

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 774

(Senator Smith, *et al.*)

Judicial Proceedings

Judiciary

**Correctional Services - Restrictive Housing - Reporting by Correctional Units
and Requirements Relating to Minors**

This bill expands the entities required to submit specified information relating to inmates in restrictive housing to the Governor's Office of Crime Control and Prevention (GOCCP) and repeals the requirement for the information to be submitted directly to the General Assembly. Instead of the Department of Public Safety and Correctional Services (DPSCS), each correctional unit must submit that information to GOCCP, and when GOCCP has received the information from every correctional unit, GOCCP must promptly submit the information in a report to the General Assembly. In addition, the bill prohibits a correctional unit from placing a minor in restrictive housing, with specified exceptions. A minor placed in restrictive housing must be provided specified conditions and privileges and, if those conditions or privileges are not provided, the managing official or the managing official's designee must record the reason in the minor's file.

Fiscal Summary

State Effect: It is anticipated that the bill's changes can be implemented with existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: The bill is not anticipated to materially affect local government expenditures, as discussed below. Local revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: By December 31 of each year, *each correctional unit* must submit data relating to inmates in restrictive housing to GOCCP, showing, by correctional unit:

- the total population of the correctional unit;
- 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 correctional unit'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 the correctional unit 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 unit relating to the use and conditions of restrictive housing, including steps to reduce reliance on restrictive housing.

"Correctional unit" means a unit of Maryland State or local government that is directly responsible for the care, custody, and control of individuals committed to the custody of the unit for the commission or alleged commission of a crime or an act that would be a crime if committed by an adult. "Correctional unit" includes DPSCS, the Department of Juvenile Services, and the office of the sheriff of a county or other unit of government with responsibility for operating a local correctional facility or county detention center.

A minor may not be placed 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.

A minor placed in restrictive housing must be provided:

- daily physical and mental health assessments to determine whether the minor may be released from restrictive housing; and

- the same standard of access that is provided to inmates not in restrictive housing to phone calls; visits; mail; food; water; showers; sanitary supplies; property (including clothing and bedding); and medical, mental, and dental health care; and
- except as specified, maximized access to recreation, education, and programming.

Current Law:

Report: By December 31 of each year, DPSCS must submit data relating to inmates in restrictive housing to GOCCP and the General Assembly, 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.

GOCCP must make that information available on its website.

Restrictive Housing: 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 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.

“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 and includes administrative segregation and disciplinary segregation.

Background: According to the latest available [Report on Restrictive Housing](#), in fiscal 2017, there were 18,460 placements on restrictive housing: 5,270 on administrative segregation and 13,190 on disciplinary segregation. For inmates younger than age 18, in

fiscal 2017, there were three placements on restrictive housing, one placement on administrative segregation, and two placements on disciplinary segregation.

State Expenditures: While DPSCS advises that policies and practices for State correctional facilities need to be modified to implement the bill, the department was unable to provide an estimate of the fiscal effect of the bill. As DPSCS already provides the information required and follows set procedures for the placement of an inmate in restrictive housing, it is assumed that the bill's requirements can be handled with existing budgeted resources.

DPSCS reports that the Youth Detention Center (YDC) on the grounds of the Baltimore City detention complex can house 50 males and 10 females in individual cells. The facility has a full-size gymnasium and on-site medical, dental, and behavioral health treatment. As of February 14, 2019, YDC's population count was 45, of which 16 were sentenced inmates for offenses including murder, armed robbery, carjacking, and assault.

GOCCP advises that it needs a part-time employee to handle the bill's requirements; however, the bill does not require GOCCP to analyze or summarize the information submitted by correctional units. In addition, GOCCP already makes the information reported by DPSCS available on its website. The Department of Legislative Services assumes, therefore, that GOCCP can submit the information it receives from correctional units in a report to the General Assembly using existing budgeted resources.

The Department of Juvenile Services advises that the bill's requirements can be handled with existing resources.

Local Expenditures: Based on information provided by several counties, the bill is not anticipated to significantly affect local expenditures. For example, Anne Arundel County advises that it can implement the bill with existing resources. Montgomery County reports that the bill results in a marginal fiscal impact to the county. Charles County advises that a new process for tracking and reporting the required information is necessary and that the bill likely increases local expenditures by \$10,000 in the first year.

Additional Information

Prior Introductions: None.

Cross File: HB 1001 (Delegate J. Lewis, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Charles, and Montgomery counties; Department of Juvenile Services; Department of Public Safety and Correctional Services; Governor's Office of Crime Control and Prevention; Department of Legislative Services

Fiscal Note History: First Reader - February 20, 2019
an/lgc Third Reader - March 25, 2019
Revised - Amendment(s) - March 25, 2019
Enrolled - May 1, 2019
Revised - Amendment(s) - May 1, 2019

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510