

Department of Legislative Services  
 Maryland General Assembly  
 2016 Session

FISCAL AND POLICY NOTE  
 Third Reader - Revised

House Bill 1180  
 Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Correctional Services - Restrictive Housing - Report

This bill requires the Department of Public Safety and Correctional Services (DPSCS), by December 31 of each year, to submit specified information relating to inmates in “restrictive housing” to the Governor’s Office of Crime Control and Prevention (GOCCP) and the General Assembly. GOCCP must make that information available on its website.

Fiscal Summary

**State Effect:** General fund expenditures increase by \$31,500 in FY 2017 only for DPSCS to reprogram its computer system. Otherwise, the bill does not materially affect State operations or finances, as discussed below.

(in dollars)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	31,500	0	0	0	0
Net Effect	(\$31,500)	\$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

**Bill Summary:** DPSCS must submit data to GOCCP showing, by correctional facility:

- the total population of the correctional facility;
- the number of inmates who have been placed in restrictive housing during the preceding year by age, race, gender, classification of housing, and the basis for the inmate's placement in restrictive housing;
- the department's definition of "serious mental illness" and the number of inmates with serious mental illness that were placed in restrictive housing during the preceding year;
- the number of inmates known to be pregnant when placed in restrictive housing during the preceding year;
- the average and median lengths of stay in restrictive housing of the inmates placed in restrictive housing during the preceding year;
- the number of incidents of death, self-harm, and attempts at self-harm by inmates in restrictive housing during the preceding year;
- the number of inmates released from restrictive housing directly into the community during the preceding year;
- any other data DPSCS considers relevant to the use of restrictive housing by correctional facilities in the State; and
- any changes to written policies or procedures at each correctional facility relating to the use and conditions of restrictive housing, including steps to reduce reliance on restrictive housing.

"Restrictive housing" means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period. "Restrictive housing" includes administrative segregation and disciplinary segregation.

**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.

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*

- Eight and a half percent 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 \$31,500 in fiscal 2017 only for reprogramming costs in DPSCS's Offender Case Management System so that DPSCS is able to provide the required data to GOCCP. This estimate assumes that 300 hours of programming are required.

GOCCP can handle posting the information that it receives on its website with existing resources.

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### **Additional Information**

**Prior Introductions:** SB 414 of 2015, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 301, received an unfavorable report from the House Judiciary Committee.

**Cross File:** SB 946 (Senator Gladden, *et al.*) - Judicial Proceedings.

**Information Source(s):** Department of Public Safety and Correctional Services, Governor's Office of Crime Control and Prevention, Vera Institute of Justice, Department of Legislative Services

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