

# SENATE BILL 809

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CF HB 745

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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

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 24, 2019

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## CHAPTER \_\_\_\_\_

AN ACT concerning

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

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

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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.



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

BY repealing and reenacting, without amendments,  
 Article – Correctional Services  
 Section 9–601(j)(1)  
 Annotated Code of Maryland  
 (2017 Replacement Volume and 2018 Supplement)

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

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

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

### **Article – Correctional Services**

9–601.

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

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

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

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

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

**9–601.1.**

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

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

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

(I) BEHAVIOR THAT POSES:

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

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

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

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

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

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

(1) MEDICALLY ASSESSED EVERY 8 HOURS;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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