

HB 1032

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1032
Judiciary

Correctional Services - Female Inmates and Inmates With Minor Children
(Dignity for Incarcerated Women Act)

This bill requires the Commissioner of Correction, if practicable, to place an inmate who is the parent of a minor child in a correctional facility that is within 250 miles of the inmate's permanent address of record. The bill alters and establishes requirements, limitations, and prohibitions relating to the use of physical restraints, body cavity searches, and restrictive housing for pregnant inmates and establishes a method for reporting each instance in which such actions are used. The bill also establishes requirements relating to newborn care and bedding and nutrition for pregnant inmates. In addition, the bill requires the Department of Public Safety and Correctional Services (DPSCS) to adopt specified regulations.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures. Revenues are not affected.

Local Effect: Local operations and finances are not anticipated to be materially affected. The bill's provisions that apply to pregnant inmates in local correctional facilities can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary:

Use of Physical Restraints: The bill expands the prohibition on the use of a physical restraint on an inmate (in either a State or local correctional facility) to include an inmate who has delivered a baby within the prior 30 days. The circumstances under which a physical restraint may be used on an inmate are also expanded to include an inmate who has delivered a baby within the prior 30 days.

If a physical restraint is used on an inmate who is known to be pregnant, who is in postpartum recovery, or who has delivered a baby within the prior 30 days, the correctional facility employee who ordered the use of the physical restraint must submit a written report containing the justification for using the physical restraint to the managing official of the facility within 72 hours after the use of the restraint.

Body Cavity Search: Except for a qualified health care professional, a (State or local) correctional facility employee may not conduct a body cavity search of a pregnant inmate unless the correctional facility employee reasonably believes that the pregnant inmate is concealing contraband. If a correctional facility employee conducts a body cavity search of a pregnant inmate, the correctional facility employee must submit a written report containing the justification for the body cavity search and stating whether contraband was recovered to the managing official of the facility within 72 hours after the body cavity search.

Restrictive Housing: DPSCS may not place a pregnant inmate or an inmate who has given birth within the prior 30 days in restrictive housing unless a correctional facility employee reasonably believes that the inmate will harm others or the inmate's self or that the inmate poses a substantial flight risk. If a correctional facility employee authorizes the placement of an inmate in restrictive housing, the correctional facility employee must submit a written report containing the justification for confining the inmate to the managing official of the facility within 72 hours after the inmate's transfer.

Bed and Nutritional Requirements: DPSCS must ensure that pregnant inmates are provided sufficient food and dietary supplements as ordered by a physician, a physician staff member, or a facility nutritionist to meet generally accepted prenatal nutritional guidelines for pregnant women. In addition, DPSCS may not assign a pregnant inmate to a bed that is elevated more than three feet from the floor of the facility.

Newborn Care: DPSCS must (1) allow a newborn child to remain with the inmate for at least 72 hours after birth, unless a medical provider reasonably believes that the inmate poses a health or safety risk to the newborn child; (2) make necessary nutritional and

hygiene products, including diapers, available for care of the newborn child; and (3) provide the necessary nutritional and hygiene products without cost to the inmate if the inmate is indigent. In addition, DPSCS must (1) develop and provide to all correctional facility employees who have contact with pregnant inmates training related to the physical and mental health of pregnant inmates and fetuses, as specified, and (2) develop and provide educational programming for pregnant inmates related to prenatal care, pregnancy-specific hygiene, parenting skills, the impact of alcohol and drugs on a fetus, and the general health of children.

Regulations: DPSCS must adopt regulations that (1) authorize a minimum of two contact visits per week per minor child of an inmate who resides under low- or minimum-security classification, except under specified conditions, and (2) limit inspections conducted by a male correctional facility employee of an area where a female inmate is in a state of undress, as specified.

Current Law:

Pregnant Inmates: 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 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.

Chapters 827 and 828 of 2018 require 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.

Inmate Segregation: DPSCS is authorized to adopt regulations for the operation and maintenance of State correctional facilities, including regulations concerning the discipline and conduct of inmates, including the character of punishments for violations of discipline.

“Restrictive housing” means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period and includes administrative segregation and disciplinary segregation.

Background: Chapters 596 and 597 of 2016 require DPSCS, by December 31 of each year, to submit specified information relating to inmates in “restrictive housing” to the Governor’s Office of Crime Control and Prevention and the General Assembly.

In the [report](#) released in December 2017 (the latest available), DPSCS reports that, during fiscal 2017, there were 14,578 placements on restrictive housing. This includes 4,346 placements on administrative segregation and 10,232 placements on disciplinary segregation. Some inmates were placed on restrictive housing more than once during the reporting period. There were no pregnant inmates placed on restrictive housing during the reporting period. There were 216 inmates diagnosed with a “serious mental illness” placed on restrictive housing.

