

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 759
(Senator Carter)
Judicial Proceedings

**Correctional Services - Pregnancy and Postpartum Support (Prevention of
Forced Infant Separation Act)**

This bill requires the Division of Correction (DOC) to allow a pregnant woman classified to be in prerelease status to relocate to the prerelease unit for women throughout the duration of her pregnancy. DOC must also allow an inmate who is classified to be in prerelease status and recently gave birth and her child to reside in the prerelease unit for women for up to one year following the birth of the child. Further, DOC must allow (1) the father or secondary caretaker of a child residing at the prerelease unit for women liberal visitation with the child if the visitation is otherwise legally allowed and (2) an inmate at the Maryland Correctional Institution for Women (MCIW) liberal visitation with her child. In addition, the bill establishes a Healthy Start Bonding Program, the stated purpose of which is to facilitate strong bonds between incarcerated women and their children. DOC must develop the program in consultation with professionals with expertise relating to maternal-child health and well-being. The program must be offered at the prerelease unit for women and MCIW.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

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 determines when the inmate's health allows the inmate to be returned to a correctional facility after giving birth.

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.

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.

Prerelease Unit for Women

Chapter 16 of 2021 requires the Commissioner of Correction within the Department of Public Safety and Correctional Services (DPSCS) to operate a comprehensive rehabilitative prerelease unit for women that is a separate structure in which specified services are provided, has security features for specified female inmates, and matches security level on a validated gender-responsive risk measure. Under the Act, DPSCS was required to (1) identify a location, as specified, acquire property, and design a site plan for the unit by June 1, 2021; (2) begin construction or renovation of the facility by September 1, 2021; and (3) begin operating and providing services in the facility by June 1, 2023.

The five-year *Capital Improvement Program* introduced with the proposed fiscal 2024 capital budget does not include funding for a prerelease unit for women.

State Expenditures: The bill may result in a significant increase in general fund expenditures for DPSCS.

DPSCS currently operates a baby bonding program at MCIW that allows liberal visitation between mother and child for eligible participants; however, it is unclear if the program satisfies the bill's intent with respect to the Healthy Start Bonding Program.

In addition, although DPSCS is required to operate a separate comprehensive rehabilitative prerelease unit for women, the unit is still in the initial planning stages, and construction is not expected to be completed for three to four years. Once the prerelease unit is built, in order to fully implement the bill, DPSCS needs additional equipment and staff with expertise relating to maternal-child health and well-being (including social workers and nutritionists for infants). In addition, DPSCS needs to modify contracts with medical vendors in order to provide pediatric services for infants. Although the total number of staff and types and amount of equipment needed to implement the bill cannot be reliably estimated at this time, costs are anticipated to be potentially significant.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 454 and SB 776 of 2022.

Designated Cross File: HB 523 (Delegate Mireku-North, *et al.*) - Judiciary.

Information Source(s): Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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js/lgc

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