

SENATE BILL 656

E4
HB 829/13 – JUD

4lr0940
CF HB 27

By: **Senators Raskin, Benson, Colburn, Feldman, Forehand, Frosh, Kelley, King, Kittleman, Madaleno, Middleton, Montgomery, Muse, Ramirez, Robey, Rosapepe, and Stone**

Introduced and read first time: January 31, 2014
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 18, 2014

CHAPTER _____

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 except under certain circumstances;
5 requiring the medical professional responsible for the care of a certain inmate to
6 determine when the inmate's health allows the inmate to be returned to a
7 correctional facility after giving birth; prohibiting, with certain exceptions, a
8 physical restraint from being used on a certain inmate; ~~requiring a correctional~~
9 ~~facility to document certain use of a physical restraint~~; requiring the
10 Department of Public Safety and Correctional Services and the managing
11 official of a local correctional facility or the managing official of a certain
12 transport agency to develop a certain policy for use at each correctional facility;
13 ~~requiring~~ authorizing the managing official of a local correctional facility to take
14 certain actions when a certain representation concerning an inmate is made;
15 requiring the Department of Juvenile Services to adopt certain regulations
16 relating to the use of physical restraints on certain individuals; requiring the
17 Secretary of Public Safety and Correctional Services ~~and the managing official~~
18 ~~of each local correctional facility~~ to provide ~~a certain report~~ reports to the
19 Governor and the General Assembly on or before a certain date each calendar
20 year for a certain period; ~~declaring the findings of the General Assembly~~;
21 defining certain terms; and generally relating to pregnant inmates and the use
22 of physical restraints.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
 2 Article – Correctional Services
 3 Section 9–601
 4 Annotated Code of Maryland
 5 (2008 Replacement Volume and 2013 Supplement)

6 BY adding to
 7 Article – Correctional Services
 8 Section 11–206
 9 Annotated Code of Maryland
 10 (2008 Replacement Volume and 2013 Supplement)

11 BY repealing and reenacting, without amendments,
 12 Article – Human Services
 13 Section 9–237(a)
 14 Annotated Code of Maryland
 15 (2007 Volume and 2013 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Human Services
 18 Section 9–237(c)
 19 Annotated Code of Maryland
 20 (2007 Volume and 2013 Supplement)

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

23 **Article – Correctional Services**

24 9–601.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
 26 MEANINGS INDICATED.

27 (2) “LABOR” MEANS, AS DETERMINED BY THE MEDICAL
 28 PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE OR DETAINEE,
 29 THE PERIOD OF TIME BEFORE A BIRTH DURING WHICH CONTRACTIONS ARE OF
 30 SUFFICIENT FREQUENCY, INTENSITY, AND DURATION TO BRING ABOUT
 31 EFFACEMENT AND PROGRESSIVE DILATION OF THE CERVIX.

32 (3) “PHYSICAL RESTRAINT” MEANS A RESTRAINT OR
 33 MECHANICAL DEVICE USED TO CONTROL OR BIND THE MOVEMENT OF ANY PART
 34 OF AN INDIVIDUAL’S BODY OR LIMBS, INCLUDING FLEX CUFFS, SOFT
 35 RESTRAINTS, HARD METAL HANDCUFFS, A BLACK BOX, CHUBB CUFFS, LEG
 36 IRONS, BELLY CHAINS, TETHER CHAINS, SECURITY CHAINS, OR A CONVEX
 37 SHIELD.

1 (4) “POSTPARTUM RECOVERY” MEANS, THE PERIOD
2 IMMEDIATELY FOLLOWING DELIVERY AS DETERMINED BY THE MEDICAL
3 PROFESSIONAL RESPONSIBLE FOR THE CARE OF THE INMATE, ~~THE PERIOD~~
4 ~~IMMEDIATELY FOLLOWING DELIVERY~~, INCLUDING THE ENTIRE PERIOD DURING
5 WHICH THE INMATE IS IN THE HOSPITAL OR INFIRMARY AFTER A BIRTH.

