

SENATE BILL 809

E4

9lr1763
CF HB 745

By: **Senators Lee, Benson, Carter, Elfreth, Feldman, Guzzone, Hayes, Hester, Kagan, Nathan-Pulliam, Patterson, Peters, Smith, Waldstreicher, Washington, West, Young, and Zucker**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2019

CHAPTER _____

1 AN ACT concerning

2 **Correctional Facilities – Restrictive Housing – Pregnant Inmates**

3 FOR the purpose of requiring each correctional facility to have a written policy in place
4 regarding the medical care of pregnant inmates that addresses the use of medical
5 isolation or restrictive housing for certain purposes during pregnancy and during a
6 certain post-pregnancy period; establishing that a pregnant inmate may not be
7 involuntarily placed in certain restrictive housing, with certain exceptions; providing
8 that a certain pregnant inmate may be placed in certain restrictive housing if a
9 certain managing official makes a certain determination; requiring a certain
10 managing official to make a certain documentation; requiring that a certain
11 documentation be reviewed and affirmed in a certain manner at a certain time;
12 requiring that a certain individual placed in certain restrictive housing be medically
13 assessed at a certain time, housed only in a certain setting, and given a certain
14 treatment plan; requiring a certain pregnant inmate to be admitted to the infirmary
15 by order of a certain medical professional; requiring a certain inmate to be housed in
16 the infirmary as an admitted patient under certain circumstances until a certain
17 time; requiring a certain inmate who has been housed in the infirmary to be provided
18 with certain benefits and privileges; requiring a certain inmate to be provided a
19 certain notification within a certain period of time; ~~requiring a correctional facility~~
20 ~~to post certain information in a certain manner~~; requiring the Secretary of Public
21 Safety and Correctional Services to establish a certain process; requiring a certain
22 managing official of a correctional facility to submit a certain report under certain
23 circumstances; ~~requiring the Secretary, on or before a certain date and annually~~

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 ~~thereafter, to make a certain report to the General Assembly,~~ defining a certain term;
2 and generally relating to pregnant inmates.

3 BY repealing and reenacting, without amendments,
4 Article – Correctional Services
5 Section 9–601(j)(1)
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(j)(2)(ix) and (x)
11 Annotated Code of Maryland
12 (2017 Replacement Volume and 2018 Supplement)

13 BY adding to
14 Article – Correctional Services
15 Section 9–602(j)(2)(xi) and 9–601.1
16 Annotated Code of Maryland
17 (2017 Replacement Volume and 2018 Supplement)

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

20 **Article – Correctional Services**

21 9–601.

22 (j) (1) This subsection applies to local correctional facilities and correctional
23 facilities in the Department.

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

26 (ix) eligibility and access to behavioral health counseling and social
27 services during the prenatal and postpartum recovery periods; [and]

28 (x) use of restraints during pregnancy, transportation, labor and
29 delivery, and postpartum recovery; AND

30 (XI) USE OF INVOLUNTARY MEDICAL ISOLATION OR
31 RESTRICTIVE HOUSING FOR ADMINISTRATIVE, PROTECTIVE, OR DISCIPLINARY
32 PURPOSES DURING PREGNANCY AND 8 WEEKS DURING THE POSTPARTUM OR
33 POST-PREGNANCY RECOVERY PERIOD.

34 **9–601.1.**

1 (A) IN THIS SECTION, “RESTRICTIVE HOUSING” HAS THE MEANING STATED
2 IN § 9-614 OF THIS SUBTITLE.

3 (B) EXCEPT AS PROVIDED IN THIS SECTION, A PREGNANT INMATE MAY NOT
4 BE INVOLUNTARILY PLACED IN RESTRICTIVE HOUSING, INCLUDING INVOLUNTARY
5 MEDICAL ISOLATION OR INFIRMARY.

