



## **SB0809 - Correctional Facilities – Restrictive Housing – Pregnant Inmates**

Presented to Hon. Bobby Zirkin and Members of the Senate Judicial Proceedings Committee

February 21, 2019 12:00 p.m.

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### **POSITION: SUPPORT**

NARAL Pro-Choice Maryland **encourages the Judicial Proceedings Committee a favorable report on SB0809 – Correctional Facilities – Restrictive Housing – Pregnant Inmates**, sponsored by Senator Susan Lee.

Our organization is an advocate for reproductive health, rights, and justice. We work to guarantee each individual's freedom to decide if, when, and how many children to have. Incarcerated and detained pregnant women and girls are among the population of Marylanders we support. We recognize the current era of mass incarceration has made countless women living behind bars vulnerable to violations of their reproductive freedom. In the reality of our existing male-centered corrections system, women are frequently lacking multiple systems of healthcare specific to their reproductive systems. The use of restrictive housing further limits the quality of care afforded to female inmates. Within Maryland, 29 out of every 100,000 women within the population are incarcerated, with a disproportionate number being women of color.<sup>1</sup>

SB0809 specifically addresses concerns regarding the use of involuntary isolation of inmates who are pregnant or in the post-pregnancy recovery period. Restrictive housing is defined by the Department of Justice as being confined to one's cell for approximately 22 hours or more per day, alone or with other prisoners.<sup>2</sup> Nationally, 4 to 5 percent of prisoners are in restrictive housing,<sup>3</sup> while roughly 8 percent of Maryland's prison population is in restrictive housing.<sup>4</sup> In 2015, Department of Public Safety and Correctional Services (DPSCS) stated that the average length of stay in restrictive housing was 130 days,<sup>5,6</sup> despite guidance from the U.N. Special Rapporteur on Torture that there should be an absolute ban on restrictive housing in excess of 15 days.<sup>7</sup> Pursuant to the Correctional Services Article, § 9-614, Annotated Code of Maryland, DPSCS submits a document demonstrating its continual overuse of restrictive housing. The report showed that 49.8% of Maryland's prison population was placed in restrictive housing at some point in 2017.<sup>8</sup> The average length of stay in restrictive housing was approximately 46 days.<sup>9</sup>

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<sup>1</sup> The Sentencing Project. "Incarcerated Women and Girls." November 2015. <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>

<sup>2</sup> Report and Recommendations Concerning the Use of Restrictive Housing, (23 February 2016) U.S. Department of Justice, <http://www.justice.gov/restrictivehousing>.

<sup>3</sup> Rodriguez, S. and Kiebal, V. (December 2018) "Solitary Confinement FAQ", *Solitary Watch*, <http://solitarywatch.com/facts/faq/>.

<sup>4</sup> Koh, E. (July 19, 2015), How Many Maryland Prisoners are in Solitary Confinement? It's Hard to Say, *The Washington Post*, [https://www.washingtonpost.com/local/md-politics/how-many-maryland-prisoners-are-in-isolated-confinement-no-one-knows/2015/07/19/ea82d0f0-24de-11e5-b72c-2b7d516e1e0e\\_story.html](https://www.washingtonpost.com/local/md-politics/how-many-maryland-prisoners-are-in-isolated-confinement-no-one-knows/2015/07/19/ea82d0f0-24de-11e5-b72c-2b7d516e1e0e_story.html).

<sup>5</sup> *Solitary Confinement: IAHRC Campaigns*, (2016), <http://www.interfaithactionhr.org/solitary>

<sup>6</sup> Letter from Stephen T. Moyer, Secretary of the Department of Public Safety and Correctional Services to Hon. Bobby A. Zirkin, Re: Use of Segregated Confinement in Maryland's correctional facilities (dated Oct. 1, 2015).

<sup>7</sup> United Nations General Assembly (August 5, 2011) *Interim Report of Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, A/66/268, par. 76

<sup>8</sup> Maryland Department of Public Safety and Correctional Service (December 2017) *Report on Restrictive Housing – Fiscal Year 2017*.

