

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 27

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

Judiciary

Judicial Proceedings

Correctional Services - Healthy Births for Incarcerated Women Act

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, 2014.

Fiscal Summary

State Effect: The bill is not expected to materially affect State operations or finances. The bill largely codifies current practice for State correctional facilities. Compliance with the bill's reporting requirement for the Department of Public Safety and Correctional Services (DPSCS) can likely be handled with existing budgeted resources, depending on the number of pregnant inmates in each calendar year through 2017. DJS can handle the bill's requirement for the adoption of new regulations with existing budgeted resources.

Local Effect: The bill is not expected to materially affect local operations or finances. Extension of State practices regarding pregnant inmates to local correctional facilities 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 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.

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. A physical restraint may be used on an inmate known to be pregnant or in postpartum recovery only if (1) the managing official of a correctional facility, the managing official's designee, or a local sheriff makes an individualized determination, which must 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 a medical facility, other inmates, or the public according to policies and procedures adopted by DPSCS and the managing official of a local correctional facility or the managing official of the agency designated to transport inmates and (2) the physical restraint is the least restrictive necessary and does not include waist or leg restraints.

If a health professional treating an inmate known to be pregnant or in postpartum recovery requests that physical restraints not be used, the correctional officer or law enforcement officer accompanying the inmate must immediately remove all physical restraints.

DPSCS and the managing official of each local correctional facility or the managing official of the agency designated to transport inmates must develop a policy for use at each correctional facility that (1) requires a physical restraint used on a pregnant inmate during transport to be the least restrictive necessary and (2) establishes a method for reporting each instance in which a physical restraint is used.

If a representation is made to the managing official of a local correctional facility that an inmate in the custody of the managing official is pregnant, the managing official may (1) before the anticipated birth, have the inmate transferred from the local 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) return the inmate to the local 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. The use of physical restraints on an inmate during such a transfer must be in accordance with the bill's provisions applicable to inmates in a State correctional facility.

With respect to juvenile detention facilities, DJS is required to adopt regulations prohibiting the use of physical restraints on an individual known to be in the third trimester of pregnancy or during labor, delivery, or postpartum recovery, including during all transports, unless a facility superintendent or the facility superintendent's designee determines that a physical restraint is necessary to protect the individual from harming herself or others or to prevent the individual's escape from custody.

Finally, the bill requires that, 30 days before the end of each calendar year until December 31, 2017, the Secretary of Public Safety and Correctional Services submit a report to the Governor and the General Assembly on the number of times physical restraints were used on a pregnant inmate during labor, delivery, and postpartum recovery during the previous calendar year in each State and local correctional facility.

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: The National Commission on Correctional Health Care (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 generally 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: HB 829 of 2013, a similar bill, passed the House and the Senate with amendments. A conference committee was appointed, but no further action was taken.

Cross File: SB 656 (Senator Raskin, *et al.*) – Judicial Proceedings.

Information Source(s): Carroll, Harford, Montgomery, Prince George's and Queen Anne's counties; Department of Health and Mental Hygiene; Department of Juvenile Services; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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