

HB 301

Department of Legislative Services Maryland General Assembly 2015 Session

FISCAL AND POLICY NOTE

House Bill 301

(Delegate Carter, *et al.*)

Judiciary

Public Safety - Segregated Confinement - Report

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to submit an annual report to the Governor on “segregated confinement” in State correctional facilities by November 1 of each year. The bill details the information that must be included in each report, including the number of inmates held in segregated confinement, the length of time for each such confinement, incidents of self-harm or attempted self-harm, complaints of abuse, incidents of use of force, average annual per capita housing costs for segregation, efforts to reduce the use of disciplinary segregation, specified information relating to inmates with mental illness, and a description of specified staff training efforts. Each report must use code or identification numbers to protect the identity of inmates. The bill’s provisions are made severable.

Fiscal Summary

State Effect: General fund expenditures increase by \$75,000 in FY 2016 only for reprogramming costs in DPSCS’s case management system. General fund expenditures may increase further for contractual staff or overtime to annually complete the required reports. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	75,000	-	-	-	-
Net Effect	(\$75,000)	\$0	\$0	\$0	\$0

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

Local Effect: None.

Small Business Effect: None.

Analysis

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.

There are also DPSCS regulations concerning 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 credit; (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 regards 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.

Background: DPSCS and the Vera Institute of Justice signed agreements in the fall of 2010 for an assessment and review of DPSCS's use of segregation. The project's charge was to assess DPSCS's segregation policies and practices; analyze its use of administrative segregation (AS), disciplinary segregation (DS), and protective custody segregation (PC); identify mental health and programming issues related to segregation; and make recommendations for handling and reducing its administrative and disciplinary segregation populations.

The Vera Institute works with government officials on a range of criminal and social justice topics. Vera's Segregation Reduction Project describes the projects efforts as collaborative in working with partner states, including site visits to facilities, meetings with system and facility administrators, and policy and case reviews. The project also conducts comprehensive analyses of a system's administrative data. In addition to DPSCS, Vera is currently partnering with the Illinois Department of Corrections, the Washington State Department of Corrections, and New Mexico's Corrections Department.

The Vera study found that Maryland was like other state prison systems in the use of the three forms of segregation cited above. The following preliminary findings and recommendations were reported by Vera to DPSCS in the fall of 2012:

Vera Preliminary Findings

- 8.5% of the DPSCS population is held in segregated housing; the vast majority of these prisoners are assigned to DS.
- Segregated and nonsegregated prisoners have different demographic characteristics, security level classifications, and levels of gang affiliation.
- Maryland's use of DS and AS is high compared to other states.
- DPSCS is using DS for 300- and 400-level offenses – and for some 100-level offenses – when alternative sanctions are available and might be as or more effective.
- Many DS sentences exceed the maximum sentences specified in the Adjustment History Sentencing Matrix.
- There are discrepancies in DS sentences given by hearing officers for similar violations and circumstances.
- Mixed populations in AS and DS result in ineffective use of costly resources.

- Lack of mental health and special needs interventions and staff increases the size of the AS/DS population and burdens staff and prisoners.

Vera Recommendations to Reduce DPSCS Segregation Populations

- Increase significantly the use of alternative sanctions for 300- and 400-level violations, especially for prisoners with “Violation Free” and “Good” prior adjustment histories.
- Develop procedures to assure uniformity in types of sanctions for rule violations (segregation vs. alternative sanctions) and length of DS sentences given by departmental hearing officers. The practice of exceeding matrix guidelines needs to be corrected by not allowing staff to exceed the prescribed ranges except in unusual cases with intensive documentation and review.
- Ensure that disciplinary sentence lengths conform to sentencing ranges in regulations and do not cluster at the maximum end of the range. Monitor sentencing patterns and justifications for overrides.
- Reduce the length of segregation sentences in regulation. Ranges set forth by the current guidelines exceed what is typical in other states and need to be adjusted.
- Discontinue use of DS for any 400-level violations.

