

# HOUSE BILL 1032

E4

9lr1657

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By: **Delegate Cox**

Introduced and read first time: February 8, 2019

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Female Inmates and Inmates With Minor Children**  
3 **(Dignity for Incarcerated Women Act)**

4 FOR the purpose of requiring the Commissioner of Correction to place a certain inmate in  
5 a correctional facility that is within a certain distance from a certain address under  
6 certain circumstances; requiring the Department of Public Safety and Correctional  
7 Services to adopt certain regulations authorizing visitation of a certain inmate by  
8 the inmate's minor child or children; prohibiting use of a physical restraint on an  
9 inmate who has delivered a baby at a certain time unless certain requirements are  
10 met; requiring a certain employee to submit a certain report within a certain time  
11 period if a physical restraint is used on a certain inmate; prohibiting a certain search  
12 of a certain inmate except under certain circumstances; requiring a certain employee  
13 to submit a certain report within a certain time period if a certain search is conducted  
14 on a certain inmate; requiring the Department to provide certain inmates certain  
15 nutritional food and supplements; prohibiting the Department from placing a certain  
16 inmate in certain restrictive housing except under certain circumstances; requiring  
17 a certain correctional facility employee to submit a certain report within a certain  
18 time period if a certain inmate is placed in certain restrictive housing; prohibiting  
19 the Department from assigning a certain inmate to a certain bed; requiring the  
20 Department to allow a certain child to remain with a certain inmate for a certain  
21 period of time, with a certain exception; requiring the Department to provide certain  
22 nutritional and hygiene products to a certain inmate and certain child; requiring the  
23 Department to provide certain products free of charge to a certain indigent inmate;  
24 requiring the managing official of a local correctional facility to compile certain  
25 reports and submit a certain summary to the Secretary of Public Safety and  
26 Correctional Services at a certain time; requiring the Department to develop and  
27 provide certain training for certain employees; requiring the Department to develop  
28 and provide certain educational programming for certain inmates; requiring the  
29 Department to adopt certain regulations limiting certain inspections; authorizing a  
30 certain employee to conduct a certain inspection under certain circumstances;  
31 requiring a certain employee to submit a certain report within a certain time period

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 if a certain inspection is conducted under certain circumstances; defining a certain  
2 term; and generally relating to inmates.

3 BY adding to  
4 Article – Correctional Services  
5 Section 9–107 and 9–617  
6 Annotated Code of Maryland  
7 (2017 Replacement Volume and 2018 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article – Correctional Services  
10 Section 9–601  
11 Annotated Code of Maryland  
12 (2017 Replacement Volume and 2018 Supplement)

13 Preamble

14 WHEREAS, The number of incarcerated women in the State has increased; and

15 WHEREAS, A significant percentage of incarcerated women nationally have  
16 children under the age of 18 years; and

17 WHEREAS, Children who grow up with parents in prison are significantly more  
18 likely to become incarcerated themselves; and

19 WHEREAS, Prisoners who maintain close contact with their family members while  
20 incarcerated have better postrelease outcomes and lower recidivism rates; and

21 WHEREAS, Children of inmates who are able to visit their imprisoned parents have  
22 increased cognitive skills, improved academic self-esteem, and greater self-control and  
23 change schools much less often; and

24 WHEREAS, Prenatal care significantly improves outcomes for pregnant women and  
25 infants; and

26 WHEREAS, Participation in postdelivery mother–infant residency or nursery  
27 programs is associated with lower recidivism rates, reduced risk of babies entering foster  
28 care, and improved odds that mothers and their babies will remain together after the  
29 mother’s period of incarceration; and

30 WHEREAS, Use of restrictive housing and restraints on incarcerated pregnant  
31 women may be extremely dangerous to the health of mothers, fetuses, and infants; and

32 WHEREAS, Nationally, a significant percentage of women in prison were victims of  
33 sexual assault prior to entering the prison system; now, therefore,

34 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

1 That the Laws of Maryland read as follows:

2 **Article – Correctional Services**

3 **9–107.**

4 (A) IF PRACTICABLE, THE COMMISSIONER SHALL PLACE AN INMATE WHO IS  
5 A PARENT OF A MINOR CHILD IN A CORRECTIONAL FACILITY THAT IS WITHIN 250  
6 MILES OF THE INMATE’S PERMANENT ADDRESS OF RECORD.

7 (B) (1) THE DEPARTMENT SHALL ADOPT REGULATIONS AUTHORIZING  
8 VISITATION OF AN INMATE WHO RESIDES UNDER LOW- OR MINIMUM-SECURITY  
9 CLASSIFICATION BY THE INMATE’S MINOR CHILD OR CHILDREN.

