

# HOUSE BILL 829

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By: Delegates M. Washington, B. Robinson, A. Kelly, Anderson, Barve, Bobo, Braveboy, Carr, Carter, Clippinger, Conaway, Cullison, Dumais, Frush, Glenn, Griffith, Gutierrez, Hixson, Huckler, Jones, Kaiser, Lee, Luedtke, McComas, McIntosh, A. Miller, Mizeur, Pena–Melnik, Reznik, S. Robinson, Rosenberg, Summers, and Waldstreicher

Introduced and read first time: February 6, 2013

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Pregnant Detainees and Inmates – Restraint**  
3 **Restrictions and Reporting**

4 FOR the purpose of requiring that the medical professional responsible for the care of  
5 a certain inmate determine when the inmate’s health allows the inmate to be  
6 returned to a correctional facility after giving birth; prohibiting, with certain  
7 exceptions, a physical restraint from being used on a certain inmate when the  
8 inmate is known to be in a certain trimester of pregnancy; providing that this  
9 Act does not prevent a certain person from filing a certain complaint; requiring  
10 the security officer of a certain correctional facility to make and maintain  
11 certain written findings in certain circumstances; requiring the security officer  
12 of a local correctional facility to take certain actions when a certain  
13 representation concerning an inmate is made; providing for restrictions on the  
14 use of a physical restraint on a certain inmate in a local correctional facility;  
15 requiring the Department of Juvenile Services to adopt certain regulations;  
16 requiring the Commissioner of Corrections and the managing official of each  
17 municipal and county correctional institution to provide a certain report to the  
18 General Assembly and the Governor on or before a certain date each year; and  
19 generally relating to pregnant inmates and the use of restraints.

20 BY repealing and reenacting, with amendments,  
21 Article – Correctional Services  
22 Section 9–601  
23 Annotated Code of Maryland  
24 (2008 Replacement Volume and 2012 Supplement)

25 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Correctional Services  
2 Section 11–206  
3 Annotated Code of Maryland  
4 (2008 Replacement Volume and 2012 Supplement)

5 BY repealing and reenacting, without amendments,  
6 Article – Human Services  
7 Section 9–237(a)  
8 Annotated Code of Maryland  
9 (2007 Volume and 2012 Supplement)

10 BY repealing and reenacting, with amendments,  
11 Article – Human Services  
12 Section 9–237(c)  
13 Annotated Code of Maryland  
14 (2007 Volume and 2012 Supplement)

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

17 **Article – Correctional Services**

18 9–601.

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

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

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

26 (b) Without notice, the Governor may:

27 (1) parole the inmate;

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

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

31 (c) If the Governor suspends the execution of an inmate’s sentence, the  
32 managing official of the correctional facility:



1                                   **2. THE CIRCUMSTANCES THAT NECESSITATED THE**  
2 **USE OF THE RESTRAINT; AND**

3                                   **3. THE LENGTH OF TIME THE RESTRAINT WAS USED.**

4                                   **(II) THE WRITTEN FINDINGS DESCRIBED IN SUBPARAGRAPH**  
5 **(I) OF THIS PARAGRAPH SHALL BE MAINTAINED BY THE FACILITY FOR A**  
6 **MINIMUM OF 5 YEARS.**

7           **[(d)] (E)**     (1)     The expenses of an inmate's accommodation, maintenance,  
8 and medical care incurred as a result of the inmate's transfer under subsection (c)(1) of  
9 this section shall be paid:

10                               (i)     by the inmate;

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

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

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

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

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

21           **[(e)] (F)**     (1)     After receiving proof from the father or other relative of the  
22 child of the ability to properly care for the child, the Department may order that the  
23 father or other relative take custody of the child.

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

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

31           **[(f)] (G)**     Notwithstanding any other provision of this section, the  
32 Department may allow an inmate to participate in programming and to retain custody  
33 of the newborn child in or out of custody if:

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

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

5 **11-206.**

6 (A) IF A REPRESENTATION IS MADE TO THE SECURITY OFFICER OF A  
7 LOCAL CORRECTIONAL FACILITY THAT AN INMATE IN THE CUSTODY OF THE  
8 MANAGING OFFICIAL IS PREGNANT AND ABOUT TO GIVE BIRTH, THE SECURITY  
9 OFFICER SHALL:

10 (1) A REASONABLE TIME BEFORE THE ANTICIPATED BIRTH, MAKE  
11 AN INVESTIGATION; AND

12 (2) IF THE FACTS REQUIRE:

