

SENATE BILL 629

E4

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CF 8lr1871

By: **Senators Kelley, Benson, Brochin, Conway, Feldman, Ferguson, Guzzone, Kagan, King, Lee, Madaleno, Manno, Muse, Nathan-Pulliam, Oaks, Ramirez, Robinson, Rosapepe, Smith, Young, and Zucker**

Introduced and read first time: February 1, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Facilities – Pregnant Inmates – Medical Care**

3 FOR the purpose of requiring each local correctional facility and each correctional facility
4 in the Department of Public Safety and Correctional Services to have a certain policy
5 in place regarding the medical care of pregnant inmates that addresses certain
6 matters; requiring the managing official of each correctional facility to provide the
7 written policy to an inmate at a certain time; requiring the Maryland Commission
8 on Correctional Standards to review each correctional facility's policy during regular
9 inspections; and generally relating to pregnant inmates.

10 BY repealing and reenacting, with amendments,
11 Article – Correctional Services
12 Section 9–601
13 Annotated Code of Maryland
14 (2017 Replacement Volume)

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

17 **Article – Correctional Services**

18 9–601.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Labor” means, as determined by the medical professional responsible
21 for the care of the inmate or detainee, the period of time before a birth during which
22 contractions are of sufficient frequency, intensity, and duration to bring about effacement
23 and progressive dilation of the cervix.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (3) “Physical restraint” means a restraint or device used to control or bind
2 the movement of any part of an individual’s body or limbs.

3 (4) “Postpartum recovery” means the period immediately following
4 delivery as determined by the medical professional responsible for the care of the inmate,
5 including the entire period during which the inmate is in the hospital or infirmary after a
6 birth.

7 (b) If a representation is made to the managing official of a correctional facility in
8 the Department that an inmate in the correctional facility is pregnant and about to give
9 birth, the managing official:

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

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

14 (c) Without notice, the Governor may:

15 (1) parole the inmate;

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

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

19 (d) If the Governor suspends the execution of an inmate’s sentence, the managing
20 official of the correctional facility:

21 (1) a reasonable time before the anticipated birth, shall have the inmate
22 transferred from the correctional facility to another facility that provides comfortable
23 accommodations, maintenance, and medical care under supervision and safeguards that
24 the managing official determines necessary to prevent the inmate’s escape from custody;
25 and

26 (2) shall require the inmate to be returned to the correctional facility as
27 soon after giving birth as the inmate’s health allows, as determined by the medical
28 professional responsible for the care of the inmate.

29 (e) A physical restraint may not be used on an inmate while the inmate is in labor
30 or during delivery, except as determined by the medical professional responsible for the
31 care of the inmate.

32 (f) (1) Subject to paragraph (2) of this subsection, a physical restraint may not
33 be used on an inmate known to be pregnant or in postpartum recovery.

1 (2) A physical restraint may be used on an inmate known to be pregnant
2 or in postpartum recovery if:

3 (i) the managing official of a correctional facility, the managing
4 official's designee, or a local sheriff makes an individualized determination, which shall be
5 recorded on the transport or medical record of the inmate, that a physical restraint is
6 required to ensure the safety and security of the inmate, the staff of the correctional facility
7 or medical facility, other inmates, or the public according to policies and procedures adopted
8 by the Department and the managing official of a local correctional facility or the managing
9 official of the agency designated to transport inmates; and

10 (ii) the physical restraint is the least restrictive necessary and does
11 not include waist or leg restraints.

12 (3) Notwithstanding paragraph (2) of this subsection, if a doctor, nurse, or
13 other health professional treating an inmate known to be pregnant or in postpartum
14 recovery requests that physical restraints not be used, the correctional officer or other law
15 enforcement officer accompanying the inmate shall immediately remove all physical
16 restraints.

17 (4) The Department and the managing official of each local correctional
18 facility or the managing official of the agency designated to transport inmates shall develop
19 a policy for use at each correctional facility that:

20 (i) requires a physical restraint used on a pregnant inmate during
21 transport to be the least restrictive necessary; and

22 (ii) establishes a method for reporting the use of physical restraints
23 on pregnant inmates.

24 (g) (1) The expenses of an inmate's accommodation, maintenance, and medical
25 care incurred as a result of the inmate's transfer under subsection (d)(1) of this section shall
26 be paid:

27 (i) by the inmate;

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

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

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

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

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

4 (h) (1) After receiving proof from the father or other relative of the child of the
5 ability to properly care for the child, the Department may order that the father or other
6 relative take custody of the child.

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

11 (3) If the father or other relative of the child is unable to properly maintain
12 and care for the child, the Department shall place the child in the care of the Department
13 of Human Services.

14 (i) Notwithstanding any other provision of this section, the Department may
15 allow an inmate to participate in programming and to retain custody of the newborn child
16 in or out of custody if:

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

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

21 **(J) (1) THIS SUBSECTION APPLIES TO LOCAL CORRECTIONAL FACILITIES**
22 **AND CORRECTIONAL FACILITIES IN THE DEPARTMENT.**

23 **(2) EACH CORRECTIONAL FACILITY SHALL HAVE A WRITTEN POLICY**
24 **IN PLACE REGARDING THE MEDICAL CARE OF PREGNANT INMATES THAT**
25 **ADDRESSES:**

26 **(I) PROCEDURES FOR PROVIDING PREGNANCY TESTING TO ALL**
27 **FEMALE INMATES, INCLUDING ON INTAKE;**

28 **(II) ACCESS TO PRENATAL CARE, INCLUDING:**

29 **1. ROUTINE APPOINTMENTS, LABORATORY WORK, AND**
30 **ULTRASOUNDS;**

31 **2. PROCEDURES AND SCHEDULES FOR PROVIDING**
32 **PREGNANT INMATES WITH LABORATORY AND TESTING RESULTS; AND**

1 **3. NUTRITIONAL NEEDS AND COUNSELING;**

2 **(III) HIGH-RISK PREGNANCIES, INCLUDING MATERNAL**
3 **SUBSTANCE ABUSE DISORDER;**

4 **(IV) MISCARRIAGE MANAGEMENT, INCLUDING:**

5 **1. PROCEDURES FOR EVALUATING THE APPROPRIATE**
6 **LEVEL OF CARE;**

7 **2. PROTOCOL FOR ON-SITE AND OFF-SITE**
8 **MISCARRIAGE MANAGEMENT;**

9 **3. EMERGENCY MISCARRIAGE MANAGEMENT; AND**

10 **4. FOLLOW-UP CARE;**

11 **(V) ACCESS TO ABORTION CARE, INCLUDING:**

12 **1. INFORMATION ABOUT ABORTION PROVIDERS; AND**

13 **2. TRANSPORTATION;**

14 **(VI) LABOR AND DELIVERY, INCLUDING:**

15 **1. THE FACILITY WHERE LABOR AND DELIVERY SHALL**
16 **OCCUR;**

17 **2. TRANSPORTATION; AND**

18 **3. TRANSMITTAL OF MEDICAL RECORDS TO THE**
19 **FACILITY FOR LABOR AND DELIVERY;**

20 **(VII) POSTPARTUM RECOVERY CARE, INCLUDING:**

21 **1. TRANSPORTATION TO THE CORRECTIONAL FACILITY**
22 **FROM THE LABOR AND DELIVERY FACILITY;**

23 **2. ACCESS TO HYGIENE PRODUCTS;**

24 **3. A SCHEDULE FOR POSTPARTUM RECOVERY CARE;**

25 **AND**

