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FISCAL AND POLICY NOTE
Revised

House Bill 829
Judiciary

(Delegate M. Washington, *et al.*)

Judicial Proceedings

Correctional Services - Pregnant Detainees and Inmates - Restraint Restrictions

This bill specifies policy, procedures, and protocols that State and local correctional facilities must follow in connection with the care of a pregnant inmate. The Department of Juvenile Services (DJS) is required to adopt specified related regulations.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: None. The bill tracks the policy position and recommendations of the National Commission on Correctional Health Care (NCCHC) and codifies some current practices of State correctional facilities. Compliance with the bill's requirements can be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services (DPSCS) and DJS.

Local Effect: None. The bill's requirements can be handled with existing budgeted resources. It is believed that most local facilities already have similar practices in place.

Small Business Effect: None.

Analysis

Bill Summary: The bill states that, because physical restraint may be harmful to an expectant mother and fetus, especially in the third trimester and during labor, it is the public policy of the State that restraint of pregnant inmates during labor and delivery must not be used unless determined necessary by an attending medical professional, facility security staff, or correctional staff. The application of restraints during prepartum

and postpartum periods of the inmate, unless deemed necessary, must be avoided to the extent possible.

When restraints are applied to an inmate, the restraints must be applied with consultation from medical staff, facility security staff, and correctional staff. Correctional staff, medical staff, hospital security staff, and the inmate must cooperate for the most successful outcome of the pregnancy. Restraints may not be used on an inmate known to be in the third trimester of pregnancy, including during labor, transport to a medical facility or birthing center, delivery, or postpartum recovery, unless necessary to ensure the safety and security of the inmate, the staff of the correctional institution or medical facility, other inmates, or the public, or unless the restraints are required by the medical facility or hospital. If restraint is necessary, the restraining must be done by the least restrictive means necessary and in a way that mitigates adverse clinical consequences. Restraints that directly constrict the abdominal area may not be used on a pregnant inmate.

The bill requires the security officer of a local correctional facility to take specified actions, including the possible transfer of the inmate from the local correctional facility to another specified facility, when a representation is made that an inmate in the custody of the facility's managing official is pregnant and about to give birth.

The bill requires that the medical professional responsible for the care of an inmate determine when the inmate's health allows the inmate to be returned to a correctional facility after giving birth.

With respect to juvenile detention facilities, DJS is required to adopt regulations prohibiting the use of physical restraints when a juvenile is known to be in the third trimester of pregnancy, including during labor, transport to a medical facility or birthing center, delivery, and postpartum recovery, unless necessary to ensure the safety and security of the juvenile, medical personnel, DJS staff, other juveniles, or the public or unless the restraint is required by the medical facility or hospital consistent with evolving best practices and standards.

Current Law: If a representation is made to the managing official of a State correctional facility that an inmate in the facility is pregnant and about to give birth, the managing official must make an investigation and, if the facts require, recommend through the Maryland Parole Commission that the Governor exercise executive clemency. Without notice, the Governor may parole the inmate, commute the inmate's sentence, or suspend the execution of the inmate's sentence for a definite period or from time to time.

If the Governor suspends the execution of an inmate's sentence, the managing official of the correctional facility must, in a reasonable time before the anticipated birth, 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. The managing official must also require the inmate to be returned to the correctional facility as soon after giving birth as the inmate's health allows.

Background: NCCHC is an independent, nonprofit organization involved in addressing the standard of health care in correctional facilities in the United States. The bill's policy statement and requirements closely track the policy statement and recommendations on the restraint of pregnant inmates adopted by NCCHC on October 10, 2010.

