MISCARRIAGE MANAGEMENT; AND

4. FOLLOW-UP CARE;

(V) ACCESS TO ABORTION CARE, INCLUDING:

1. INFORMATION ABOUT ABORTION PROVIDERS; AND

2. TRANSPORTATION;

(VI) ACCESS TO CHILD PLACEMENT RESOURCES, INCLUDING:

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

2. FOSTER CARE; AND

3. KINSHIP CARE;

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

1. THE FACILITY WHERE LABOR AND DELIVERY SHALL OCCUR;

2. TRANSPORTATION; AND

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

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

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

2. ACCESS TO HYGIENE PRODUCTS;

3. A SCHEDULE FOR POSTPARTUM RECOVERY CARE;
AND

4. ACCOMMODATIONS FOR PUMPING AND STORAGE OF
BREAST MILK;

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

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

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

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

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 26, 2018.