

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 71

(Senator Carter)

Judicial Proceedings

Judiciary

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 incarcerated individual 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 incarcerated individual 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. **The bill is contingent on the establishment of a prerelease unit for women within DOC, as specified.**

Fiscal Summary

State Effect: No effect in FY 2025 through 2027 due to the bill's contingency, as discussed below. Beginning in FY 2028, general fund expenditures increase, potentially significantly. Although a reliable estimate of any such increase cannot be made at this time, costs could total more than \$1.0 million in FY 2028 and more than \$250,000 annually thereafter, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill is contingent on the establishment of a prerelease unit for women within DOC. The Department of Public Safety and Correctional Services (DPSCS) must notify the Department of Legislative Services (DLS) within five days after a date for the commencement of operations of a prerelease unit for women is established. On the date the notice is received by DLS, the bill's provisions take effect.

Current Law:

Pregnant Incarcerated Individuals

If a representation is made to the managing official of a State correctional facility that an incarcerated individual 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 incarcerated individual, commute the incarcerated individual's sentence, or suspend the execution of the incarcerated individual's sentence for a definite period or from time to time.

If the Governor suspends the execution of an incarcerated individual's sentence, the managing official of the correctional facility must, in a reasonable time before the anticipated birth, have the incarcerated individual 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 incarcerated individual's escape from custody. The managing official must also require the incarcerated individual to be returned to the correctional facility as soon after giving birth as the incarcerated individual's health allows.

Chapter 212 of 2014 requires that the medical professional responsible for the care of an incarcerated individual determines when the incarcerated individual's health allows the incarcerated individual 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 incarcerated individual in the custody of the managing official is pregnant, the managing official may (1) before the anticipated birth, have the incarcerated individual 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 incarcerated individual's escape from custody and (2) return the incarcerated individual to the local correctional facility as soon after giving birth as the incarcerated individual's health allows, as determined by the medical professional responsible for the care of the incarcerated individual.

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 incarcerated individuals, as specified. The managing official of a correctional facility must provide the required written policy to an incarcerated individual 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 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 incarcerated individuals, 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.

State Expenditures: As noted above, the bill is contingent on the establishment of a prerelease unit for women within DOC. While Chapter 16 required DPSCS to construct such a facility and begin operating and providing services in the facility by June 1, 2023, the prerelease unit has not yet been constructed. The *Capital Improvement Program* for fiscal 2025 to 2029 includes approximately \$89.0 million (\$87.0 million in general obligation bonds and \$2.0 million in general funds) to design and construct the New Life Skills and Re-Entry Center for Women (previously called the Women's Prerelease Center). This includes \$5.0 million in prior authorizations and approximately \$4.0 million in fiscal 2025 to complete the design of the facility. Accordingly, because the facility is not expected to be operational until May 2028, the bill has no effect on DPSCS's operating budget until late fiscal 2028.

Once the prerelease unit is established, however, 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. DPSCS advises that it plans to continue to operate a baby bonding program at the new Life Skills and Re-entry Center for Women; however, it is unclear if the program satisfies the bill's intent with respect to the Healthy Start Bonding Program.

Once the prerelease unit for women 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 may increase by more than \$1.0 million in fiscal 2028 and by more than \$250,000 annually thereafter. For context, the anticipated operating budget for the center is estimated to total approximately \$7.1 million in fiscal 2028 and approximately \$11.4 million in fiscal 2029.

This analysis does not reflect any additional capital costs that could be incurred to the extent the current design and construction of the project need to be altered to accommodate the bill's changes. The State's capital program is determined annually through the capital budget process subject to debt affordability limits. As total spending is fixed each year, to the extent project costs increase, other projects may receive less funding, be delayed, or get canceled.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 523 of 2023 and HB 454 and SB 776 of 2022.

Designated Cross File: HB 191 (Delegate Mireku-North) - Judiciary.

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

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