

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 745
Judiciary

(Delegate W. Fisher, *et al.*)

Correctional Facilities - Restrictive Housing - Pregnant Inmates

This bill prohibits, with specified exceptions, the involuntary placement of a pregnant inmate in restrictive housing and sets forth requirements for when a pregnant inmate is placed in restrictive housing. The bill requires each correctional facility to have a written policy in place regarding the medical care of pregnant inmates that addresses the use of involuntary medical isolation or restrictive housing for administrative, protective, or disciplinary purposes during pregnancy and eight weeks during the postpartum or post-pregnancy recovery period. In addition, by October 1, 2020, and annually thereafter, the Secretary of Public Safety and Correctional Services must report to the General Assembly, 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, as specified.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures and operational impacts for the Department of Public Safety and Correctional Services (DPSCS), as discussed below. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures and operational impacts for local jurisdictions, as discussed below. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: 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 behavior that poses a serious and immediate risk of physical harm or an immediate and credible flight risk that cannot be reasonably prevented by other means. A managing official who makes such a determination must document the reason why other less restrictive housing is not possible. The determination must be reviewed and affirmed at least every 24 hours in writing with a copy provided to the inmate.

A pregnant inmate placed in restrictive housing must be medically assessed every eight hours, housed only in the least restrictive setting consistent with the health and safety of the individual, and given an intensive treatment plan developed and approved by the person overseeing women's health and services in the facility.

A pregnant inmate who is deemed to need infirmary care must be admitted to the infirmary on order of a primary care nurse practitioner or obstetrician. If the inmate is overdue in the pregnancy, the inmate must be housed in the infirmary as an admitted patient until labor begins or until the obstetrical consultant has made other housing and care recommendations. A pregnant inmate who has been placed in the infirmary must be provided:

- access to regular outside recreation consistent with the general population;
- the ability to purchase food items through the commissary;
- access to visits, mail, and telephone consistent with general population privileges; and
- the ability to continue to participate in work detail, programming, and classes.

Within 48 hours after confirmation by a health care professional that an inmate is pregnant, the inmate must be notified in writing of the restrictions on a pregnant inmate being placed in restrictive housing under the bill. Each correctional facility must post the restrictions on a pregnant inmate being placed in restrictive housing, as specified.

The Secretary of Public Safety and Correctional Services must establish a process through which an inmate may report a violation of the bill's requirements. In addition, the managing official of a correctional facility who authorized the placement of a pregnant inmate in restrictive housing must submit, within 30 days of the placement, a report in writing to the Secretary and to the person overseeing women's health and services in the facility. The report must describe 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, as specified; 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.

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.

By regulation, the managing official of a correctional facility must maintain a written policy and procedure governing the placement, removal, supervision, and rights of an inmate assigned to "administrative segregation," "disciplinary detention," medical isolation, and protective custody status, which includes provisions for (1) identification of persons authorized to place and remove an inmate from special confinement; (2) designation of circumstances and conditions warranting assignment and release; (3) specification of timeframes, method, and persons authorized to review status; (4) access to services, programs, and activities consistent with the inmate's status; and (5) maintenance of supervision records of specified activities and occurrences.

“Administrative segregation” means a form of physical separation of an inmate from the general population determined by the classification process or authorized personnel when the continued presence of an inmate in the general population would pose a serious threat to (1) life; (2) property; (3) self; (4) staff or other inmates; (5) the security or orderly functioning of the facility; or (6) the well-being of society. “Disciplinary detention” means a form of physical separation in which an inmate found guilty at a disciplinary hearing is confined apart from the general population for a designated period of time.

There are also DPSCS regulations concerning inmate discipline. An inmate who commits a rule violation is subject to the inmate disciplinary process of the department. Sanctions for inmate rule violations include (1) placement of an inmate on disciplinary segregation; (2) revocation of good conduct and special projects credits; (3) suspension of inmate privileges; or (4) restitution for lost, stolen, altered, damaged, or destroyed property of the State, a person, or an entity. Rule violations are categorized according to the severity of the offense. When staff believe a rule violation has occurred, an investigation is initiated within one calendar day of the alleged violation, and a shift supervisor determines whether the violation merits a hearing, informal disposition, or reduction to an incident report. Staff serves a notice of inmate rule violation and disciplinary hearing on the inmate, and a shift commander may isolate the inmate if the inmate poses a threat to security.

Following a hearing, and upon a determination of guilt, a hearing officer may permit the defendant inmate or, if represented, the defendant inmate’s representative and, if assigned, the facility representative, to argue for appropriate sanctions. The hearing officer also (1) determines and imposes appropriate sanctions in regard to disciplinary segregation time and loss of diminution credits according to an adjustment history sentencing matrix and (2) informs the hearing participants of the sanction imposed and the period and effective date of the sanction.

“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 (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. **Exhibit 1** shows the average and median length of stay in restrictive housing placements during fiscal 2017.

Exhibit 1
Restrictive Housing Placements
Length of Stay (in Days)
Fiscal 2017

	<u>Average</u>	<u>Median</u>
Restrictive Housing	45.8	31
Administrative Segregation	51.5	35
Disciplinary Segregation	43.5	30

Source: Department of Public Safety and Correctional Services

State Expenditures: DPSCS reports that in fiscal 2018, no pregnant inmates were placed in restrictive housing. DPSCS further advises 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 post-delivery. DPSCS considers all pregnant inmates to be high-risk patients; thus, DPSCS houses pregnant inmates in the infirmary with 24-hour monitoring.

In addition, DPSCS reports 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, if the current process is deemed inadequate under the bill, changes need to be made to its operations in order for medical staff to provide a medical assessment every eight hours. It is assumed that any resulting impact on DPSCS expenditures is minimal.

Local Expenditures: Based on information provided by several counties, the bill is anticipated to have minimal or no impact on local finances. Anne Arundel and Montgomery counties both report that the bill’s requirements do not have a fiscal impact. Charles County advises that county expenditures increase by \$10,000 annually to create a new process to track and report additional information and to handle additional duties for the medical staff at its detention facility.

Additional Information

Prior Introductions: None.

Cross File: SB 809 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Anne Arundel, Charles, and Montgomery counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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