6 ~~(B) THE GENERAL ASSEMBLY FINDS THAT:~~

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

9 ~~(2) THE MAJORITY OF FEMALE INMATES IN THE STATE ARE~~
10 ~~NONVIOLENT OFFENDERS;~~

11 ~~(3) THE USE OF PHYSICAL RESTRAINTS ON INMATES INCREASES~~
12 ~~THE POTENTIAL FOR PHYSICAL HARM TO THE INMATE FROM AN ACCIDENTAL~~
13 ~~TRIP OR FALL, WHICH COULD NEGATIVELY IMPACT THE PREGNANCY OF A~~
14 ~~PREGNANT INMATE;~~

15 ~~(4) FREEDOM FROM THE USE OF PHYSICAL RESTRAINTS IS~~
16 ~~ESPECIALLY CRITICAL DURING LABOR, DELIVERY, AND POSTPARTUM~~
17 ~~RECOVERY BECAUSE WOMEN OFTEN NEED TO MOVE DURING LABOR AND~~
18 ~~RECOVERY, INCLUDING MOVING THEIR LEGS AS PART OF THE BIRTHING~~
19 ~~PROCESS;~~

20 ~~(5) THE USE OF PHYSICAL RESTRAINTS ON A PREGNANT WOMAN~~
21 ~~CAN INTERFERE WITH THE MEDICAL STAFF’S ABILITY TO APPROPRIATELY~~
22 ~~ASSIST IN CHILDBIRTH OR TO CONDUCT SUDDEN EMERGENCY PROCEDURES;~~

23 ~~(6) THE AMERICAN MEDICAL ASSOCIATION, THE FEDERAL~~
24 ~~BUREAU OF PRISONS, THE U.S. MARSHALS SERVICE, THE AMERICAN~~
25 ~~CORRECTIONAL ASSOCIATION, THE AMERICAN CONGRESS OF OBSTETRICIANS~~
26 ~~AND GYNECOLOGISTS, AND THE AMERICAN PUBLIC HEALTH ASSOCIATION~~
27 ~~OPPOSE THE USE OF PHYSICAL RESTRAINTS ON WOMEN DURING LABOR,~~
28 ~~DELIVERY, AND POSTPARTUM RECOVERY BECAUSE IT IS UNNECESSARY AND~~
29 ~~DANGEROUS TO A WOMAN’S HEALTH AND WELL BEING; AND~~

30 ~~(7) INTERNATIONAL HUMAN RIGHTS BODIES HAVE EXPRESSED~~
31 ~~CONCERN ABOUT POLICIES THAT PERMIT THE USE OF PHYSICAL RESTRAINTS~~
32 ~~ON PREGNANT AND BIRTHING WOMEN.~~

1 [(a)] ~~(C)~~ **(B)** If a representation is made to the managing official of a
 2 correctional facility in the Department that an inmate in the correctional facility is
 3 pregnant and about to give birth, the managing official:

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

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

8 [(b)] ~~(D)~~ **(C)** Without notice, the Governor may:

9 (1) parole the inmate;

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

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

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

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

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

23 ~~(F)~~ **(E)** **A PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE**
 24 **WHILE THE INMATE IS IN LABOR OR DURING DELIVERY, EXCEPT AS**
 25 **DETERMINED BY THE MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF**
 26 **THE INMATE.**

27 ~~(G)~~ **(F)** **(1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, A**
 28 **PHYSICAL RESTRAINT MAY NOT BE USED ON AN INMATE KNOWN TO BE**
 29 **PREGNANT OR IN POSTPARTUM RECOVERY.**

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

32 **(I) THE MANAGING OFFICIAL OF A CORRECTIONAL**
 33 **FACILITY, THE MANAGING OFFICIAL'S DESIGNEE, OR A LOCAL SHERIFF MAKES**