As of April 20, 2012, DPSCS has a written policy statement on the use of restraints for pregnant detainees, inmates, or offenders, which supersedes any prior provisions. The policy does not consider trimesters, but applies to an inmate medically determined to be carrying a developing fetus in the uterus. The policy states:

- A pregnant detainee, inmate, or offender may be restrained only when absolutely necessary to protect the pregnant individual from self-harm, harming others, or to prevent escape.
- A pregnant detainee, inmate, or offender may not be restrained during labor, delivery, or immediate post-delivery recuperation, or during similar stages associated with terminating a pregnancy.
- If a pregnant detainee, inmate, or offender is restrained, the restraint used shall be the least restrictive form of restraint necessary to ensure safety and security with minimum risk to the pregnant individual and fetus.
- If a pregnant detainee, inmate, or offender is to be moved from one location to another within a DPSCS facility, from one DPSCS facility to another DPSCS facility or other location outside a DPSCS facility and restraints are used, a wheelchair shall be used to minimize the risk of falling.
- A restraint device commonly referred to as a waist chain or other similar device designed to be worn around an individual's waist may not be used on a pregnant detainee, inmate, or offender.

In addition, the policy statement electronically links to a "Clinical Services Pregnancy Management Manual" and provides the following additional statement of responsibility under § .05 of the statement:

A. Procedures for use of a restraint device on a pregnant detainee, inmate, or offender, at a minimum, shall address:

- (1) The types of restraints permitted;
- (2) Staff training related to:

- (a) Use of restraints, specifically addressing a pregnant detainee, inmate, or offender; and
- (b) Pregnancy related medical emergencies;
- (3) Approval for use based on security concerns;
- (4) Case-by-case assessment considering, at a minimum:
 - (a) Security level;
 - (b) Escape risk;
 - (c) Medical recommendations by the Department's contracted medical health professional specializing in obstetrics;
 - (d) The current stage of the pregnancy;
 - (e) Other known physical or mental conditions;
 - (f) Emergency and routine medical conditions; and
 - (g) Potential for harm to self or to others;
- (5) Documenting and reviewing cases when restraints are used on a pregnant detainee, inmate, or offender to ensure compliance with established procedures;
- (6) For non-medical transportation, for example a court appearance or hearing, a recommendation from the Department's contracted medical health professional specializing in obstetrics concerning the individual's medical ability to safely be transported; and
- (7) Corrective action should deficiencies be identified.

B. Except under §.05C of this directive, if it is necessary to move an ambulatory pregnant detainee, inmate, or offender from one location to another within a Department facility, from one Department facility to another Department facility, or other location outside a Department facility and restraints are used, the individual shall be seated in a wheelchair and secured to the wheelchair according to procedures consistent with requirements of this directive.

- (1) An ambulatory pregnant detainee, inmate, or offender restrained in a wheelchair may be removed from the wheelchair and restraints re-applied consistent with this directive for the purpose of:
 - (a) Transferring to another stationary seated position;
 - (b) Transferring to an examination table;
 - (c) Standing to be searched;
 - (d) Transferring to a vehicle for transport; or
 - (e) Other circumstances that require the individual to be removed from the wheelchair.
- (2) If an ambulatory pregnant detainee, inmate, or offender restrained in a wheelchair is removed from the wheelchair the employee participating in moving the individual shall assist the individual to minimize the risk of the individual falling.

(3) If a restraint device is used to secure the hands of a pregnant detainee, inmate, or offender in the front and the individual is not seated, the restraint device shall permit a minimum space of twelve inches between the individual's wrists.

C. In a medical emergency related to pregnancy or otherwise involving moving a pregnant detainee, inmate, or offender, a 9-1-1 call shall be made and the pregnant detainee, inmate, or offender, if necessary, shall be secured to the gurney according to procedures consistent with this directive.

D. For the purpose of the use of restraints, a pregnant detainee, inmate, or offender who voluntarily or, due to a medical emergency, involuntarily undergoing a medical procedure intended to terminate the pregnancy is considered to be in the process of labor, delivery, or immediate post-delivery recuperation.

E. Uniform post orders related to detainee, inmate, or offender transportation, hospital stays, hospital watches, and security during medical procedures shall be consistent with requirements established under this directive.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; Department of Health and Mental Hygiene; Department of Juvenile Services; Department of Public Safety and Correctional Services; National Commission on Correctional Health Care; Department of Legislative Services

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