

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1001 (Delegate Moon, *et al.*)
 Judiciary

Correctional Services - Restrictive Housing - Limitations

This bill establishes limitations on the placement of an inmate in restrictive housing within State and local correctional facilities. Correctional facilities must implement procedures to allow fair and meaningful opportunities for an inmate to challenge the inmate’s placement in restrictive housing, as specified. The bill also establishes a Restrictive Housing Workgroup within the Department of Public Safety and Correctional Services (DPSCS). DPSCS must provide staff for the workgroup.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$753,600 in FY 2018 to hire hearing officers to handle the bill’s requirement regarding inmate challenges to placement in restrictive housing. Future years reflect annualization. General obligation (GO) bond expenditures for DPSCS increase by an estimated \$10.5 million to renovate existing restrictive housing units; as the size of the capital budget is established annually through the capital budget process, any GO bond funds spent on this project results in fewer funds being available for other projects in the *Capital Improvement Program (CIP)*.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	753,600	952,400	994,600	1,039,000	1,085,700
Bond Exp.	10,500,000	0	0	0	0
Net Effect	(\$11,253,600)	(\$952,400)	(\$994,600)	(\$1,039,000)	(\$1,085,700)

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

Local Effect: Significant increase in local expenditures to the extent that local correctional facilities must hire staff and renovate facilities to meet the bill’s requirements. **This bill likely imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Limitations

An inmate may not be placed in restrictive housing for more than 15 consecutive days or a total of 20 days in a 60-day period, unless:

- there is clear and convincing evidence that the inmate poses an immediate and substantial risk of physical harm to the security of the facility, to the inmate, or to others;
- all other less-restrictive options to address the risk have been attempted and have failed to mitigate the risk of harm;
- the inmate has received a personal and comprehensive medical and mental health examination by a clinician before the inmate's placement in restrictive housing; and
- the inmate is held in restrictive housing for only the minimum time required to address the risk, and for a period of time that does not compromise the inmate's mental or physical health.

An inmate may not be placed in restrictive housing for refusing medical treatment or for nondisciplinary reasons. A vulnerable inmate may not be placed in restrictive housing unless there is a facility-wide lockdown. In addition, an inmate may not be released directly from restrictive housing to the community, unless it is necessary for the safety of the inmate, staff, other inmates, or the public.

An inmate placed in restrictive housing:

- may not be denied visitation, mail, treatment, therapy, or out-of-cell or outdoor activity, weather permitting;
- is entitled to the same standard of food services and the same access to water and all other basic necessities as the general population; and
- must be evaluated at least twice per week in a confidential setting.

Cells used for restrictive housing must be properly ventilated, well lighted, temperature controlled, clean, and equipped with properly functioning sanitary fixtures.

A correctional facility must maximize opportunities for recreation, education, and social interaction for inmates in restrictive housing.

Each time an inmate is placed in restrictive housing, the correctional facility must document and, excluding identifying information, make available on the DPSCS website:

- the name, age, gender, race, and ethnicity of the inmate;
- the date and time the inmate was placed in and released from restrictive housing; and
- the reason for the restrictive housing, including exhaustion of less restrictive alternatives.

Restrictive Housing Workgroup

The workgroup must advise DPSCS on policies, procedures, and best practices related to the use of restrictive housing. DPSCS must share with the workgroup in a timely manner any information requested by the workgroup. The workgroup may make recommendations to DPSCS, local correctional facilities, local elected bodies, or the General Assembly regarding the use of restrictive housing.

The workgroup must meet quarterly, convene its first meeting before December 31, 2017, and is subject to the Open Meetings Act.

Members of the workgroup may enter any correctional facility in the State with two days' notice. Workgroup members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the state budget.

Definitions

“Clinician” means a trained and licensed medical professional who has the authority to make a diagnosis and treat patients.

“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.

“Serious mental illness” includes anxiety disorders, bipolar and related disorders, intellectual disabilities and autism spectrum disorders, major depressive disorders, major neurocognitive disorders, obsessive compulsive and related disorders, personality disorders, schizophrenia spectrum and other psychotic disorders, and trauma and stressor-related disorders.

“Vulnerable inmate” means an inmate who (1) is age 18 or younger; (2) is age 65 or older; (3) is pregnant, in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; (4) is or is perceived to be lesbian, gay, bisexual, transgender, or intersex; (5) has a serious mental illness; or (6) has a physical disability.

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 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.

Background: 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 Control and Prevention and the General Assembly.

