

SENATE BILL 539

E4

8lr1442
CF HB 786

By: **Senators Lee, Benson, Currie, Kelley, Muse, Ramirez, and Smith**

Introduced and read first time: January 31, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Correctional Services – Restrictive Housing – Limitations**

3 FOR the purpose of authorizing a certain sanction for a certain inmate who has been found
4 guilty of a certain administrative infraction; authorizing a certain sanction for a
5 certain inmate who has been found guilty of a certain substantive infraction;
6 restricting the number of consecutive and total days that an inmate may be placed
7 in certain restrictive housing; prohibiting the placement of an inmate in restrictive
8 housing for certain reasons; prohibiting a certain vulnerable inmate from placement
9 in restrictive housing under certain circumstances; requiring a certain inmate in
10 restrictive housing to be provided certain health assessments and access to certain
11 privileges and conditions; requiring the failure to provide a certain privilege or
12 condition to a certain inmate to be recorded in the inmate's file; prohibiting the direct
13 release of a certain inmate from restrictive housing to the community, with a certain
14 exception; providing for the application of this Act; defining certain terms; and
15 generally relating to inmates and restrictive housing.

16 BY repealing and reenacting, without amendments,
17 Article – Correctional Services
18 Section 9–614(a)
19 Annotated Code of Maryland
20 (2017 Replacement Volume)

21 BY adding to
22 Article – Correctional Services
23 Section 9–616
24 Annotated Code of Maryland
25 (2017 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Correctional Services

1
2 9–614.

3 (a) (1) In this section, “restrictive housing” means a form of physical
4 separation in which the inmate is placed in a locked room or cell for approximately 22 hours
5 or more out of a 24–hour period.

6 (2) “Restrictive housing” includes administrative segregation and
7 disciplinary segregation.

8 **9–616.**

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (2) “ADMINISTRATIVE INFRACTION” MEANS AN ACT COMMITTED
12 INSIDE A CORRECTIONAL FACILITY THAT DOES NOT CONSTITUTE A VIOLATION OF
13 MARYLAND CRIMINAL LAW.

14 (3) “ALTERNATIVE DISCIPLINARY SANCTION” MEANS A PENALTY
15 IDENTIFIED IN COMAR 12.02.27.39D(1) THROUGH (4).

16 (4) “INCIDENT REPORT” HAS THE MEANING STATED IN COMAR
17 12.02.27.02B.

18 (5) “RESTRICTIVE HOUSING” HAS THE MEANING STATED IN § 9–614
19 OF THIS SUBTITLE.

20 (6) “SUBSTANTIVE INFRACTION” MEANS AN ACT COMMITTED INSIDE
21 A CORRECTIONAL FACILITY THAT CONSTITUTES A VIOLATION OF MARYLAND
22 CRIMINAL LAW.

23 (7) “VULNERABLE INMATE” MEANS AN INMATE WHO:

24 (I) IS 18 YEARS OF AGE OR YOUNGER;

25 (II) IS 65 YEARS OF AGE OR OLDER;

26 (III) IS PREGNANT, IN THE POSTPARTUM PERIOD, OR HAS
27 RECENTLY SUFFERED A MISCARRIAGE OR TERMINATED A PREGNANCY;

28 (IV) IS OR IS PERCEIVED TO BE LESBIAN, GAY, BISEXUAL,
29 TRANSGENDER, OR INTERSEX;

1 (V) HAS A DIAGNOSED SERIOUS MENTAL ILLNESS; OR

2 (VI) HAS AN INTELLECTUAL, A DEVELOPMENTAL, OR A
3 PHYSICAL DISABILITY OR A TRAUMATIC BRAIN INJURY.

4 (B) THIS SECTION APPLIES TO FACILITIES OPERATED BY A CORRECTIONAL
5 UNIT, AS DEFINED IN § 2-401 OF THIS ARTICLE.

6 (C) (1) AN INMATE WHO HAS BEEN FOUND GUILTY OF AN
7 ADMINISTRATIVE INFRACTION MAY BE SUBJECT TO:

8 (I) FOR A FIRST INFRACTION, NOT MORE THAN A VERBAL
9 WARNING;

10 (II) FOR A SECOND INFRACTION, NOT MORE THAN AN INCIDENT
11 REPORT; AND

12 (III) FOR A THIRD OR SUBSEQUENT INFRACTION, NOT MORE
13 THAN AN ALTERNATIVE DISCIPLINARY SANCTION.

