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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB 0454**

**FROM: Maryland Office of the Public Defender**

**POSITION: Favorable**

**DATE: 02/04/2022**

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The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report on House Bill 0454.

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The legislature, statute and case law agree that the best interest of a child is served by being with their parent. Therefore, we should take every opportunity that we have to increase the amount of time a child and or an infant has with their mother. Additionally, the U.S. Constitution has identified the right to parent one's child as a fundamental right. Any opportunity we have to preserve that right should also be taken. House Bill 0454 allows for the best interest of the child and the fundamental right to parent to be preserved and should therefore be treated favorably.

In the State of Maryland, pregnant women who go into labor while incarcerated in a Department of Public Safety and Correctional Services (DPSCS) correctional facility will be transported to a hospital but are required to return to their facility as soon as they are discharged.<sup>1</sup> For a standard vaginal delivery, this is generally 1-2 days after giving birth.<sup>2</sup> This means that most incarcerated women have less than 48 hours with their newborns before the baby is forcibly separated from the mother. Among incarcerated women in Maryland, 10% are pregnant and it is likely that many of these women will give birth while incarcerated.<sup>3</sup> Considering that the majority of incarcerated women are the sole caregivers of their children, many of these newborns will enter the Maryland Department of Human Services (DHS) foster care program just days after they are born.<sup>4</sup>

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<sup>1</sup> Md Code, Corr Servs § 9-601.

<sup>2</sup> <https://www.acog.org/womens-health/faqs/a-partners-guide-to-pregnancy>.

<sup>3</sup> Letter on file with Anushka Vakil, Maryland Justice Project, from DPSCS, Office of the Secretary, Kristina Donnelly.

<sup>4</sup> <https://www.apa.org/pi/ses/resources/indicator/2019/04/incarcerated-women>.

The forced separation of infants leads to myriad adverse health outcomes for both the baby and the mother. Research suggests that the first year is one of the most important in an infant's life, as it is a time of significant physical, cognitive, and social development.<sup>5</sup> This means that when babies are forcibly separated from their parents just days after birth, there can be lifelong developmental consequences. Not only does separation immediately cause a permanent increase in a baby's stress levels, but separated babies are more likely to develop post-traumatic stress and substance use disorders as adults.<sup>6</sup> For mothers, the psychological consequences of forced separation can be just as severe. Mothers separated from their newborns are more likely to experience post-partum depression, extreme powerlessness, grief, and feelings of detachment after forced separation.<sup>7</sup>

House Bill 0454 expands upon legislation proposed in 2020 that was led by numerous advocacy groups, SB 0624. That proposed bill authorized the Commissioner of Correction to operate a pre-release unit for women within the Division of Corrections (DOC). In particular, House Bill 0454 will provide pregnant women who are under DPSCS custody with pre-release status the option to relocate to this unit throughout the duration of their pregnancy and remain with their infants for up to one year post-partum. Pregnant women who are not eligible for pre-release status and are instead housed at the Maryland Correctional Institution for Women will have access to infant bonding programs that will help them maintain strong bonds with their children through increased visitation. Both pre-release eligible and non-eligible women will also have access to the Healthy Start Program, which will be developed by professionals in child development and ensure that mothers get the resources they need to form strong and lasting bonds with their infants.

This bill treats incarcerated women and their families like they matter. This bill has the potential to keep families together. If a woman who gives birth has a year or so to serve in her sentence and is allowed to spend that year with her infant while serving out her sentence, this dramatically reduces the possibility that the family bond will be severed permanently. On the other hand, when a child enters foster care, the court must consider changing that child's permanency plan to adoption after the child has been in care for 15 months. Where infants are concerned, most courts in Maryland do not wait the full 15 months and will usually change the child's plan within the first six months of the infant being in care. For a woman who is serving a sentence of longer than six months and has no family to care for the child, her incarceration will almost always mean that she will lose custody of her child permanently. This fact is even more devastating when the mother's sentence is greater than six months but less than a year or fifteen months where by law they could have had an opportunity to reunify with their child but in practice those familial ties are severed forever.

Often, there is a stigma attached to incarcerated people. When that stigma is coupled with the stigma associated with parents that find themselves involved in the child welfare system, these mothers are more likely to suffer. Specifically, they will likely not be allowed to have any contact with their child in the form of visitation or electronic contact after they are adopted. The

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<sup>5</sup> <https://www.uofmhealth.org/health-library/hw251065>.

<sup>6</sup> <https://theconversation.com/a-sudden-and-lasting-separation-from-a-parent-can-permanently-alter-brain-development-98542>.

<sup>7</sup> [https://www.jognn.org/article/S0884-2175\(15\)33973-3/pdf](https://www.jognn.org/article/S0884-2175(15)33973-3/pdf).

Prevention of Forced Infant Separation Act would allow mothers the opportunity to maintain custody of their children where their sentence is two years or less, critically granting them a year to be with their child and establish a bond with their children. As a result, even if their child has to go into foster care, the statutory timelines work in their favor. Additionally, should their child enter the foster care system, this law would give them a jump start on receiving the services that would allow them to reunify with their child, thereby making it more likely that they would be able to reunify with their children timely upon their release.

Furthermore, House Bill 0454 increases the likelihood of rehabilitation among incarcerated women. It reduces the trauma of a mother being separated from her infant and gives her something to work toward, which is the opportunity to stay with her child or reunify with her child if she has to be separated after one year. We often forget that incarcerated people are people. The same pain and trauma that any other woman would experience if the baby she carried for ten months were taken from her, is the same pain and trauma that an incarcerated mother feels. Perhaps, an even greater pain knowing that their actions put them in that position. The impact of that trauma is sometimes an insurmountable barrier to accessing whatever resources that may be available to that mother that would lead to reform. As a Parental Defender, I have seen how devastating it is for a mother to sit in court and know there is nothing she can do to regain access to her child because she is incarcerated and there are generally limited services available to her to assist her in doing what she needs to do to reunify. With access to the Healthy Start Program, women are given the opportunity to improve their circumstances and their ability to parent their children while incarcerated. That resource not only strengthens the mother but the family as a whole.

There is a clear need for Maryland to prevent the cruel and harmful separation of infants days after birth. However, there is also a clear legislative solution. HB0454 will help incarcerated parents form strong attachments with their newborns, leading to better health outcomes and a strong incentive against recidivism. It's time for Maryland to keep families together and end forced infant separation.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report on HB 0454.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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