In the [report](#) released in December 2016, DPSCS reports that, during fiscal 2016, there were 17,646 placements on restrictive housing. This includes 5,158 placements on administrative segregation and 12,488 placements on disciplinary segregation. Some inmates were placed on restrictive housing more than once during the reporting period.

There were no pregnant inmates placed on restrictive housing during the reporting period. There were 172 inmates diagnosed with a “serious mental illness” placed on restrictive housing. **Exhibit 1** shows the average and median length of stay in restrictive housing placements during fiscal 2016.

Exhibit 1
Restrictive Housing Placements
Length of Stay (in Days)
Fiscal 2016

	<u>Average</u>	<u>Median</u>
Restrictive Housing	58	42
Administrative Segregation	67	49
Disciplinary Segregation	52	38

Source: Department of Public Safety and Correctional Services

In 2015, DPSCS entered into a partnership with the National Institute of Corrections (NIC) seeking technical assistance to reform the segregation practices in the State. As a result of the partnership, NIC presented DPSCS with 15 recommendations to move toward compliance with national standards regarding the operation of segregation, including the establishment of a Maximum II Structured Housing (MAX II SH) Program.

DPSCS advises that it is in the process of implementing the national best practices and establishing MAX II SH facilities for the male and female populations. The units will be

used for inmates considered to be the most violent and dangerous and who continuously commit assaults and other serious infractions while incarcerated. The concept is to target an inmate's inappropriate behaviors – especially violent behavior – and develop individualized case plans to target the top four risk factors for violent behavior: antisocial behavior, antisocial personality patterns, antisocial cognition, and antisocial associates.

Inmates assigned to the MAX II SH units will complete a four-step stratified incentive based plan that allows inmates to slowly assimilate back into the general population through a controlled environment, yet provides separation from the general population for safety concerns. Each phase is monitored by mental health and medical professionals, who will develop cognitive groups to effectively help inmates reengage in positive behavior. The goal is to eventually place these inmates back into the general population at the completion of the program.

The MAX II SH initiative is scheduled to begin July 2017.

State Expenditures:

Department of Public Safety and Correctional Services Operating Costs

General fund expenditures increase by *at least* \$753,613 in fiscal 2018, which accounts for the bill's October 1, 2017 effective date. This estimate reflects the cost of hiring 1 correctional hearing officer supervisor and 10 correctional hearing officers to handle challenges to an inmate's placement in restrictive housing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	11
Salaries and Fringe Benefits	\$697,417
Operating Expenses	<u>56,196</u>
Minimum FY 2018 Operating Expenditures	\$753,613

The estimate does not reflect the additional costs related to the modification DPSCS needs to make to its medical and mental health provider contracts as a result of the bill. Thus, the actual increase in general fund expenditures is higher.

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

DPSCS can provide staff support to the Restrictive Housing Workgroup with existing resources.

Capital Costs

GO bond expenditures by DPSCS increase by an estimated \$10.5 million to renovate the three existing restrictive housing units to meet the bill's temperature-controlled cell requirement. Although the Department of Legislative Services (DLS) cannot independently verify the cost to renovate an existing facility with air conditioning, which, according to DPSCS, is needed to meet the bill's requirement, DPSCS advises that the cost is approximately \$3.5 million per facility (or \$10.5 million total). The cost to build a *new* climate-controlled maximum security facility with support space, including medical, for approximately 1,000 inmates is estimated at more than \$200 million. Thus, this analysis assumes that DPSCS elects to renovate the three existing facilities rather than construct a new one.

DLS notes that, while the bill increases capital costs for DPSCS, in fact, overall GO bond expenditures do not increase, as the total size of the capital budget is established annually by the Governor and General Assembly through the capital budget process. Renovation of facilities required by the bill is likely spread over several years; however, for the purpose of this analysis, the cost is shown in a single year. Given the fixed nature of the capital budget, the renovation of facilities required by this bill likely reduces funding available for other projects currently in the CIP, resulting in the delay or cancellation of those projects.

Local Expenditures: Although Harford County advises that the bill has no fiscal impact, many local jurisdictions do not have year-round, temperature-controlled environments for restrictive housing of inmates. In addition, many jurisdictions do not have the staff necessary to handle the likely increase in challenges to an inmate's placement in restrictive housing. Therefore, the bill's requirements likely result in a significant increase in expenditures for local correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: SB 1015 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Harford County; Department of Public Safety and Correctional Services; Department of Legislative Services

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