10 (2) THE REGULATIONS ADOPTED UNDER THIS SUBSECTION SHALL  
11 AUTHORIZE AT LEAST TWO CONTACT VISITS PER WEEK PER MINOR CHILD UNLESS A  
12 CORRECTIONAL FACILITY EMPLOYEE REASONABLY BELIEVES THAT A CHILD:

13 (I) MAY BE HARMED DURING VISITATION; OR

14 (II) POSES A SECURITY RISK DUE TO GANG AFFILIATION, PRIOR  
15 INVOLVEMENT IN THE JUVENILE JUSTICE SYSTEM, OR A PRIOR VIOLATION OF A  
16 FACILITY CONTRABAND POLICY.

17 9–601.

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

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

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

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

29 (5) “RESTRICTIVE HOUSING” HAS THE MEANING STATED IN § 9–614  
30 OF THIS SUBTITLE.

31 (b) If a representation is made to the managing official of a correctional facility in

1 the Department that an inmate in the correctional facility is pregnant and about to give  
2 birth, the managing official:

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

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

7 (c) Without notice, the Governor may:

8 (1) parole the inmate;

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

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

12 (d) If the Governor suspends the execution of an inmate's sentence, the managing  
13 official of the correctional facility:

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

19 (2) shall require the inmate to be returned to the correctional facility as  
20 soon after giving birth as the inmate's health allows, as determined by the medical  
21 professional responsible for the care of the inmate.

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

25 (f) (1) Subject to paragraph (2) of this subsection, a physical restraint may not  
26 be used on an inmate **WHO IS** known to be pregnant [or], **WHO IS** in postpartum recovery,  
27 **OR WHO HAS DELIVERED A BABY WITHIN THE PRIOR 30 DAYS.**

28 (2) A physical restraint may be used on an inmate **WHO IS** known to be  
29 pregnant [or], **WHO IS** in postpartum recovery, **OR WHO HAS DELIVERED A BABY WITHIN**  
30 **THE PRIOR 30 DAYS** if:

31 (i) the managing official of a correctional facility, the managing  
32 official's designee, or a local sheriff makes an individualized determination, which shall be  
33 recorded on the transport or medical record of the inmate, that a physical restraint is  
34 required to ensure the safety and security of the inmate, the staff of the correctional facility

1 or medical facility, other inmates, or the public according to policies and procedures adopted  
2 by the Department and the managing official of a local correctional facility or the managing  
3 official of the agency designated to transport inmates; and

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

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

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

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

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

18 **(5) IF A PHYSICAL RESTRAINT IS USED ON AN INMATE WHO IS KNOWN**  
19 **TO BE PREGNANT, WHO IS IN POSTPARTUM RECOVERY, OR WHO HAS DELIVERED A**  
20 **BABY WITHIN THE PRIOR 30 DAYS, THE CORRECTIONAL FACILITY EMPLOYEE WHO**  
21 **ORDERED THE USE OF THE PHYSICAL RESTRAINT SHALL SUBMIT A WRITTEN**  
22 **REPORT CONTAINING THE JUSTIFICATION FOR USING THE PHYSICAL RESTRAINT TO**  
23 **THE MANAGING OFFICIAL OF THE FACILITY WITHIN 72 HOURS AFTER THE USE OF**  
24 **THE RESTRAINT.**

25 **(G) (1) EXCEPT FOR A QUALIFIED HEALTH CARE PROFESSIONAL, A**  
26 **CORRECTIONAL FACILITY EMPLOYEE MAY NOT CONDUCT A BODY CAVITY SEARCH**  
27 **OF A PREGNANT INMATE UNLESS THE CORRECTIONAL FACILITY EMPLOYEE**  
28 **REASONABLY BELIEVES THAT THE PREGNANT INMATE IS CONCEALING**  
29 **CONTRABAND.**

30 **(2) IF A CORRECTIONAL FACILITY EMPLOYEE CONDUCTS A BODY**  
31 **CAVITY SEARCH OF A PREGNANT INMATE, THE CORRECTIONAL FACILITY EMPLOYEE**  
32 **SHALL SUBMIT A WRITTEN REPORT CONTAINING THE JUSTIFICATION FOR THE BODY**  
33 **CAVITY SEARCH AND STATING WHETHER CONTRABAND WAS RECOVERED TO THE**  
34 **MANAGING OFFICIAL OF THE FACILITY WITHIN 72 HOURS AFTER THE BODY CAVITY**  
35 **SEARCH.**

36 **(H) THE DEPARTMENT SHALL ENSURE THAT PREGNANT INMATES ARE**

1 PROVIDED SUFFICIENT FOOD AND DIETARY SUPPLEMENTS AS ORDERED BY A  
2 PHYSICIAN, A PHYSICIAN STAFF MEMBER, OR A FACILITY NUTRITIONIST TO MEET  
3 GENERALLY ACCEPTED PRENATAL NUTRITIONAL GUIDELINES FOR PREGNANT  
4 WOMEN.

