



PREPARE
PREpare for PARole and REentry

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HBO191 - Correctional Services - Pregnancy and Postpartum Support (Prevention of Forced Infant Separation Act) - Support if Amended

The CARES Act began releasing low risk Federal incarcerated individuals on home detention in 2020 in response to the COVID pandemic. The 3 year data is spectacular, and is contained in the June 2023 policy brief.¹ **This information was unavailable last legislative session**, but is incredibly relevant to HBO191. Of particular interest is the new charge recidivism rate of 0.17%. From a CARES Act population of 13,204 people, which is nearly as many people as the entire Maryland prison population, only 22 people committed new offenses, most of which were minor. (see page 4) This incredible success cut the financial cost of incarceration in half (see page 6) while contributing less crime to the community than an equal cohort of randomly selected individuals. It also allowed these low risk incarcerated individuals to return to their home, where they could obtain employment, pay taxes, reunify with family, and contribute socially and financially, offsetting the cost of their monitoring even more with secondary contributions.

The CARES Act data is relevant because the women considered in HBO191 are all on pre-release status, the lowest security status available only to those with less than 36 months to serve. They would have been incarcerated for less than 40 weeks considering that they are pregnant or immediately postpartum. That means the crime they have been convicted of would almost universally be a non-violent crime that carries a short sentence. Institutional infractions would raise their security levels, so they have all exhibited good behavior. They are a comparable population to the one successfully reintegrated through the CARES Act, and the lower-cost, higher-benefit solution of home detention should be implemented instead.

Instead of utilizing this now-proven GPS technology, HBO191 instead seeks to incarcerate the infant with their mothers in centralized prison housing in the Baltimore area away from the families, including the father of the child. Maryland law gives an equal presumption of custody to both parents and reviews that presumption only through the lens of the child's best interest, but HBO191 does something different. It

¹ CARES Act Home Confinement Policy Brief, June 2023,
https://www.booker.senate.gov/imo/media/doc/cares_act_home_confinement_policy_brief1.pdf

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includes no mechanism by which the father is identified, notified or given the opportunity to object. There is no requirement to obtain his consent. The wording of 3-903 (A) betrays its intent by referring to the “father or secondary caretaker” - assigning a lower, secondary status to the father solely on the basis of gender. It then assigns custody to the mother, while providing only a toothless provision that provides the father with “liberal visitation” assuming he can travel to Baltimore and the institution is compliant and sufficiently staffed. It strips the father of his right to participate in important parenting and medical decisions, attend pediatrician appointments, take paternity leave and bond with his child, and to be present for his child’s first year milestones. It remains silent on whether or not he is still responsible for child support, with all the collateral consequences of nonpayment, while his infant is incarcerated - and if he is liable, whether the mother, who is also not financially contributing, should have to pay child support to the state as well.

HB0191 is not even good for the women without consideration of the child. While it is true that about 38% of incarcerated individuals returned to Baltimore City in 2023, that means that 62% did not. Forcing all incarcerated women to participate in Baltimore reentry programming does not make sense on any level because the 62% of women returning elsewhere will not have jobs or service providers when they are released and go home. They will have to endure the frustration of rebuilding their lives twice. CARES Act style home detention is the better option for the majority of women returning in Maryland. Under HB0191, an infant must now endure these disruptions alongside the mother. Knowing the negative consequences of Adverse Childhood Experiences, it seems that this kind of harm should be prevented, not encouraged.

In my experience as a parole advocate and reentry coach, I recognize the importance of family reunification in successful reentry. While I take note of the research that shows lower recidivism among women utilizing prison nurseries in other states, it is important to recognize that there are many interventions that can lower recidivism and studies also recognize the risks and difficulties of raising an infant inside a prison. In the past there may have been an argument for a risk/benefit analysis, however today technological advances have outstripped the need for prison nurseries. Using the CARES Act as a model, Maryland can save money by using GPS technology, help incarcerated mothers rebuild their lives at home, and promote family unification. It is my hope that HB0191 can be amended to remove the use of a single physical location and replace it with GPS monitoring, however if that is not possible, I urge an unfavorable report.