

HOUSE BILL 27

E4

(PRE-FILED)

4lr0864
CF 4lr0940

By: **Delegates M. Washington, A. Kelly, and B. Robinson**

Requested: November 7, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Healthy Births for Incarcerated Women Act**

3 FOR the purpose of prohibiting the use of a physical restraint on an inmate while the
4 inmate is in labor or during delivery; requiring the medical professional
5 responsible for the care of a certain inmate to determine when the inmate's
6 health allows the inmate to be returned to a correctional facility after giving
7 birth; prohibiting, with certain exceptions, a physical restraint from being used
8 on a certain inmate; requiring a correctional facility to document certain use of
9 a physical restraint; requiring the managing official of a local correctional
10 facility to take certain actions when a certain representation concerning an
11 inmate is made; requiring the Department of Juvenile Services to adopt certain
12 regulations; requiring the Secretary of Public Safety and Correctional Services
13 and the managing official of each local correctional facility to provide a certain
14 report to the Governor and the General Assembly on or before a certain date;
15 declaring the findings of the General Assembly, defining certain terms; and
16 generally relating to pregnant inmates and the use of physical restraints.

17 BY repealing and reenacting, with amendments,
18 Article – Correctional Services
19 Section 9–601
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2013 Supplement)

22 BY adding to
23 Article – Correctional Services
24 Section 11–206
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2013 Supplement)

27 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Human Services
2 Section 9–237(a)
3 Annotated Code of Maryland
4 (2007 Volume and 2013 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Human Services
7 Section 9–237(c)
8 Annotated Code of Maryland
9 (2007 Volume and 2013 Supplement)

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

12 **Article – Correctional Services**

13 9–601.

14 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
15 MEANINGS INDICATED.

16 (2) “LABOR” MEANS THE PERIOD OF TIME BEFORE A BIRTH
17 DURING WHICH CONTRACTIONS ARE OF SUFFICIENT FREQUENCY, INTENSITY,
18 AND DURATION TO BRING ABOUT EFFACEMENT AND PROGRESSIVE DILATION OF
19 THE CERVIX.

20 (3) “PHYSICAL RESTRAINT” MEANS RESTRAINT OR MECHANICAL
21 DEVICE USED TO CONTROL THE MOVEMENT OF AN INDIVIDUAL’S BODY OR
22 LIMBS, INCLUDING FLEX CUFFS, SOFT RESTRAINTS, HARD METAL HANDCUFFS, A
23 BLACK BOX, CHUBB CUFFS, LEG IRONS, BELLY CHAINS, TETHER CHAINS,
24 SECURITY CHAINS, OR A CONVEX SHIELD.

25 (4) “POSTPARTUM RECOVERY” MEANS, AS DETERMINED BY THE
26 MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE, THE
27 PERIOD IMMEDIATELY FOLLOWING DELIVERY, INCLUDING THE ENTIRE PERIOD
28 DURING WHICH THE INMATE IS IN THE HOSPITAL OR INFIRMARY AFTER A
29 BIRTH.

30 (B) THE GENERAL ASSEMBLY FINDS THAT:

31 (1) THE USE OF PHYSICAL RESTRAINT ON A PREGNANT WOMAN
32 CAN POSE UNDUE HEALTH RISKS TO THE WOMAN AND HER PREGNANCY;

33 (2) THE MAJORITY OF FEMALE INMATES IN THE STATE ARE
34 NONVIOLENT OFFENDERS;

1 **(3) THE USE OF PHYSICAL RESTRAINTS ON INMATES INCREASES**
2 **THE POTENTIAL FOR PHYSICAL HARM TO THE INMATE FROM AN ACCIDENTAL**
3 **TRIP OR FALL, WHICH COULD NEGATIVELY IMPACT THE PREGNANCY OF A**
4 **PREGNANT INMATE;**

5 **(4) FREEDOM FROM THE USE OF PHYSICAL RESTRAINTS IS**
6 **ESPECIALLY CRITICAL DURING LABOR, DELIVERY, AND POSTPARTUM**
7 **RECOVERY BECAUSE WOMEN OFTEN NEED TO MOVE DURING LABOR AND**
8 **RECOVERY, INCLUDING MOVING THEIR LEGS AS PART OF THE BIRTHING**
9 **PROCESS;**

10 **(5) THE USE OF PHYSICAL RESTRAINTS ON A PREGNANT WOMAN**
11 **CAN INTERFERE WITH THE MEDICAL STAFF'S ABILITY TO APPROPRIATELY**
12 **ASSIST IN CHILDBIRTH OR TO CONDUCT SUDDEN EMERGENCY PROCEDURES;**

