

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 851 (Delegate Ruth)
 Judiciary

Corrections - Restrictive Housing - Serious Mental Illness

This bill, which applies to both State and local correctional facilities, prohibits the placement of an inmate with a “serious mental illness” in restrictive housing, except in limited exigent circumstances in which the individual presents an immediate and ongoing threat of imminent harm to the individual or others. An inmate with a serious mental illness placed in restrictive housing (1) must be removed immediately on a determination that the individual no longer presents an immediate and ongoing threat of imminent harm to the individual or others; (2) must be provided daily wellness checks by certified health care and custody staff, as specified; and (3) may not remain in restrictive housing for more than 15 days. The managing official of the facility must require that a specified daily record is maintained. The bill establishes related reporting requirements for the Department of Public Safety and Correctional Services (DPSCS).

Fiscal Summary

State Effect: General fund expenditures increase by at least \$3.1 million in FY 2022; future years are annualized and reflect minimum ongoing costs. Revenues are not affected.

(\$ in millions)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3.1	3.6	3.7	3.8	4.0
Net Effect	(\$3.1)	(\$3.6)	(\$3.7)	(\$3.8)	(\$4.0)

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

Local Effect: Potential significant increase in expenditures for local correctional facilities. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The required daily wellness check must include a determination as to whether an individual continues to present an immediate and ongoing threat of imminent harm to the individual or others. The required daily record must document the circumstances warranting placement in restrictive housing and the ongoing circumstances demonstrating that the placement in restrictive housing remains appropriate.

By January 1, 2022, DPSCS must provide an interim report to the General Assembly on (1) steps the department has taken to improve conditions of confinement in restrictive housing, as specified; (2) the number of incarcerated individuals with serious mental illness who are placed in restrictive housing on an annual basis, as specified; and (3) the average length of placement in restrictive housing. By January 1, 2023, DPSCS must provide a final report to the General Assembly on the same required information.

“Serious mental illness” means the condition of an individual with a diagnosis recognized by the American Psychiatric Association who demonstrates high symptom severity or the need for specialized care and a significant functional impairment. “Significant functional impairment” includes an impairment evidenced by (1) self-harming behaviors; (2) serious defects in adaptive functioning that hamper conforming to institutional rules or engagement in activities; (3) a pattern of dysfunctional, bizarre, or disruptive social interactions; or (4) other behaviors identified by health care professionals that represent a significant functional impairment.

Current Law: 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.

Chapters 596 and 597 of 2016 require DPSCS, by December 31 of each year, to submit specified information relating to inmates in restrictive housing to the Governor’s Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) and the General Assembly. The latest report can be found [here](#).

Chapters 526 and 527 of 2019 expanded the entities required to submit information relating to inmates in restrictive housing to include each correctional unit (all correctional units within each jurisdiction). The latest report can be found [here](#). In addition, Chapters 526 and 527 prohibit 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.

State Expenditures: DPSCS has taken several measures in recent years to reduce the number of inmates in restrictive housing and to provide services to the seriously mentally ill inmate population; however, DPSCS advises that to meet the bill’s requirements to provide daily wellness checks and complete daily records, additional staff is needed. As a result, general fund expenditures for DPSCS increase by at least \$3.1 million in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring 9 professional counselors, 7 social workers, and 28 correctional officers to provide daily wellness checks and escorts to assessments for inmates in restrictive housing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, including contractual services.

Positions	44.0
Salaries and Fringe Benefits	\$2,391,659
Contractual Services	424,430
Other Operating Expenses	<u>245,575</u>
Minimum FY 2022 State Expenditures	\$3,061,664

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

In addition to the costs estimated above, additional costs are likely incurred. The current medical contract likely needs to be modified. In addition, modifications within facilities to provide the required assessments and training are likely needed. However, without actual experience under the bill, any such costs cannot be determined and are not reflected in this analysis.

Local Expenditures: Local government expenditures increase, potentially significantly, for at least some local correctional facilities to provide staff and security to limit the use of restrictive housing pursuant to the bill’s changes and to provide daily wellness checks by certified health care and custody staff. The effect likely varies by jurisdiction.

Additional Information

Prior Introductions: HB 742 of 2020, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 1002, was referred to the Senate Rules Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Wicomico counties; Department of Juvenile Services; Department of Public Safety and Correctional Services; Department of Legislative Services

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rh/lgc

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