5 (I) (1) THE DEPARTMENT MAY NOT PLACE A PREGNANT INMATE OR AN  
6 INMATE WHO HAS GIVEN BIRTH WITHIN THE PRIOR 30 DAYS IN RESTRICTIVE  
7 HOUSING UNLESS A CORRECTIONAL FACILITY EMPLOYEE REASONABLY BELIEVES  
8 THAT THE INMATE WILL HARM OTHERS OR THE INMATE'S SELF OR THAT THE INMATE  
9 POSES A SUBSTANTIAL FLIGHT RISK.

10 (2) IF A CORRECTIONAL FACILITY EMPLOYEE AUTHORIZES THE  
11 PLACEMENT OF AN INMATE IN RESTRICTIVE HOUSING, THE CORRECTIONAL  
12 FACILITY EMPLOYEE SHALL SUBMIT A WRITTEN REPORT CONTAINING THE  
13 JUSTIFICATION FOR CONFINING THE INMATE TO THE MANAGING OFFICIAL OF THE  
14 FACILITY WITHIN 72 HOURS AFTER THE INMATE'S TRANSFER.

15 (J) THE DEPARTMENT MAY NOT ASSIGN A PREGNANT INMATE TO A BED  
16 THAT IS ELEVATED MORE THAN 3 FEET FROM THE FLOOR OF THE FACILITY.

17 [(g)] (K) (1) The expenses of an inmate's accommodation, maintenance, and  
18 medical care incurred as a result of the inmate's transfer under subsection (d)(1) of this  
19 section shall be paid:

20 (i) by the inmate;

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

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

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

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

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

31 [(h)] (L) (1) After receiving proof from the father or other relative of the child  
32 of the ability to properly care for the child, the Department may order that the father or  
33 other relative take custody of the child.

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

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

8           **[(i)] (M)     (1)**     Notwithstanding any other provision of this section, the  
9 Department may allow an inmate to participate in programming and to retain custody of  
10 the newborn child in or out of custody if:

11                   **[(1)] (I)**     the environment and program is consistent with the best  
12 interests of the child and consistent with public safety; and

13                   **[(2)] (II)**    the custody is not inconsistent with the parental rights of  
14 any individual who is not detained or confined in a correctional facility.

15                   **(2)     THE DEPARTMENT SHALL ALLOW THE NEWBORN CHILD TO**  
16 **REMAIN WITH THE INMATE FOR AT LEAST 72 HOURS AFTER BIRTH UNLESS A**  
17 **MEDICAL PROVIDER REASONABLY BELIEVES THAT THE INMATE POSES A HEALTH OR**  
18 **SAFETY RISK TO THE NEWBORN CHILD.**

19                   **(3)     THE DEPARTMENT SHALL:**

20                           **(I)     MAKE NECESSARY NUTRITIONAL AND HYGIENE PRODUCTS,**  
21 **INCLUDING DIAPERS, AVAILABLE FOR CARE OF THE NEWBORN CHILD; AND**

22                           **(II)    PROVIDE THE NECESSARY NUTRITIONAL AND HYGIENE**  
23 **PRODUCTS WITHOUT COST TO THE INMATE IF THE INMATE IS INDIGENT.**

24           **[(j)] (N)     (1)**     This subsection applies to local correctional facilities and  
25 correctional facilities in the Department.

26           (2)     Each correctional facility shall have a written policy in place regarding  
27 the medical care of pregnant inmates that addresses:

28                   (i)     procedures for providing pregnancy testing to all female inmates,  
29 including on intake;

30                   (ii)    access to prenatal care, including:

31                           1.     routine appointments, laboratory work, and ultrasounds;

32                           2.     procedures and schedules for providing pregnant inmates