6 (C) (1) A PREGNANT INMATE MAY BE INVOLUNTARILY PLACED IN
7 RESTRICTIVE HOUSING IF THE MANAGING OFFICIAL OF THE CORRECTIONAL
8 FACILITY, IN CONSULTATION WITH THE PERSON OVERSEEING WOMEN’S HEALTH
9 AND SERVICES IN THE FACILITY, MAKES AN INDIVIDUALIZED AND WRITTEN
10 DETERMINATION THAT RESTRICTIVE HOUSING IS REQUIRED AS A TEMPORARY
11 RESPONSE TO:

12 (I) BEHAVIOR THAT POSES:

13 ~~(H)~~ 1. A SERIOUS AND IMMEDIATE RISK OF PHYSICAL HARM
14 TO THE INMATE OR ANOTHER; OR

15 ~~(H)~~ 2. AN IMMEDIATE AND CREDIBLE FLIGHT RISK THAT
16 CANNOT BE REASONABLY PREVENTED BY OTHER MEANS; OR

17 (II) A SITUATION THAT POSES A RISK OF SPREADING A
18 COMMUNICABLE DISEASE THAT CANNOT BE REASONABLY MITIGATED BY OTHER
19 MEANS.

20 (2) A MANAGING OFFICIAL WHO MAKES A DETERMINATION
21 DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL DOCUMENT THE
22 REASON WHY OTHER LESS RESTRICTIVE HOUSING IS NOT POSSIBLE.

23 (3) THE DETERMINATION DESCRIBED IN PARAGRAPH (1) OF THIS
24 SUBSECTION SHALL BE REVIEWED AND AFFIRMED AT LEAST EVERY 24 HOURS IN
25 WRITING WITH A COPY PROVIDED TO THE INMATE.

26 (D) AN INDIVIDUAL PLACED IN RESTRICTIVE HOUSING UNDER THIS
27 SECTION SHALL BE:

28 (1) MEDICALLY ASSESSED EVERY 8 HOURS;

29 (2) HOUSED ONLY IN THE LEAST RESTRICTIVE SETTING CONSISTENT
30 WITH THE HEALTH AND SAFETY OF THE INDIVIDUAL; AND

1 **(3) GIVEN AN INTENSIVE TREATMENT PLAN DEVELOPED AND**
2 **APPROVED BY THE PERSON OVERSEEING WOMEN'S HEALTH AND SERVICES IN THE**
3 **FACILITY.**

4 **(E) (1) A PREGNANT INMATE WHO IS DEEMED TO NEED INFIRMARY CARE**
5 **SHALL BE ADMITTED TO THE INFIRMARY ON ORDER OF A PRIMARY CARE NURSE**
6 **PRACTITIONER OR OBSTETRICIAN.**

7 **(2) IF THE INMATE IS OVERDUE IN THE PREGNANCY, THE INMATE**
8 **SHALL BE HOUSED IN THE INFIRMARY AS AN ADMITTED PATIENT UNTIL LABOR**
9 **BEGINS OR UNTIL THE OBSTETRICAL CONSULTANT HAS MADE OTHER HOUSING AND**
10 **CARE RECOMMENDATIONS.**

11 **(3) A PREGNANT INMATE WHO HAS BEEN PLACED IN THE INFIRMARY**
12 **SHALL BE PROVIDED:**

13 **(I) ACCESS TO REGULAR OUTSIDE RECREATION CONSISTENT**
14 **WITH THE GENERAL POPULATION;**

15 **(II) ~~THE ABILITY TO PURCHASE FOOD ITEMS THROUGH THE~~**
16 **~~COMMISSARY;~~**

17 **~~(III)~~ ACCESS TO VISITS, MAIL, AND TELEPHONE CONSISTENT**
18 **WITH GENERAL POPULATION PRIVILEGES; AND**

19 **~~(IV)~~ (III) THE ABILITY TO CONTINUE TO PARTICIPATE IN WORK**
20 **DETAIL, PROGRAMMING, AND CLASSES.**

21 **(F) (1) WITHIN 48 HOURS AFTER CONFIRMATION BY A HEALTH CARE**
22 **PROFESSIONAL THAT AN INMATE IS PREGNANT, THE INMATE SHALL BE NOTIFIED IN**
23 **WRITING OF THE RESTRICTIONS ON A PREGNANT INMATE BEING PLACED IN**
24 **RESTRICTIVE HOUSING PROVIDED IN THIS SECTION.**

