

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 787
Judiciary

(Delegate Dumais, *et al.*)

Correctional Facilities - Pregnant Inmates - Medical Care

This bill requires each State and local correctional facility to have a written policy in place regarding the medical care of pregnant inmates, as specified. The managing official of a correctional facility must provide the required written policy to an inmate at the time of a positive pregnancy test result. The Maryland Commission on Correctional Standards must review each correctional facility's policy during regular inspections.

Fiscal Summary

State Effect: None. The bill generally codifies existing practice; any changes can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: Many local correctional facilities already have a policy in place; however, it is assumed that any facilities without such a policy can meet the bill's requirements with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The required written policy regarding the medical care of pregnant inmates must address, as specified:

- procedures for providing pregnancy testing to all female inmates;
- access to prenatal care;
- high-risk pregnancies;

- miscarriage management;
- access to abortion care;
- labor and delivery;
- postpartum recovery care;
- eligibility and access to behavioral health counseling and social services during the prenatal and postpartum recovery periods; and
- use of restraints during pregnancy, transportation, labor and delivery, and postpartum recovery.

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.

Chapter 212 of 2014 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 the Department of Public Safety and Correctional Services (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 provisions applicable to inmates in a State correctional facility.

Additional Information

Prior Introductions: None.

Cross File: SB 629 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Anne Arundel, Baltimore, Charles, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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