1 AN INDIVIDUALIZED DETERMINATION, ~~CONTEMPORANEOUSLY~~ WHICH SHALL BE
 2 RECORDED ON THE TRANSPORT OR MEDICAL RECORD OF THE INMATE, THAT A
 3 PHYSICAL RESTRAINT ~~MUST BE USED~~ IS REQUIRED TO ENSURE THE SAFETY AND
 4 SECURITY OF THE INMATE, THE STAFF OF THE CORRECTIONAL FACILITY OR
 5 MEDICAL FACILITY, OTHER INMATES, OR THE PUBLIC ACCORDING TO POLICIES
 6 AND PROCEDURES ADOPTED BY THE DEPARTMENT AND THE MANAGING
 7 OFFICIAL OF A LOCAL CORRECTIONAL FACILITY OR THE MANAGING OFFICIAL
 8 OF THE AGENCY DESIGNATED TO TRANSPORT INMATES; AND

9 (II) THE PHYSICAL RESTRAINT IS THE LEAST RESTRICTIVE
 10 NECESSARY AND DOES NOT INCLUDE WAIST OR LEG RESTRAINTS.

11 (3) NOTWITHSTANDING PARAGRAPH (2) OF THIS SUBSECTION, IF
 12 A DOCTOR, NURSE, OR OTHER HEALTH PROFESSIONAL TREATING AN INMATE
 13 KNOWN TO BE PREGNANT OR IN POSTPARTUM RECOVERY REQUESTS THAT
 14 PHYSICAL RESTRAINTS NOT BE USED, THE CORRECTIONAL OFFICER OR OTHER
 15 LAW ENFORCEMENT OFFICER ACCOMPANYING THE INMATE SHALL
 16 IMMEDIATELY REMOVE ALL PHYSICAL RESTRAINTS.

17 (4) ~~IF A PHYSICAL RESTRAINT IS USED ON AN INMATE UNDER~~
 18 ~~THIS SUBSECTION, THE CORRECTIONAL FACILITY SHALL DOCUMENT THE USE~~
 19 ~~OF PHYSICAL RESTRAINTS, INCLUDING:~~

20 (I) ~~THE TYPE OF PHYSICAL RESTRAINT USED;~~

21 (II) ~~THE CIRCUMSTANCES THAT NECESSITATED THE USE OF~~
 22 ~~THE PHYSICAL RESTRAINT; AND~~

23 (III) ~~THE LENGTH OF TIME THE PHYSICAL RESTRAINT WAS~~
 24 ~~USED~~ THE DEPARTMENT AND THE MANAGING OFFICIAL OF EACH LOCAL
 25 CORRECTIONAL FACILITY OR THE MANAGING OFFICIAL OF THE AGENCY
 26 DESIGNATED TO TRANSPORT INMATES SHALL DEVELOP A POLICY FOR USE AT
 27 EACH CORRECTIONAL FACILITY THAT:

28 (I) REQUIRES A PHYSICAL RESTRAINT USED ON A
 29 PREGNANT INMATE DURING TRANSPORT TO BE THE LEAST RESTRICTIVE
 30 NECESSARY; AND

31 (II) ESTABLISHES A METHOD FOR REPORTING THE USE OF
 32 PHYSICAL RESTRAINTS ON PREGNANT INMATES.

33 [(d)] ~~(H)~~ (G) (1) The expenses of an inmate's accommodation, maintenance,
 34 and medical care incurred as a result of the inmate's transfer under subsection [(c)(1)]
 35 ~~(E)(1)~~ (D)(1) of this section shall be paid:

- 1 (i) by the inmate;
- 2 (ii) by relatives or friends of the inmate; or
- 3 (iii) from any available fund that may be used to pay the hospital
4 expenses of an inmate in the correctional facility.

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

- 7 (i) the county from which the inmate was committed is
8 responsible for payment of the expenses; and
- 9 (ii) the managing official of the correctional facility to which the
10 inmate was committed shall collect payment in accordance with Title 16 of the Health
11 – General Article.

12 [(e)] ~~(H)~~ (H) (1) After receiving proof from the father or other relative of the
13 child of the ability to properly care for the child, the Department may order that the
14 father or other relative take custody of the child.

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

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

22 [(f)] ~~(I)~~ (I) Notwithstanding any other provision of this section, the
23 Department may allow an inmate to participate in programming and to retain custody
24 of the newborn child in or out of custody if:

- 25 (1) the environment and program is consistent with the best interests
26 of the child and consistent with public safety; and
- 27 (2) the custody is not inconsistent with the parental rights of any
28 individual who is not detained or confined in a correctional facility.