13 (I) BEFORE THE ANTICIPATED BIRTH, HAVE THE INMATE  
14 TRANSFERRED FROM THE LOCAL CORRECTIONAL FACILITY TO ANOTHER  
15 FACILITY THAT PROVIDES COMFORTABLE ACCOMMODATIONS, MAINTENANCE,  
16 AND MEDICAL CARE UNDER SUPERVISION AND SAFEGUARDS THAT THE  
17 SECURITY OFFICER DETERMINES NECESSARY TO PREVENT THE INMATE'S  
18 ESCAPE FROM CUSTODY; AND

19 (II) RETURN THE INMATE TO THE LOCAL CORRECTIONAL  
20 FACILITY AS SOON AFTER GIVING BIRTH AS THE INMATE'S HEALTH ALLOWS, AS  
21 DETERMINED BY THE MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF  
22 THE INMATE.

23 (B) (1) (I) EXCEPT AS PROVIDED IN § 9-601(D) OF THIS ARTICLE,  
24 A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN TO BE IN THE  
25 2ND OR 3RD TRIMESTER OF PREGNANCY, INCLUDING DURING LABOR,  
26 TRANSPORT TO A MEDICAL FACILITY OR BIRTHING CENTER, DELIVERY, AND  
27 POSTPARTUM RECOVERY.

28 (II) IF A PHYSICAL RESTRAINT IS USED, THE MANAGING  
29 OFFICIAL SHALL MAKE AND MAINTAIN WRITTEN FINDINGS REGARDING THE  
30 USE, INCLUDING:

31 1. THE TYPE OF RESTRAINT USED;

1                           **2. THE CIRCUMSTANCES THAT NECESSITATED THE**  
2 **USE OF THE RESTRAINT; AND**

3                           **3. THE LENGTH OF TIME THE RESTRAINT WAS USED.**

4                           **(2) THE WRITTEN FINDINGS DESCRIBED IN PARAGRAPH (1)(II) OF**  
5 **THIS SUBSECTION SHALL BE MAINTAINED BY THE FACILITY FOR A MINIMUM OF**  
6 **5 YEARS.**

7                           **Article – Human Services**

8 9–237.

9                   (a) The Department shall adopt regulations that set standards for juvenile  
10 detention facilities operated by the Department and by private agencies under  
11 contract with the Department.

12                   (c) The standards shall include provisions establishing:

13                       (1) a policy that eliminates the unnecessary use of detention and that  
14 prioritizes diversion and appropriate nonsecure alternatives;

15                       (2) criteria for the placement of a child in a particular juvenile  
16 detention facility;

17                       (3) population limits for each juvenile detention facility that may not  
18 be exceeded except in emergency circumstances;

19                       (4) a requirement that staffing ratios and levels of services be  
20 maintained during emergencies;

21                       (5) specifications for the architectural structure of a juvenile detention  
22 facility;

23                       (6) staff qualifications and training, including training in recognizing  
24 and reporting child abuse and neglect;

25                       (7) the ratio of staff to children in a juvenile detention facility;

26                       (8) the rights of children in a juvenile detention facility, including the  
27 right to privacy, visitors, telephone use, and mail delivery;

28                       (9) prohibitions against the use of excessive force against a child;

29 [and]

1                   (10) internal auditing and monitoring of programs and facilities in the  
2 juvenile services system; AND

3                   **(11) PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINTS**  
4 **WHEN A JUVENILE IS KNOWN TO BE IN THE 2ND OR 3RD TRIMESTER OF**  
5 **PREGNANCY, INCLUDING DURING LABOR, TRANSPORT TO A MEDICAL FACILITY**  
6 **OR BIRTHING CENTER, DELIVERY, AND POSTPARTUM RECOVERY UNLESS**  
7 **NECESSARY TO PREVENT THE JUVENILE FROM INJURING THE CHILD, MEDICAL**  
8 **PERSONNEL, OR JUVENILE SERVICES STAFF.**

9                   SECTION 2. AND BE IT FURTHER ENACTED, That, on or before 30 days  
10 before the end of each fiscal year, the Commissioner of Corrections and the managing  
11 official of each municipal and county correctional institution in which a pregnant  
12 inmate has been physically restrained during the previous fiscal year shall report to  
13 the Governor and, in accordance with § 2-1246 of the State Government Article, the  
14 General Assembly on each instance of physical restraint, including the written  
15 findings required to be reported in accordance with this Act.

16                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 July 1, 2013.