- 1 with laboratory and testing results; and
- 2 3. nutritional needs and counseling;
- 3 (iii) high-risk pregnancies, including maternal substance abuse  
4 disorder;
- 5 (iv) miscarriage management, including:
- 6 1. procedures for evaluating the appropriate level of care;
- 7 2. protocol for on-site and off-site miscarriage management;
- 8 3. emergency miscarriage management; and
- 9 4. follow-up care;
- 10 (v) access to abortion care, including:
- 11 1. information about abortion providers; and
- 12 2. transportation;
- 13 (vi) access to child placement resources, including:
- 14 1. information about adoption or referral to adoption  
15 resources, including kinship adoption, open and closed adoption, and agency and private  
16 adoption;
- 17 2. foster care; and
- 18 3. kinship care;
- 19 (vii) labor and delivery, including:
- 20 1. the facility where labor and delivery shall occur;
- 21 2. transportation; and
- 22 3. transmittal of medical records to the facility for labor and  
23 delivery;
- 24 (viii) postpartum recovery care, including:
- 25 1. transportation to the correctional facility from the labor  
26 and delivery facility;



- 1 2. access to hygiene products;
- 2 3. a schedule for postpartum recovery care; and
- 3 4. accommodations for pumping and storage of breast milk;

4 (ix) eligibility and access to behavioral health counseling and social  
5 services during the prenatal and postpartum recovery periods; and

6 (x) use of restraints during pregnancy, transportation, labor and  
7 delivery, and postpartum recovery.

8 (3) The managing official of a correctional facility shall provide the written  
9 policy required under this subsection to an inmate at the time of a positive pregnancy test  
10 result.

11 **(4) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY SHALL**  
12 **COMPILE A SUMMARY OF ALL WRITTEN REPORTS RECEIVED UNDER SUBSECTIONS**  
13 **(F), (G), AND (I) OF THIS SECTION AND SEND THE SUMMARY TO THE SECRETARY**  
14 **EACH MONTH.**

15 ~~[(4)]~~ **(5)** The Maryland Commission on Correctional Standards shall  
16 review each correctional facility's policy required under this subsection during regular  
17 inspections.

18 **(O) (1) THE DEPARTMENT SHALL DEVELOP AND PROVIDE TO ALL**  
19 **CORRECTIONAL FACILITY EMPLOYEES WHO HAVE CONTACT WITH PREGNANT**  
20 **INMATES TRAINING RELATED TO THE PHYSICAL AND MENTAL HEALTH OF**  
21 **PREGNANT INMATES AND FETUSES, INCLUDING:**

22 **(I) GENERAL CARE OF PREGNANT WOMEN;**

23 **(II) THE IMPACT OF RESTRAINTS ON PREGNANT INMATES AND**  
24 **FETUSES;**

25 **(III) THE IMPACT OF BEING PLACED IN RESTRICTIVE HOUSING**  
26 **ON PREGNANT INMATES; AND**

27 **(IV) THE IMPACT OF BODY CAVITY SEARCHES ON PREGNANT**  
28 **INMATES.**

29 **(2) THE DEPARTMENT SHALL DEVELOP AND PROVIDE EDUCATIONAL**  
30 **PROGRAMMING FOR PREGNANT INMATES RELATED TO:**

31 **(I) PRENATAL CARE;**

- 1                   **(II) PREGNANCY-SPECIFIC HYGIENE;**  
2                   **(III) PARENTING SKILLS;**  
3                   **(IV) THE IMPACT OF ALCOHOL AND DRUGS ON A FETUS; AND**  
4                   **(V) THE GENERAL HEALTH OF CHILDREN.**

5 **9-617.**

6           **(A) THE DEPARTMENT SHALL ADOPT REGULATIONS THAT LIMIT**  
7 **INSPECTIONS CONDUCTED BY A MALE CORRECTIONAL FACILITY EMPLOYEE OF AN**  
8 **AREA WHERE A FEMALE INMATE IS IN A STATE OF UNDRESS.**

9           **(B) (1) IF A FEMALE CORRECTIONAL FACILITY EMPLOYEE IS NOT**  
10 **AVAILABLE, A MALE CORRECTIONAL FACILITY EMPLOYEE MAY CONDUCT AN**  
11 **INSPECTION OF AN AREA WHERE A FEMALE INMATE IS IN A STATE OF UNDRESS.**

12                   **(2) IF A MALE CORRECTIONAL FACILITY EMPLOYEE CONDUCTS AN**  
13 **INSPECTION OF AN AREA WHERE A FEMALE INMATE IS IN A STATE OF UNDRESS, THE**  
14 **MALE CORRECTIONAL FACILITY EMPLOYEE SHALL SUBMIT A WRITTEN REPORT**  
15 **CONTAINING THE JUSTIFICATION FOR THE INSPECTION TO THE MANAGING**  
16 **OFFICIAL OF THE FACILITY WITHIN 72 HOURS AFTER THE INSPECTION.**

17           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
18 October 1, 2019.