14 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN INMATE
15 WHO HAS BEEN FOUND GUILTY OF A SUBSTANTIVE INFRACTION MAY BE SUBJECT TO:

16 (I) FOR A FIRST INFRACTION, NOT MORE THAN 15 DAYS IN
17 RESTRICTIVE HOUSING;

18 (II) FOR A SECOND INFRACTION, NOT MORE THAN 30 DAYS IN
19 RESTRICTIVE HOUSING; AND

20 (III) FOR A THIRD OR SUBSEQUENT INFRACTION, NOT MORE
21 THAN 45 DAYS IN RESTRICTIVE HOUSING.

22 (3) UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE
23 INMATE POSES AN IMMEDIATE AND SUBSTANTIAL RISK OF PHYSICAL HARM TO THE
24 SECURITY OF THE FACILITY, TO THE INMATE, OR TO OTHERS, AN INMATE MAY NOT
25 BE SUBJECT TO MORE THAN 15 CONSECUTIVE DAYS OR A TOTAL OF 90 DAYS IN
26 RESTRICTIVE HOUSING IN A 1-YEAR PERIOD.

27 (D) AN INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING FOR:

28 (1) NONDISCIPLINARY REASONS;

1 **(2) REFUSING MEDICAL TREATMENT; OR**

2 **(3) UNLESS THE INMATE'S PLACEMENT IN RESTRICTIVE HOUSING IS**
3 **TEMPORARY, HAS BEEN ORDERED BY A MEDICAL PROFESSIONAL, AND IS IN A**
4 **CLINICALLY DESIGNATED AND SUPERVISED AREA, SELF-HARM BEHAVIOR.**

5 **(E) UNLESS THERE IS A FACILITY-WIDE LOCKDOWN, A VULNERABLE**
6 **INMATE MAY NOT BE PLACED IN RESTRICTIVE HOUSING UNTIL ALTERNATIVE**
7 **DISCIPLINARY SANCTIONS AND INFORMAL SANCTIONS HAVE BEEN ATTEMPTED AND**
8 **DOCUMENTED AND HAVE FAILED TO MITIGATE THE RISK OF PHYSICAL HARM TO THE**
9 **SECURITY OF THE FACILITY, TO THE INMATE, OR TO OTHERS.**

10 **(F) (1) AN INMATE IN RESTRICTIVE HOUSING SHALL BE PROVIDED:**

11 **(I) WEEKLY COMPREHENSIVE PHYSICAL AND MENTAL HEALTH**
12 **ASSESSMENTS BY A MEMBER OF THE EVALUATION TEAM, AS DEFINED IN § 4-101 OF**
13 **THIS ARTICLE, TO DETERMINE IF THE INMATE MAY BE RELEASED FROM**
14 **RESTRICTIVE HOUSING;**

15 **(II) THE SAME STANDARD OF ACCESS THAT IS PROVIDED TO**
16 **INMATES NOT IN RESTRICTIVE HOUSING TO:**

17 **1. PHONE CALLS;**

18 **2. VISITS;**

19 **3. MAIL;**

20 **4. BASIC NECESSITIES, INCLUDING:**

21 **A. FOOD;**

22 **B. WATER;**

23 **C. SHOWERS; AND**

24 **D. CLOTHING AND BEDDING;**

25 **5. SANITARY CONDITIONS; AND**

26 **6. MEDICAL CARE, INCLUDING APPROPRIATE**
27 **PREVENTIVE AND EMERGENCY CARE; AND**

1 (III) MAXIMIZED ACCESS TO RECREATION, EDUCATION, AND
2 PROGRAMMING.

3 (2) IF A PRIVILEGE OR CONDITION DESCRIBED IN PARAGRAPH (1) OF
4 THIS SUBSECTION IS NOT PROVIDED TO AN INMATE, THE REASON SHALL BE
5 RECORDED IN THE INMATE'S FILE.

6 (G) UNLESS NECESSARY FOR THE SAFETY OF THE INMATE, AN INMATE MAY
7 NOT BE RELEASED DIRECTLY FROM RESTRICTIVE HOUSING TO THE COMMUNITY.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2018.