Recommendations for Special Populations in AS and DS

- Eliminate the placement of PC prisoners in segregation. Increase PC bed availability to prevent prisoners from remaining at higher custody levels than necessary over time.
- Expand “Missioned” (nonAS/DS) housing for prisoners who are mentally ill, developmentally delayed, and who have traumatic brain injury who have ongoing needs the segregation units are not designed to address.
- Revise AS and DS criteria to maintain developmentally delayed, mentally ill, and vulnerable at-risk prisoners in special management units in the general population rather than in AS/DS.
- Prioritize increasing mental health and social work staff across facilities to enhance access to treatment and programs and enable prisoners to fully comply with case management plans.
- Conduct new/refresher training for officers dealing with mentally ill and other special needs prisoners.

Although the Vera report did not include data from the Patuxent Institution or the Maryland Correctional Adjustment Center, the following demographic information was found across the DPSCS system:

- Gender – Women account for only a small percent of prisoners across the groupings: 0.6% in AS, 2.3% in PC, and 2.9% in DS.
- Race – A slightly higher percentage of DS prisoners (75.1%) were African American than in the general prison population (72.2%). In contrast, a lower percentage of AS prisoners (64.2%) and PC prisoners (56.2%) were African American than in the general prison population.
- Age – DS and AS prisoners were somewhat younger than the prisoners in the general population, with an average age of 30.4 for DS, 30.8 for AS, and 36.0 for general population prisoners. In contrast, the average age of PC prisoners (40) was somewhat older than the general prison population.
- Security Level – DS, AS, and PC prisoners were composed of a larger proportion of maximum- and medium-custody inmates than the general prison population.
- Gang Affiliation – DS, AS, and PC prisoners also were more likely to have a documented gang affiliation (45.2% in AS, 38.1% in DS, and 23.8% in PC) than general population prisoners (12.6%).

State Expenditures: General fund expenditures increase by \$75,000 in fiscal 2016 only for reprogramming costs in DPSCS's case management system. The bill requires DPSCS to make computer programming modifications to the department's Offender Case Management System (OCMS). In addition, DPSCS advises that OCMS and the department's Electronic Patient Health Records system must be linked to meet all of the bill's reporting requirements. DPSCS advises that six unidentified changes to the current OCMS capacities must be done through change orders with the current vendor, which require approval by the Board of Public Works. DPSCS believes that that approval process and the subsequent project means that the first segregated confinement report could not be completed until the end of calendar 2015, which is after the bill's first reporting deadline of November 1, 2015.

Given the State's fiscal difficulties, agency budgets have been constrained. Thus, the requirement to develop the report may not be absorbable within the existing budgeted resources of DPSCS. Instead, in addition to the computer reprogramming costs estimated above, general fund expenditures may increase each year beginning in fiscal 2016 for overtime or to hire contractual staff to annually complete the required reports; however, any such increase cannot be reliably estimated at this time. The potential for increased staffing or overtime costs is based on the following information and assumptions:

- DPSCS advises that nine reporting requirements cannot be tracked with OCMS and must be tracked manually at each correctional facility. While DPSCS did not identify these nine reporting requirements, the department's Mental Health Division reports that it maintains monthly records of the number of inmates in segregation who designated as having a serious mental illness, but the division

does not keep specific demographic data on each individual, including age, race, sexual identification, sexual orientation, releases from segregation, reasons for segregation, lengths of stay, or the amount of out-of-cell time for exercise.

- DPSCS advises that the scope and detail of the reports required under the bill cannot be met with existing staff.
 - According to the Vera Institute, the bill's reporting requirements go beyond the current data tracking capacities of most prison systems.
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Additional Information

Prior Introductions: None.

Cross File: SB 414 (Senator Gladden, *et al.*) – Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services, Vera Institute of Justice, Department of Legislative Services

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md/lgc

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