<sup>9</sup> *Ibid*.

The U.N. Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders absolutely prohibit the placement of pregnant women in restrictive housing.<sup>10</sup> Restrictive housing has been shown to produce harmful outcomes for mental and physical health, including hypersensitivity to stimuli, distortions and hallucinations, increased anxiety or nervousness, diminished impulse control, severe and chronic depression, appetite and weight loss, and heart palpitations, among others.<sup>11</sup> Restrictive housing puts pregnant women at high risk of jeopardizing timely access to necessary health care including prenatal care, miscarriage management, and hospital delivery.<sup>12</sup> Not only does restrictive housing makes it difficult for a pregnant inmate to receive pregnancy-related medical attention, but it obstructs a woman's constitutional right to terminate her pregnancy. By placing a pregnant inmate in restrictive housing, she is delayed in accessing abortion care services, often resulting in a later abortion or being forced to carry the pregnancy to term.<sup>13</sup> Specifically, women who report being raped by corrections officers are sometimes sent to solitary confinement as punishment, which may both deny the woman's reproductive decision-making, as well as discourage other prisoners from reporting similar abuse.<sup>14</sup>

Legislation to improve the living conditions for inmates subjected to restrictive housing and preventing its excessive use is essential in the maintenance of women's health within the state and local corrections system. SB0809 defends the values of reproductive justice throughout. The requirements of routine 8-hour physical and mental health assessments for those in restrictive housing, as well as the provision of preventative, emergency, and medical care are a safeguard in guaranteeing the needs of women's health are met. The bill's stipulation requiring the failure to provide a certain privilege or condition to a certain inmate to be noted in the inmate's file establishes a system which allows record of inmate mistreatment to be preserved. Creating a record of treatment strengthens the voices of inmates. Finally, the prohibition of placement in restrictive housing for inmates who are pregnant or in the post-pregnancy recovery period is consistent with our belief that incarcerated women retain their rights to comprehensive reproductive healthcare, as well as to healthy pregnancy outcomes during their time in the corrections system.

It is important to note that we anticipate that the DPSCS will respond that pregnant and post-pregnant inmates are not being placed in restrictive housing, but in medical isolation cells outside the infirmary – in a location that is considered within the medical section of the Maryland Correctional Institute for Women. As members of the statewide coalition, Reproductive Justice Inside, we have heard from advocates and those that have been inside that this practice is equal to disciplinary solitary confinement. There is no medical reason to place an inmate in such isolation, denied adequate food, blankets, clothing, supplies, as well as the right to participate in work detail and onsite programs that assist with rehabilitation and coping skills. The result is the inmate's perception that she is being punished for being or having been recently pregnant. The space, sensory, and stimulation deprivation is the same as disciplinary segregation, and its unwarranted use will continue to risk poor pregnancy outcomes as well as the physical and mental health of the inmate being forced into such confinement. It is also important to note that the coalition is aware that the state prison is not the only location that has engaged in this practice, and that local facilities do this as well. For these reasons, NARAL Pro-Choice Maryland **urges a favorable report for SB0809**. Thank you for your time and consideration.

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<sup>10</sup> (March 16, 2011) *United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders*, A/RES/65/229, par. 7(b) (commonly known as the "Bangkok Rules").

<sup>11</sup> VERA Institute of Justice (May 2015) *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, [http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf).

<sup>12</sup> ALCU (April 9, 2014). *Worse Than Second-Class: Solitary Confinement of Women in the United States*. [https://www.aclu.org/sites/default/files/assets/worse\\_than\\_second-class.pdf](https://www.aclu.org/sites/default/files/assets/worse_than_second-class.pdf).

<sup>13</sup> Roth, R. (April 7, 2011) Will the Justice Department Stand Up for Women Raped in Prison?, *The Nation* <http://www.thenation.com/article/will-justice-department-stand-women-raped-prison/>.

<sup>14</sup> ACLU (April 9, 2014).