

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 999 (Senator Waldstreicher)
 Rules

Correctional Services - Restrictive Housing - Direct Release

This bill (1) requires the Commissioner of Correction to provide an inmate who has been placed in restrictive housing a specified transitional process more than 180 days before the direct release of the inmate from a facility to the community and (2) prohibits the placement of an inmate in restrictive housing within 180 days of the inmate’s release date, unless specified requirements are met. In addition, the commissioner must document, in writing, the justification for an inmate being released directly from restrictive housing to the community, and an inmate released directly from restrictive housing to the community must be provided (1) a release plan tailored to the specific needs of the inmate, unless the release is a result of a court order requiring an immediate release and (2) notification of applicable and available community resources. The bill’s provisions do not apply to an inmate who poses a substantial and immediate threat to others, administrative segregation of an inmate for up to 5 days for reasons related to the inmate’s release, or an inmate who requests voluntary placement in administrative or restrictive housing.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$3.1 million in FY 2021; future years are annualized and reflect ongoing costs. Revenues are not affected.

| (in dollars) | FY 2021 | FY 2022 | FY 2023 | FY 2024 | FY 2025 |
|----------------|---------------|---------------|---------------|---------------|---------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 3,081,400 | 3,384,400 | 3,465,800 | 3,585,500 | 3,709,300 |
| Net Effect | (\$3,081,400) | (\$3,384,400) | (\$3,465,800) | (\$3,585,500) | (\$3,709,300) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The transitional process that an inmate who has been placed in restrictive housing must receive more than 180 days before the direct release from a facility to the community must include:

- substantial resocialization programming in a group setting;
- regular mental health counseling to assist in the transition;
- assistance in finding housing and obtaining State and federal benefits; and
- reentry planning, continuum of care, and referral services offered to inmates in a general population setting, as specified.

An inmate may not be placed in restrictive housing within 180 days of the inmate's release date unless the warden or the warden's designee makes an individualized determination and certifies in writing, based on clear and convincing evidence, that (1) the inmate poses a grave risk of harm to others or the security of the facility and all other less restrictive options have been exhausted or (2) the inmate poses an immediate and credible flight risk that cannot reasonably be prevented by other means. An inmate placed in restrictive housing must receive a copy of the placement authorization, receipt for which is to be signed by the inmate, stating (1) the reasoning on which the determination to place the inmate in restrictive housing was made; (2) the length of time of placement; and (3) procedures for appealing the placement. The inmate must sign an acknowledgment of receipt of the placement authorization.

Current Law: The Department of Public Safety and Correctional Services (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.

DPSCS regulations also address 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. The standard of proof required for the administrative process is “substantial evidence.” “Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Chapter 526 of 2019 prohibits the placement of a minor in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk of physical harm to the minor, other inmates, or staff or to the security of the facility. “Restrictive housing” means a form of physical separation that has not been requested by the inmate 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: According to the latest available [Report on Restrictive Housing](#), in fiscal 2018, there were 18,324 placements on restrictive housing: 4,578 on administrative segregation and 13,746 on disciplinary segregation. In fiscal 2018, a total of 287 inmates were released directly from restrictive housing and no pregnant inmates were placed on restrictive housing.

The goal of the Office of Adult Education and Literacy Services in the Division of Workforce Development and Adult Learning within the Maryland Department of Labor (MDL) is to ensure that Maryland adults have access to basic skills instruction to enable them to be effective workers, family members, partners in children’s education, and citizens. The Office of Correctional Education in the division has similar goals but serves adults who are incarcerated. The office provides educational opportunities to more than 9,000 inmates with services offered at each Division of Correction facility, the Patuxent Institution, and all prerelease units.

State Expenditures: DPSCS and MDL provide several programs and services to general population inmates that meet the requirements of the bill’s transitional process; however, DPSCS advises that inmates in disciplinary segregation lose certain privileges, including the ability to participate in those programs and services. As a result, general fund expenditures for DPSCS increase by at least \$3.1 million in fiscal 2021, which reflects the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring 22 social workers, 10 counselors, 4 administrative officers, and 4 case managers to provide reentry services to inmates in restrictive housing in all State correctional facilities in order to meet the requirement to provide a transitional process to affected inmates. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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|---|--------------------|
| Positions | 40 |
| Salaries and Fringe Benefits | \$2,616,715 |
| Contractual Services and Supplies | 260,050 |
| Operating Expenses | <u>204,600</u> |
| Minimum FY 2021 DPSCS Expenditures | \$3,081,365 |

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

The current agreement between DPSCS and MDL regarding educational services likely needs to be modified as a result of the bill, modifications within facilities to provide additional space for instruction are likely necessary, and additional correctional officers to provide escorts for inmates participating in required services are also likely needed. In addition, enrollment of inmates in programs administered by the Maryland Department of Health may increase as a result of the bill. However, without actual experience under the bill, any associated costs cannot be determined and are not reflected in this analysis.

Additional Information

Prior Introductions: HB 1002 of 2019, a similar bill, passed the House with amendments and passed second reading with amendments in the Senate, but no further action was taken.

Designated Cross File: HB 740 (Delegate J. Lewis, *et al.*) - Judiciary.

Information Source(s): Maryland Department of Health; Department of Housing and Community Development; Department of Human Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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