State Expenditures: General fund expenditures for DPSCS increase, potentially significantly, beginning in fiscal 2020 to, among other things, modify contracts, conduct training, purchase equipment and supplies, and potentially hire additional staff to implement the bill’s various requirements. Although a reliable estimate of any increase in costs cannot be made at this time, the potential effects are discussed below.

DPSCS reported that, in fiscal 2018, no pregnant inmates were placed in restrictive housing. DPSCS has also advised that it is the current practice at the Maryland Correctional Institution-Women (MCIW) to not place pregnant inmates in restrictive housing. However, generally, a pregnant inmate is not moved to the medical infirmary until the last trimester of the pregnancy. Pregnant inmates remain in the medical infirmary until they are medically cleared by medical staff at the inmate’s postpartum medical visit, normally conducted four to six weeks postdelivery. DPSCS considers all pregnant inmates to be high-risk patients; thus, DPSCS houses pregnant inmates in the infirmary with 24-hour monitoring.

DPSCS states that the practices employed by the infirmary at MCIW for the care of pregnant inmates meet the evidence-based guidelines established by the American College of Obstetrics and Gynecology for the safe performance of gynecology and obstetrics procedures. However, the current process does not include care for newborn infants. If a newborn infant is allowed to remain with the inmate at least 72 hours after birth, as specified, modification of the medical contract is required in order for pediatric care to be included in medical services provided. Additional training for correctional facility staff who have contact with pregnant inmates and infants is also necessary. In addition, the existing commissary contract does not include nutritional and hygiene products for the care of infants, such as diapers; therefore, a modification to that contract is also necessary. Pursuant to the bill, DPSCS may not recover any costs for necessary nutritional and hygiene products from indigent inmates. Further, equipment such as cribs and changing tables are necessary. The costs associated with the required contract modifications,

training, equipment, and supplies are likely significant; however, an estimate of the increase in general fund expenditures cannot be reliably determined at this time.

This analysis assumes that the requirement for the Commissioner of Correction to place an inmate who is a parent of a minor child in a correctional within 250 miles of the inmate's permanent address of record applies only to residents of the State and that DPSCS retains the ability to determine inmate placement based on security level, programming, verified gang affiliations or enemies, and any other safety or security factor, even when such placement is outside the required maximum of 250 miles. MCIW, located in Jessup, meets the bill's requirement as it is within a 250-mile radius to any location in the State; however, for male inmates, this requirement may have an impact on the department. DPSCS does not verify an inmate's permanent address until the inmate is eligible for release; therefore, any information regarding an inmate's permanent address at intake is self-reported. If, under the bill, DPSCS must verify an inmate's permanent address before placement in a correctional facility, the department may need additional staff. However, the extent to which additional staff are needed, and an estimate of any associated costs, cannot be reliably determined at this time.

An inmate in a State correctional facility is not required to maintain the inmate's children on the visitor list. In addition, an approved visitor who is at least age 18 can bring minor children with the visitor without DPSCS verifying the identity or relationship of the child to the inmate. If DPSCS must verify the relationship of each child to the inmate, the department needs to create a process to locate and pay for birth certificates for children of inmates who are unable to provide proof of the relationship. In order to create such a process, DPSCS estimates that it needs to hire 22 additional case managers. The cost to hire 22 case managers is approximately \$1.3 million in fiscal 2020, which reflects the bill's October 1, 2019 effective date, and at least \$1.6 million annually thereafter. In addition, the cost to obtain a copy of a birth certificate in the State is \$10 per certificate.

DPSCS advises that it offers several opportunities for parent and child bonding within correctional facilities. For example, MCIW allows infants up to age three to participate in Baby Bonding (twice monthly) and Grandmothers' Bonding (once monthly). Girl Scouts Beyond Bars occurs twice monthly for daughters ages 5 to 17 who wish to participate in the scouting program. Family Day is held annually with children participation, and Children's Day is held annually at Christmas.

However, the bill's provisions relating to contact visits create operational impacts for DPSCS, as visitors, including visitors who are minors, can introduce contraband into correctional facilities. In order for DPSCS to authorize at least two contact visits per week per minor child, DPSCS advises that it needs to hire 44 additional correctional officers for State correctional facilities. The cost to hire 44 correctional officers is approximately \$2.2 million in fiscal 2020 (due to the bill's October 1, 2019 effective date) and at least

\$2.6 million annually thereafter. However, the extent to which DPSCS is able to limit or control the timing of contact visits under the bill is unclear. Accordingly, without actual experience under the bill, the need for additional staff is unclear.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett and Montgomery counties; Maryland Association of Counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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mm/lgc

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