

SENATE BILL 809

E4

9lr1763
CF 9lr2366

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

A BILL ENTITLED

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

26 BY repealing and reenacting, without amendments,

27 Article – Correctional Services

28 Section 9–601(j)(1)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2017 Replacement Volume and 2018 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Correctional Services
5 Section 9–601(j)(2)(ix) and (x)
6 Annotated Code of Maryland
7 (2017 Replacement Volume and 2018 Supplement)

8 BY adding to
9 Article – Correctional Services
10 Section 9–602(j)(2)(xi) and 9–601.1
11 Annotated Code of Maryland
12 (2017 Replacement Volume and 2018 Supplement)

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

15 **Article – Correctional Services**

16 9–601.

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

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

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

23 (x) use of restraints during pregnancy, transportation, labor and
24 delivery, and postpartum recovery; **AND**

25 **(XI) USE OF INVOLUNTARY MEDICAL ISOLATION OR**
26 **RESTRICTIVE HOUSING FOR ADMINISTRATIVE, PROTECTIVE, OR DISCIPLINARY**
27 **PURPOSES DURING PREGNANCY AND 8 WEEKS DURING THE POSTPARTUM OR**
28 **POST-PREGNANCY RECOVERY PERIOD.**

29 **9–601.1.**

30 **(A) IN THIS SECTION, “RESTRICTIVE HOUSING” HAS THE MEANING STATED**
31 **IN § 9–614 OF THIS SUBTITLE.**

32 **(B) EXCEPT AS PROVIDED IN THIS SECTION, A PREGNANT INMATE MAY NOT**
33 **BE INVOLUNTARILY PLACED IN RESTRICTIVE HOUSING, INCLUDING INVOLUNTARY**

1 MEDICAL ISOLATION OR INFIRMARY.

2 (C) (1) A PREGNANT INMATE MAY BE INVOLUNTARILY PLACED IN
3 RESTRICTIVE HOUSING IF THE MANAGING OFFICIAL OF THE CORRECTIONAL
4 FACILITY, IN CONSULTATION WITH THE PERSON OVERSEEING WOMEN'S HEALTH
5 AND SERVICES IN THE FACILITY, MAKES AN INDIVIDUALIZED AND WRITTEN
6 DETERMINATION THAT RESTRICTIVE HOUSING IS REQUIRED AS A TEMPORARY
7 RESPONSE TO BEHAVIOR THAT POSES:

8 (I) A SERIOUS AND IMMEDIATE RISK OF PHYSICAL HARM; OR

9 (II) AN IMMEDIATE AND CREDIBLE FLIGHT RISK THAT CANNOT
10 BE REASONABLY PREVENTED BY OTHER MEANS.

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

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

17 (D) AN INDIVIDUAL PLACED IN RESTRICTIVE HOUSING UNDER THIS
18 SECTION SHALL BE:

19 (1) MEDICALLY ASSESSED EVERY 8 HOURS;

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

22 (3) GIVEN AN INTENSIVE TREATMENT PLAN DEVELOPED AND
23 APPROVED BY THE PERSON OVERSEEING WOMEN'S HEALTH AND SERVICES IN THE
24 FACILITY.

25 (E) (1) A PREGNANT INMATE WHO IS DEEMED TO NEED INFIRMARY CARE
26 SHALL BE ADMITTED TO THE INFIRMARY ON ORDER OF A PRIMARY CARE NURSE
27 PRACTITIONER OR OBSTETRICIAN.

28 (2) IF THE INMATE IS OVERDUE IN THE PREGNANCY, THE INMATE
29 SHALL BE HOUSED IN THE INFIRMARY AS AN ADMITTED PATIENT UNTIL LABOR
30 BEGINS OR UNTIL THE OBSTETRICAL CONSULTANT HAS MADE OTHER HOUSING AND
31 CARE RECOMMENDATIONS.

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

3 **(I) ACCESS TO REGULAR OUTSIDE RECREATION CONSISTENT**
4 **WITH THE GENERAL POPULATION;**

5 **(II) THE ABILITY TO PURCHASE FOOD ITEMS THROUGH THE**
6 **COMMISSARY;**

7 **(III) ACCESS TO VISITS, MAIL, AND TELEPHONE CONSISTENT**
8 **WITH GENERAL POPULATION PRIVILEGES; AND**

9 **(IV) THE ABILITY TO CONTINUE TO PARTICIPATE IN WORK**
10 **DETAIL, PROGRAMMING, AND CLASSES.**

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

15 **(2) (I) EACH CORRECTIONAL FACILITY SHALL POST THE**
16 **RESTRICTIONS ON A PREGNANT INMATE BEING PLACED IN RESTRICTIVE HOUSING**
17 **PROVIDED IN THIS SECTION.**

18 **(II) THE POSTING REQUIRED IN THIS PARAGRAPH SHALL BE**
19 **PLACED IN CONSPICUOUS PLACES WITHIN THE CORRECTIONAL FACILITY WHERE**
20 **INMATES ARE LIKELY TO SEE THE POSTING, INCLUDING HOUSING UNITS, MEDICAL**
21 **UNITS, LIBRARIES, AND ALL INMATE HANDBOOKS.**

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

24 **(G) THE MANAGING OFFICIAL OF A CORRECTIONAL FACILITY WHO**
25 **AUTHORIZED THE PLACEMENT OF A PREGNANT INMATE IN RESTRICTIVE HOUSING**
26 **SHALL SUBMIT WITHIN 30 DAYS OF THE PLACEMENT A REPORT IN WRITING TO THE**
27 **SECRETARY AND TO THE PERSON OVERSEEING WOMEN'S HEALTH AND SERVICES IN**
28 **THE FACILITY THAT DESCRIBES THE FACTS AND CIRCUMSTANCES SURROUNDING**
29 **THE PLACEMENT, INCLUDING:**

30 **(1) THE REASONING FOR THE DETERMINATION TO PLACE THE**
31 **INMATE IN RESTRICTIVE HOUSING;**

32 **(2) DETAILS OF THE PLACEMENT, INCLUDING THE NAMES OF THOSE**

1 WHO CONDUCTED MEDICAL ASSESSMENTS OF THE INMATE, DATES AND TIMES OF
2 PLACEMENT, AND THE DATE, IF APPLICABLE, THE INMATE WAS RELEASED FROM
3 RESTRICTIVE HOUSING; AND

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

7 (H) ON OR BEFORE OCTOBER 1, 2020, AND ANNUALLY THEREAFTER, THE
8 SECRETARY OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL REPORT TO
9 THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE
10 GOVERNMENT ARTICLE, WITHOUT ANY PERSONALLY IDENTIFIABLE INFORMATION
11 OF ANY INMATE, ON:

12 (1) THE NUMBER OF PREGNANT INMATES PLACED IN RESTRICTIVE
13 HOUSING DURING THE PREVIOUS YEAR; AND

14 (2) THE OUTCOME OF THE PREGNANCIES, INCLUDING THE NUMBER
15 OF STILLBIRTHS, MISCARRIAGES, ABORTIONS, ECTOPIC PREGNANCIES, MATERNAL
16 DEATHS, NEONATAL DEATHS, AND PRETERM BIRTHS.

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