29 **11-206.**

30 (A) IF A REPRESENTATION IS MADE TO THE MANAGING OFFICIAL OF A
31 LOCAL CORRECTIONAL FACILITY THAT AN INMATE IN THE CUSTODY OF THE
32 MANAGING OFFICIAL IS PREGNANT, THE MANAGING OFFICIAL ~~SHALL~~ MAY:

1 (1) BEFORE THE ANTICIPATED BIRTH, HAVE THE INMATE
2 TRANSFERRED FROM THE LOCAL CORRECTIONAL FACILITY TO ANOTHER
3 FACILITY THAT PROVIDES COMFORTABLE ACCOMMODATIONS, MAINTENANCE,
4 AND MEDICAL CARE UNDER SUPERVISION AND SAFEGUARDS THAT THE
5 MANAGING OFFICIAL DETERMINES NECESSARY TO PREVENT THE INMATE'S
6 ESCAPE FROM CUSTODY; AND

7 (2) RETURN THE INMATE TO THE LOCAL CORRECTIONAL
8 FACILITY AS SOON AFTER GIVING BIRTH AS THE INMATE'S HEALTH ALLOWS, AS
9 DETERMINED BY THE MEDICAL PROFESSIONAL RESPONSIBLE FOR THE CARE OF
10 THE INMATE.

11 (B) THE USE OF PHYSICAL RESTRAINTS ON AN INMATE DURING A
12 TRANSFER MADE UNDER THIS SECTION SHALL BE IN ACCORDANCE WITH §
13 9-601 OF THIS ARTICLE.

14 Article – Human Services

15 9-237.

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

19 (c) The standards shall include provisions establishing:

20 (1) a policy that eliminates the unnecessary use of detention and that
21 prioritizes diversion and appropriate nonsecure alternatives;

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

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

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

28 (5) specifications for the architectural structure of a juvenile detention
29 facility;

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

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

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

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

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

7 (11) ~~PROHIBITIONS AGAINST THE USE OF PHYSICAL RESTRAINT OF~~
8 ~~A PREGNANT JUVENILE EXCEPT UNDER CIRCUMSTANCES IN WHICH THE USE OF~~
9 ~~PHYSICAL RESTRAINTS ON A PREGNANT INMATE WOULD BE AUTHORIZED~~
10 ~~UNDER § 9-601 OF THE CORRECTIONAL SERVICES ARTICLE~~ RESTRAINTS ON AN
11 INDIVIDUAL KNOWN TO BE IN THE THIRD TRIMESTER OF PREGNANCY OR
12 DURING LABOR, DELIVERY, OR POSTPARTUM RECOVERY, INCLUDING DURING
13 ALL TRANSPORTS, UNLESS A FACILITY SUPERINTENDENT OR THE FACILITY
14 SUPERINTENDENT'S DESIGNEE DETERMINES THAT A PHYSICAL RESTRAINT IS
15 NECESSARY TO PROTECT THE INDIVIDUAL FROM HARMING HERSELF OR
16 OTHERS OR TO PREVENT THE INDIVIDUAL'S ESCAPE FROM CUSTODY.

17 SECTION 2. AND BE IT FURTHER ENACTED, That, on or before 30 days
18 before the end of each ~~fiscal year~~ calendar year until December 31, 2017, the Secretary
19 of Public Safety and Correctional Services ~~and the managing official of each local~~
20 ~~correctional facility in which a pregnant inmate has been physically restrained during~~
21 ~~the previous fiscal year~~ shall submit a report to the Governor and, in accordance with
22 § 2-1246 of the State Government Article, the General Assembly on ~~each instance of~~
23 ~~the use of physical restraints, including the documentation required to be recorded in~~
24 ~~accordance with this Act~~ the number of times physical restraints were used on a
25 pregnant inmate during labor, delivery, and postpartum recovery during the previous
26 calendar year in each State and local correctional facility.

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