

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 131
 Judiciary

(Delegate J. Lewis)

Correctional Services – Step–Down Programs – Cause of Action

This bill requires the Commissioner of Correction to provide a “step-down program” to an inmate before transfer from restrictive housing to the general population or direct release. The Commissioner must provide justification, documented in writing, if an inmate is transitioned to the general population or the community without participating in a step-down program. The bill also establishes the right for an inmate with less than 180 days until release to the community to access a step-down program, with limited exceptions, and a cause of action for a former inmate who has been denied the right to access a step-down program, under specific circumstances.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$1.8 million in FY 2022. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,799,500	2,109,200	2,172,300	2,250,400	2,330,700
Net Effect	(\$1,799,500)	(\$2,109,200)	(\$2,172,300)	(\$2,250,400)	(\$2,330,700)

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: A “step-down program” means a system of review with established criteria that prepares an inmate for transition to the general population or the community. The program must be individualized to the needs of the inmate and involve a coordinated, “multidisciplinary treatment team” approach.

A “multidisciplinary treatment team” is defined as an integrated team that meets to develop and provide necessary health and behavioral health care services and individualized treatment that addresses the needs of an inmate in restrictive housing or in a step-down program. The team may include psychologists, psychiatric practitioners, licensed social workers, licensed mental health counselors, registered nurses, activity therapists, and correctional staff. Additionally, if an inmate needs chronic care or other medical accommodation, the multidisciplinary treatment team must also include appropriate medical personnel.

A step-down program must include a pre-screening evaluation, monthly evaluations to assess an inmate’s compliance, a step-down transition compliance review, and a post-screening evaluation. Subject to the monthly evaluations, the program must allow gradually increased out-of-cell time, group interaction, education opportunities, programming opportunities, and increased privileges.

An inmate with less than 180 days until release into the community must have access to a step-down program unless there is an individualized determination that the inmate is either (1) a grave risk of harm to others or the security of the facility and all other less restrictive options have been exhausted or (2) an immediate and credible flight risk that cannot be reasonably prevented by other means.

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 and 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.

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.

DPSCS conducts a risk and needs assessment, a physical and mental examination, and an educational, vocational, and job history interview of an inmate as soon as feasible after an individual is sentenced to a DPSCS facility. Based on the assessment, DPSCS develops a case plan to guide an inmate’s rehabilitation while under DPSCS custody. A case plan must include programming and treatment recommendations, required conduct in accordance with the rules and policies of DPSCS, and payment plan for restitution (if applicable).

Before the release of any inmate, DPSCS currently:

- works with the Maryland Department of Health (MDH) to give incarcerated individuals an opportunity to complete a Medicaid application within 90 days of the individual’s release. If the individual chooses to complete the application, the individual is released with the individual’s Medicaid card, Medicaid number, or a

letter of Presumptive Eligibility if the Medicaid application is rejected. Medicaid covers individuals with incomes up to 138% of federal poverty guidelines;

- provides information regarding services in the jurisdiction of the individual's residence to continue programming offered within DPSCS facilities; and
- provides referrals for community-based mental health and substance use treatment.

DPSCS also provides a continuity of care form to each individual released from a DPSCS facility. The form includes a copy of the individual's current medication list for the individual to continue with appropriate care. If the individual's community provider would like to have additional information, the provider can request the information directly from the department.

State Expenditures: DPSCS and the Maryland Department of Labor (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 \$1.8 million in fiscal 2022 that accounts for the bill's October 1, 2021 effective date. This estimate reflects the cost of hiring 18 social workers and 10 counselors to perform the functions required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	28
Salaries and Fringe Benefits	\$1,643,211
Operating Expenses	<u>156,275</u>
Minimum FY 2022 DPSCS Expenditures	\$1,799,486

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; additional correctional officers to provide escorts for inmates participating in required services are likely needed; and one additional assistant attorney general to handle litigation created by the bill's civil cause of action may be necessary. Furthermore, enrollment of inmates in programs administered by MDH may increase as a result of the bill. However, without actual experience under the bill, these associated costs cannot be accurately determined and are not reflected in this analysis.

Additional Information

Prior Introductions: HB 740 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 999, was referred to the Senate Rules Committee, but no further action was taken. 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: None.

Information Source(s): Baltimore City; Harford and Montgomery counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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rh/jc

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