

CHAPTER 91

(House Bill 1206)

AN ACT concerning

Correctional Services – Inmates and Detainees Who Are Pregnant or Have Newborn Child

FOR the purpose of altering parole eligibility requirements for certain individuals detained or confined in a correctional facility; altering the requirements for special leave for certain inmates; establishing authority for female inmates or detainees to retain custody of newborn children under certain circumstances for participation in certain programs; transferring certain authority relating to inmates and detainees from the Division of Correction to the Department of Public Safety and Correctional Services; and generally relating to individuals detained or confined in a correctional facility who are pregnant or have a newborn child.

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 3–810, 7–301(a), and 9–601
Annotated Code of Maryland
(1999 Volume and 2006 Supplement)

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

Article – Correctional Services

3–810.

(a) On the recommendation of treatment staff and with the approval of the managing official of a correctional facility in the Division, the Commissioner or Deputy Commissioner may grant special leave to an inmate to allow an inmate to participate in a special community or other meritorious program or activity within or outside of the State that the Commissioner and managing official believe:

- (1) would benefit the inmate;
- (2) would not be detrimental to the public; and

(3) would help rehabilitate the inmate.

(b) The Commissioner or Deputy Commissioner may grant special leave for the purpose of allowing an inmate to:

(1) attend an educational program;

(2) improve job skills;

(3) attend a trade licensing examination;

(4) be interviewed for employment;

(5) participate as a volunteer for a governmental unit in an activity that serves the general public;

(6) participate in athletic competition; [or]

(7) participate in a civic activity that benefits the inmate or the community; **OR**

(8) PARTICIPATE IN A RESIDENTIAL OR NONRESIDENTIAL TREATMENT PROGRAM INCLUDING A PROGRAM FOR PREGNANT WOMEN OR A PROGRAM TO ESTABLISH BONDING BETWEEN MOTHERS AND NEWBORN CHILDREN.

(C) AN INMATE GRANTED LEAVE UNDER THIS SECTION MAY BE ALLOWED TO REMAIN OUTSIDE THE INSTITUTION FOR ANY PERIOD OF TIME CONSISTENT WITH PUBLIC SAFETY.

[(c)] **(D)** (1) An inmate is not eligible for special leave under this section unless the managing official and Commissioner concur that positive attitudinal and growth patterns are being established.

(2) Special leave shall be issued in writing and signed personally by both the managing official and either the Commissioner or Deputy Commissioner.

(3) As a condition of granting special leave, the Commissioner may require that the inmate agree to waive the right to contest extradition proceedings.

(4) The Commissioner or Deputy Commissioner shall file the order granting special leave in the Division.

7-301.

(a) (1) Except as otherwise provided in this section, the Commission shall request that the Division of Parole and Probation make an investigation for inmates in a local correctional facility and the Division of Correction make an investigation for inmates in a State correctional facility that will enable the Commission to determine the advisability of granting parole to an inmate who:

(i) has been sentenced under the laws of the State to serve a term of 6 months or more in a correctional facility; and

(ii) has served in confinement one-fourth of the inmate's aggregate sentence.

(2) Except as provided in paragraph (3) of this subsection, or as otherwise provided by law or in a predetermined parole release agreement, an inmate is not eligible for parole until the inmate has served in confinement one-fourth of the inmate's aggregate sentence.

(3) An inmate may be released on parole at any time in order to undergo drug or alcohol treatment, **MENTAL HEALTH TREATMENT, OR TO PARTICIPATE IN A RESIDENTIAL PROGRAM OF TREATMENT IN THE BEST INTEREST OF AN INMATE'S EXPECTED OR NEWBORN CHILD** if the inmate:

(i) is not serving a sentence for a crime of violence, as defined in § 14-101 of the Criminal Law Article;

(ii) is not serving a sentence for a violation of Title 3, Subtitle 6, § 5-608(d), § 5-609(d), § 5-612, § 5-613, § 5-614, § 5-621, § 5-622, or § 5-628 of the Criminal Law Article; and

(iii) has been determined to be amenable to [drug or alcohol] treatment.

9-601.

(a) If a representation is made to the managing official of a correctional facility in the [Division of Correction] **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 [Division of Correction] **MARYLAND PAROLE COMMISSION** that the Governor exercise executive clemency.

(b) 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.

(c) 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.

(d) (1) The expenses of an inmate's accommodation, maintenance, and medical care incurred as a result of the inmate's transfer under subsection (c)(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.

(e) (1) After receiving proof from the father or other relative of the child of the ability to properly care for the child, the [Division of Correction] **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 [Division of Correction] **DEPARTMENT** shall place the child in the care of the Department of Human Resources.

(F) 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, April 10, 2007.