

Chapter 655

(House Bill 1634)

AN ACT concerning

~~Juveniles — Restraint and Searches — Limitations~~
Task Force to Study the Restraint, Searches, and Needs of Children in the
 Juvenile Justice System

FOR the purpose of ~~prohibiting the use of mechanical restraints by the Department of Juvenile Services on a child in the Department's custody except under certain circumstances; prohibiting the use of physical restraint by the Department on certain pregnant children and during labor, delivery, or postpartum recovery except under certain circumstances; authorizing a facility superintendent or the superintendent's superior to allow the search of a child under certain circumstances; authorizing a facility superintendent or the superintendent's superior to allow the use of mechanical restraints on a child under certain circumstances; authorizing a facility superintendent or the superintendent's superior to allow the use of physical restraint on certain pregnant children and during labor, delivery, or postpartum recovery under certain circumstances; allowing certain mechanical restraints to be used on a child; limiting the length of time the Department may use certain mechanical restraints on a child; and generally relating to the restraint and searches of a juvenile~~ establishing the Task Force to Study the Restraint, Searches, and Needs of Children in the Juvenile Justice System; providing for the composition, chair, and staffing of the Task Force; prohibiting a member of the Task Force from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Task Force to review, examine, determine, and make recommendations regarding certain matters; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing for the termination of this Act; and generally relating to the Task Force to Study the Restraint, Searches, and Needs of Children in the Juvenile Justice System.

~~BY repealing and reenacting, with amendments,
 Article — Human Services
 Section 9-227 and 9-237(e)(9) and (10)
 Annotated Code of Maryland
 (2007 Volume and 2015 Supplement)~~

~~BY repealing and reenacting, without amendments,
 Article — Human Services
 Section 9-237(a), (b), and (d)
 Annotated Code of Maryland
 (2007 Volume and 2015 Supplement)~~

~~BY repealing~~

~~Article — Human Services
Section 9-237(e)(11)
Annotated Code of Maryland
(2007 Volume and 2015 Supplement)~~

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

- (a) There is a Task Force to Study the Restraint, Searches, and Needs of Children in the Juvenile Justice System.
- (b) The Task Force consists of the following members:
- (1) three members of the Senate of Maryland, appointed by the President of the Senate;
 - (2) three members of the House of Delegates, appointed by the Speaker of the House;
 - (3) the Secretary of Juvenile Services, or the Secretary's designee;
 - (4) the Director of the Maryland Juvenile Justice Monitoring Unit, or the Director's designee;
 - (5) the Public Defender of Maryland, or the Public Defender's designee;
 - (6) the Executive Director of the Governor's Office for Children, or the Executive Director's designee;
 - (7) the Executive Director of Advocates for Children and Youth, or the Executive Director's designee;
 - (8) the President of the Maryland Chapter of the National Association for the Advancement of Colored People (NAACP), or the President's designee;
 - (9) the Executive Director of AFSCME Maryland, or the Executive Director's designee;
 - (10) the Chairman of the Community Public Awareness Council, or the Chairman's designee;
 - (11) the Executive Director of the Maryland Sheriff's Association, or the Executive Director's designee;
 - (12) one licensed mental health expert, appointed by the Governor; and

(13) the following three members appointed by the Secretary of Juvenile Services:

- (i) one expert in juvenile restraint;
- (ii) one expert in juvenile searches; and
- (iii) one expert in the transport of juvenile detainees.

(c) The Governor shall designate the chair of the Task Force.

(d) The Maryland Juvenile Justice Monitoring Unit and the Office of the Public Defender shall provide staff for the Task Force.

(e) A member of the Task Force:

- (1) may not receive compensation as a member of the Task Force; but
- (2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

- (1) review the policies and practices of the Department of Juvenile Services regarding shackling and strip searches of children within the juvenile justice system;
- (2) examine when, by whom, and for what purposes a child in the custody of the Department of Juvenile Services is strip-searched or shackled;
- (3) determine the capital expenditures that are necessary to address issues regarding the restraint and searches of children within the juvenile justice system; and
- (4) make recommendations regarding changes in policies, practices, or capital expenditures that are necessary to address issues involving the restraint and searches of children within the juvenile justice system.

(g) On or before December 31, 2016, the Task Force shall report its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the General Assembly.

