

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 829
Judiciary

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

Correctional Services - Pregnant Detainees and Inmates - Restraint Restrictions
and Reporting

This bill prohibits, with specified exceptions, a physical restraint from being used on an inmate in a State or local correctional facility when the inmate is known to be in the second or third trimester of pregnancy, including during labor, transport to a medical facility or birthing center, delivery, and postpartum recovery. The bill specifies that, under circumstances when a physical restraint is used, the restraint must not be a leg or waist restraint, and must be the least restrictive that is practical for the circumstance. No physical restraint may be used on an inmate in labor or during childbirth. The bill also requires the Department of Juvenile Services (DJS) to adopt regulations prohibiting the use of physical restraints in juvenile detention centers under specified conditions and with specified exceptions.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: None. The bill largely codifies current practice for State correctional facilities. Extension of those practices to DJS can be handled with existing budgeted resources.

Local Effect: None. 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: Under the bill, when a physical restraint is used, the security officer or managing official must make written findings regarding the use of the restraint, as specified. The written findings must be maintained by the facility for at least five years.

The bill requires the security officer of a local correctional facility to take specified actions, including the possible transfer of the inmate from the local correctional facility to another specified facility, when a representation is made that an inmate in the custody of the facility's managing official is pregnant and about to give birth. This 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.

On or before 30 days prior to the end of each fiscal year, the Commissioner of Correction and the managing official of each municipal and county correctional facility in which a pregnant inmate has been physically restrained during the previous fiscal year must report to the Governor and the General Assembly on each instance of physical restraint, including the written findings required under the bill.

DJS is required to adopt regulations prohibiting the use of physical restraints when a juvenile is known to be in the second or third trimester of pregnancy, including during labor, transport to a medical facility or birthing center, delivery, and postpartum recovery, unless physical restraints are necessary to prevent the juvenile from injuring the child, medical personnel, or juvenile services staff.

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: As of April 20, 2012, the Department of Public Safety and Correctional Services (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.

State Fiscal Effect: This bill codifies current practice for DPSCS and extends similar requirements to the DJS and local detention facilities. However, that codification would make a violation of current policy a statutory infraction, rather than a violation subject to internal disciplinary procedures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, and Frederick counties; Department of Health and Mental Hygiene; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510