13 **(6) THE AMERICAN MEDICAL ASSOCIATION, THE FEDERAL**
14 **BUREAU OF PRISONS, THE U.S. MARSHALS SERVICE, THE AMERICAN**
15 **CORRECTIONAL ASSOCIATION, THE AMERICAN CONGRESS OF OBSTETRICIANS**
16 **AND GYNECOLOGISTS, AND THE AMERICAN PUBLIC HEALTH ASSOCIATION**
17 **OPPOSE THE USE OF PHYSICAL RESTRAINTS ON WOMEN DURING LABOR,**
18 **DELIVERY, AND POSTPARTUM RECOVERY BECAUSE IT IS UNNECESSARY AND**
19 **DANGEROUS TO A WOMAN'S HEALTH AND WELL BEING; AND**

20 **(7) INTERNATIONAL HUMAN RIGHTS BODIES HAVE EXPRESSED**
21 **CONCERN ABOUT POLICIES THAT PERMIT THE USE OF PHYSICAL RESTRAINTS**
22 **ON PREGNANT AND BIRTHING WOMEN.**

23 **[(a)] (C)** If a representation is made to the managing official of a
24 correctional facility in the Department that an inmate in the correctional facility is
25 pregnant and about to give birth, the managing official:

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

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

30 **[(b)] (D)** Without notice, the Governor may:

31 (1) parole the inmate;

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

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

3 **[(c)] (E)** If the Governor suspends the execution of an inmate's sentence,
4 the managing official of the correctional facility:

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

10 (2) shall require the inmate to be returned to the correctional facility
11 as soon after giving birth as the inmate's health allows, **AS DETERMINED BY THE**
12 **MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE.**

13 **(F) A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE WHILE**
14 **THE INMATE IS IN LABOR OR DURING DELIVERY.**

15 **(G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A**
16 **PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN TO BE**
17 **PREGNANT OR IN POSTPARTUM RECOVERY.**

18 **(2) A PHYSICAL RESTRAINT MAY BE USED ON AN INMATE KNOWN**
19 **TO BE PREGNANT OR IN POSTPARTUM RECOVERY IF:**

20 **(I) THE MANAGING OFFICIAL OF A CORRECTIONAL**
21 **FACILITY OR A LOCAL SHERIFF MAKES AN INDIVIDUALIZED DETERMINATION,**
22 **CONTEMPORANEOUSLY RECORDED ON THE TRANSPORT OR MEDICAL RECORD**
23 **OF THE INMATE, THAT A PHYSICAL RESTRAINT MUST BE USED TO ENSURE THE**
24 **SAFETY AND SECURITY OF THE INMATE, THE STAFF OF THE CORRECTIONAL**
25 **FACILITY OR MEDICAL FACILITY, OTHER INMATES, OR THE PUBLIC; AND**

26 **(II) THE PHYSICAL RESTRAINT IS THE LEAST RESTRICTIVE**
27 **NECESSARY AND DOES NOT INCLUDE WAIST OR LEG RESTRAINTS.**

28 **(3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF**
29 **A DOCTOR, NURSE, OR OTHER HEALTH PROFESSIONAL TREATING AN INMATE**
30 **KNOWN TO BE PREGNANT OR IN POSTPARTUM RECOVERY REQUESTS THAT**
31 **PHYSICAL RESTRAINTS NOT BE USED, THE CORRECTIONAL OFFICER OR OTHER**
32 **LAW ENFORCEMENT OFFICER ACCOMPANYING THE INMATE SHALL**
33 **IMMEDIATELY REMOVE ALL PHYSICAL RESTRAINTS.**

1 **(4) IF A PHYSICAL RESTRAINT IS USED ON AN INMATE UNDER**
2 **THIS SUBSECTION, THE CORRECTIONAL FACILITY SHALL DOCUMENT THE USE**
3 **OF PHYSICAL RESTRAINTS, INCLUDING:**

4 **(I) THE TYPE OF PHYSICAL RESTRAINT USED;**

5 **(II) THE CIRCUMSTANCES THAT NECESSITATED THE USE OF**
6 **THE PHYSICAL RESTRAINT; AND**

7 **(III) THE LENGTH OF TIME THE PHYSICAL RESTRAINT WAS**
8 **USED.**

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

12 (i) by the inmate;

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

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

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

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

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

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

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

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

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

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

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

7 (5) specifications for the architectural structure of a juvenile detention
8 facility;

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

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

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

14 (9) prohibitions against the use of excessive force against a child;
15 [and]

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

18 **(11) PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINT OF**
19 **A PREGNANT JUVENILE EXCEPT UNDER CIRCUMSTANCES IN WHICH THE USE OF**
20 **PHYSICAL RESTRAINTS ON A PREGNANT INMATE WOULD BE AUTHORIZED**
21 **UNDER § 9-601 OF THE CORRECTIONAL SERVICES ARTICLE.**

22 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before 30 days
23 before the end of each fiscal year, the Secretary of Public Safety and Correctional
24 Services and the managing official of each local correctional facility in which a
25 pregnant inmate has been physically restrained during the previous fiscal year shall
26 report to the Governor and, in accordance with § 2-1246 of the State Government
27 Article, the General Assembly on each instance of the use of physical restraints,
28 including the documentation required to be recorded in accordance with this Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 July 1, 2014.