25 **(2) ~~(I) EACH CORRECTIONAL FACILITY SHALL POST THE~~**
26 **~~RESTRICTIONS ON A PREGNANT INMATE BEING PLACED IN RESTRICTIVE HOUSING~~**
27 **~~PROVIDED IN THIS SECTION.~~**

28 **~~(II) THE POSTING REQUIRED IN THIS PARAGRAPH SHALL BE~~**
29 **~~PLACED IN CONSPICUOUS PLACES WITHIN THE CORRECTIONAL FACILITY WHERE~~**
30 **~~INMATES ARE LIKELY TO SEE THE POSTING, INCLUDING HOUSING UNITS, MEDICAL~~**
31 **~~UNITS, LIBRARIES, AND ALL INMATE HANDBOOKS.~~**

32 **~~(III)~~ THE SECRETARY SHALL ESTABLISH A PROCESS THROUGH**
33 **WHICH AN INMATE MAY REPORT A VIOLATION OF THIS SECTION.**

1 (G) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY WHO
2 AUTHORIZED THE PLACEMENT OF A PREGNANT INMATE IN RESTRICTIVE HOUSING
3 SHALL SUBMIT WITHIN 30 DAYS OF THE PLACEMENT A REPORT IN WRITING TO THE
4 ~~SECRETARY~~ COMMISSIONER OF CORRECTION, THE COMMISSIONER OF PRETRIAL
5 DETENTION AND SERVICES, AND ~~TO~~ THE PERSON OVERSEEING WOMEN'S HEALTH
6 AND SERVICES IN THE FACILITY THAT DESCRIBES THE FACTS AND CIRCUMSTANCES
7 SURROUNDING THE PLACEMENT, INCLUDING:

8 (1) THE REASONING FOR THE DETERMINATION TO PLACE THE
9 INMATE IN RESTRICTIVE HOUSING;

10 (2) DETAILS OF THE PLACEMENT, INCLUDING THE NAMES OF THOSE
11 WHO CONDUCTED MEDICAL ASSESSMENTS OF THE INMATE, DATES AND TIMES OF
12 PLACEMENT, AND THE DATE, IF APPLICABLE, THE INMATE WAS RELEASED FROM
13 RESTRICTIVE HOUSING; AND

14 (3) ANY PHYSICAL OR MENTAL EFFECTS ON THE INMATE OR FETUS
15 RESULTING FROM THE PLACEMENT OBSERVED OR REPORTED BY THE PERSON
16 OVERSEEING WOMEN'S HEALTH AND SERVICES IN THE FACILITY.

17 ~~(H) ON OR BEFORE OCTOBER 1, 2020, AND ANNUALLY THEREAFTER, THE~~
18 ~~SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL REPORT TO~~
19 ~~THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE~~
20 ~~GOVERNMENT ARTICLE, WITHOUT ANY PERSONALLY IDENTIFIABLE INFORMATION~~
21 ~~OF ANY INMATE, ON:~~

22 ~~(1) THE NUMBER OF PREGNANT INMATES PLACED IN RESTRICTIVE~~
23 ~~HOUSING DURING THE PREVIOUS YEAR; AND~~

24 ~~(2) THE OUTCOME OF THE PREGNANCIES, INCLUDING THE NUMBER~~
25 ~~OF STILLBIRTHS, MISCARRIAGES, ABORTIONS, ECTOPIC PREGNANCIES, MATERNAL~~
26 ~~DEATHS, NEONATAL DEATHS, AND PRETERM BIRTHS.~~

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