~~Article — Human Services~~

~~9-227.~~

~~(a) Each facility described in § 9-226 of this subtitle shall operate under the control and general management of the Department.~~

(b) ~~The Department shall:~~

~~(1) subject to Title 3, Subtitles 8 and 8A of the Courts Article, adopt regulations that set:~~

~~(i) policies for detention authorization, community detention, admission, transfer, discharge, and aftercare supervision; and~~

~~(ii) standards of care, including provisions to administer any early, periodic screening diagnosis and treatment program that the Department approves for establishment under 42 U.S.C., § 1396d(a)(4)(B) and to treat appropriately any condition that the screening reveals;~~

~~(2) adopt regulations applicable to residential facilities it operates that:~~

~~(i) prohibit the use of locked door seclusion and restraints as punishment and describe the circumstances under which locked door seclusion and restraints may be used; [and]~~

~~(ii) prohibit abuse of a child; [and]~~

~~(III) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, PROHIBIT THE USE OF MECHANICAL RESTRAINTS ON A CHILD;~~

~~(IV) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, PROHIBIT THE USE OF PHYSICAL RESTRAINT ON A CHILD KNOWN TO BE IN THE THIRD TRIMESTER OF PREGNANCY OR IN LABOR, DELIVERY, OR POSTPARTUM RECOVERY; AND~~

~~(V) AUTHORIZE THE FACILITY SUPERINTENDENT OR THE SUPERINTENDENT'S SUPERIOR TO ALLOW THE SEARCH OF A CHILD ONLY WHEN THERE IS AN INDIVIDUALIZED AND REASONABLE SUSPICION THAT THE CHILD IS CONCEALING CONTRABAND THAT POSES A RISK TO THE SAFETY OF THE CHILD OR ANOTHER PERSON WITHIN THE FACILITY; AND~~

~~(3) adopt regulations that require each State residential program to provide:~~

~~(i) medical and mental health assessment services;~~

~~(ii) alcohol abuse and drug abuse assessment services;~~

~~(iii) either alcohol abuse and drug abuse referral services or an alcohol abuse and drug abuse treatment program that has been certified in accordance with the requirements of Title 8 of the Health General Article; and~~

~~(iv) a safe, humane, and caring environment.~~

~~(e) (1) The Department shall adopt a policy to govern disciplinary actions and grievances in its facilities.~~

~~(2) The policy shall:~~

~~(i) require preparation of a written report of any disciplinary action taken against a child or of any grievance made by or on behalf of a child;~~

~~(ii) require that each written report be forwarded to and reviewed by the administrative head of the facility; and~~

~~(iii) require the Department to forward in a timely manner all reports of disciplinary actions, grievances, and grievance dispositions from each facility to the Juvenile Justice Monitoring Unit of the Office of the Attorney General established under Title 6, Subtitle 4 of the State Government Article.~~

~~(d) In each facility, the Department shall develop special programs that are designed to meet the particular needs of its residents.~~

~~(e) Subject to Title 3, Subtitles 8 and 8A of the Courts Article, the Department shall order any necessary changes in the policy, conduct, or management of a State residential program to provide adequate care for the children and adequate services to the courts.~~

~~(F) (1) THE FACILITY SUPERINTENDENT OR THE SUPERINTENDENT'S SUPERIOR MAY ALLOW THE USE OF MECHANICAL RESTRAINTS ON A CHILD, INCLUDING DURING TRANSPORT, IF:~~

~~(I) 1. THE CHILD POSES AN IMMINENT RISK OF PHYSICAL HARM TO THE CHILD OR ANOTHER PERSON; OR~~

~~2. THE CHILD IS ACTIVELY TRYING TO ESCAPE;~~

~~(II) ALL OTHER MEANS OF SUBDUING THE CHILD HAVE BEEN UNSUCCESSFUL; AND~~

~~(III) THE CHILD IS NOT KNOWN TO BE IN THE THIRD TRIMESTER OF PREGNANCY OR IN LABOR, DELIVERY, OR POSTPARTUM RECOVERY.~~

~~(2) MECHANICAL RESTRAINTS MUST BE REMOVED ONCE A CHILD CEASES TO PRESENT AN ACTIVE RISK OF PHYSICAL HARM OR ESCAPE.~~

~~(3) ONLY HANDCUFFS, FOOT CUFFS, OR BOTH IF NOT JOINED TOGETHER, MAY BE USED TO MECHANICALLY RESTRAIN A CHILD.~~

~~(C) THE FACILITY SUPERINTENDENT OR THE SUPERINTENDENT'S SUPERIOR MAY ALLOW THE USE OF PHYSICAL RESTRAINT ON A CHILD KNOWN TO BE IN THE THIRD TRIMESTER OF PREGNANCY OR IN LABOR, DELIVERY, OR POSTPARTUM RECOVERY IF THE CHILD:~~

~~(1) POSES AN IMMINENT RISK OF PHYSICAL HARM TO THE CHILD OR ANOTHER PERSON; OR~~

~~(2) IS ACTIVELY TRYING TO ESCAPE.~~

~~9-237.~~

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

~~(b) The standards shall reflect the following central purposes of juvenile detention:~~

~~(1) to protect the public;~~

~~(2) to provide a safe, humane, and caring environment for children; and~~

~~(3) to provide access to required services for children.~~

~~(c) The standards shall include provisions establishing:~~

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

~~(10) internal auditing and monitoring of programs and facilities in the juvenile services system[; and];~~

~~[(11) prohibitions against 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.]~~

~~(d) The standards shall be consistent with this title and Title 3, Subtitle 8A of the Courts Article.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2016. It shall remain effective for a period of 1 year and, at the end of May 31, 2017, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved by the Governor, May 19, 2016.