

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1029
 Judiciary

(Delegate J. Lewis)

Correctional Services - Restrictive Housing - Limitations (Restrictive Housing Reform Act of 2019)

This bill establishes requirements and limitations relating to the placement of an inmate in restrictive housing. By January 1, 2021, the Department of Public Safety and Correctional Services (DPSCS) must report to the General Assembly on the steps the department has taken relating to restrictive housing and disciplinary segregation, as specified.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$11.0 million in FY 2020. Future year expenditures are annualized and reflect minimum ongoing costs. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	11,047,600	13,751,600	14,211,500	14,697,900	15,201,000
Net Effect	(\$11,047,600)	(\$13,751,600)	(\$14,211,500)	(\$14,697,900)	(\$15,201,000)

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

Local Effect: Potential significant increase in local expenditures and operational impacts for some counties. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Requirements: The managing official of a correctional facility must ensure that each inmate placed in restrictive housing (1) receives written notice detailing the basis for placement or continued placement in restrictive housing not later than six hours after the beginning of the placement and (2) is provided a timely, thorough, and continuous review process to confirm the continued existence of the basis for placement, as specified, a written process to appeal the initial placement or continued placement of the inmate in restrictive housing, and copies of all documents, files, and records relating to the inmate's placement in restrictive housing, unless a document, file, or record contains contraband, classified information, or sensitive security-related information.

An inmate's file may not include a notation regarding placement of the inmate in administrative segregation or protective custody if the notation would serve to interrupt the inmate's programming eligibility, parole considerations, security status changes, or other opportunities.

Before placement in restrictive housing, an inmate must be provided a comprehensive mental health evaluation by a "multidisciplinary staff committee," as specified, and de-escalation techniques and opportunities. An inmate in restrictive housing must be provided:

- weekly comprehensive physical and mental health assessments by the multidisciplinary staff committee to determine if the inmate may be released from restrictive housing;
- the same standard of access that is provided to inmates not in restrictive housing to basic necessities, as specified; and
- maximized access to recreation, education, and programming, as specified.

Limitations: An inmate found guilty of an administrative infraction is subject to:

- for a first infraction, not more than a verbal warning;
- for a second infraction, not more than an incident report; and
- for a third or subsequent infraction, not more than an alternative disciplinary sanction.

An inmate found guilty of a substantive infraction is subject to:

- for a first infraction, not more than 15 consecutive days in restrictive housing;
- for a second infraction, not more than 30 days in restrictive housing; and
- for a third or subsequent infraction, not more than 45 days in restrictive housing.

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, an inmate may not be subject to more than 15 consecutive days or a total of 90 days in restrictive housing in a one-year period. In addition, an inmate may not be placed in restrictive housing for nondisciplinary reasons or for refusing medical treatment, with specified exceptions.

Report: By January 1, 2021, DPSCS must report on the steps the department has taken to:

- improve conditions of confinement in restrictive housing by allowing opportunities for out-of-cell time and congregate activity, providing inmates in restrictive housing daily outdoor recreation time, and creating more opportunities for productive in-cell activities;
- limit the number of violations that are eligible for disciplinary segregation sanctions;
- eliminate segregation sanctions for minor violations;
- create de-escalation spaces and establish a system that allows inmates in segregation to access these spaces for meaningful amounts of time;
- create individualized plans for each inmate entering restrictive housing, with the goal of returning the inmate to the general population;
- set clear time limits on the length of each phase in the step-down program to ensure that an inmate in the program is able to progress through the phases and reenter a less restrictive housing unit; and
- amend policies to specify that disciplinary segregation is a sanction of last resort.

Definitions: “Administrative infraction” means an act committed inside a correctional facility that does not constitute a violation of Maryland law.

“Administrative segregation” means a nonpunitive form of restrictive housing that removes an individual from the general population of the correctional facility for investigative, protective, or preventive reasons resulting from a substantial and immediate threat, or transitional reasons, including a pending transfer, pending classification, or other temporary administrative matter.

“Multidisciplinary staff committee” means a committee composed of staff at a facility at which an inmate is incarcerated who are responsible for reviewing the initial placement of

the inmate in restrictive housing and any extensions of time served in restrictive housing, which includes at least one licensed mental health professional, at least one medical professional, and at least one member of the management of the facility.

“Protective custody” means custodial conditions provided to an inmate at the request of the inmate or through a staff determination that the inmate requires protection.

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.

DPSCS regulations also address 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. The standard of proof required for the administrative process is "substantial evidence." "Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

"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. The average length of stay for restrictive housing was 45.8 days, for administrative segregation was 51.5 days, and for disciplinary segregation was 43.5 days. The number of inmates released while on restrictive housing was 278, administrative segregation was 138, and disciplinary segregation was 140.

State Expenditures: Inmates in restrictive housing for an administrative purpose receive a team review (conducted by a case management supervisor, correctional officer, Sergeant or above, and another correctional staff person, such as a social worker or psychologist) within 5 days of placement. After the initial review, the inmate receives a team review at least once every 7 days, for the first two months and then every 30 days thereafter, if housed in a facility accredited by the American Correctional Association (ACA). For inmates housed in a non-ACA-accredited facility, the inmate receives a team review at least once every 30 days after the initial 5-day review. Under the bill, a comprehensive physical and mental health assessment must be conducted by the multidisciplinary committee weekly.

As a result, general fund expenditures increase by at least \$11,047,575 in fiscal 2020, which accounts for the bill's October 1, 2019 effective date. This estimate reflects the cost of hiring 24 social workers, 5 social worker supervisors, 24 correctional psychologists, 5 supervisory correctional psychologists, 24 psychiatrists, and 5 supervisory psychiatrists to conduct the weekly comprehensive mental health assessments and 60 correctional officers to provide escorts to the inmates. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	147
Salaries and Fringe Benefits	\$10,259,839
Equipment/Operating Expenses	<u>787,736</u>
Minimum FY 2020 State Expenditures	\$11,047,575

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

DPSCS advises that 163 *additional* correctional officers are necessary. However, given that the number of inmates in State correctional facilities have steadily declined in recent years, the Department of Legislative Services assumes that the bill's requirements can likely be implemented with 60 additional correctional officers across all 24 State correctional facilities.

This estimate does not include costs for the following that cannot be reliably estimated at this time:

- any modifications to the current health care provider contract for additional medical staff and blood or other tests necessary for the required weekly physical assessment (DPSCS advises that a comprehensive physical assessment for a healthy patient includes a thorough physician review of medical history and health status, full body physical examination, pulmonary function testing, audiometry (hearing screening), visual acuity, glaucoma testing, immunization review, and administration of necessary immunizations. In addition assessments include full laboratory analysis and evaluation, comprehensive cardiac risk assessment, nutritional evaluation and consultation, diagnostic and testing procedures such as pelvic, mammogram, prostate, and colonoscopy. For an unhealthy patient, additional disease management testing is conducted.);
- additional medical equipment for on-site testing, additional examination rooms for medical assessments, and additional clinical rooms for mental health assessments;
- additional transportation vehicles for inmates and staff to meet logistical needs related to the required medical assessments; and
- any additional disability claims for correctional officers and necessary staff as a result of any increase in assaults on staff.

The bill also results in the following operational impacts:

- under the bill, an administrative infraction means an act committed inside a correctional facility that does not constitute a violation of Maryland law, which subjects a violator to a verbal warning, incident report, or an alternative disciplinary sanction. However, many administrative infractions within correctional facilities

jeopardize the safety and security of a facility but are not violations of State law, such as manufacturing a weapon out of property that the inmate/detainee is allowed to possess; possession of an implement or article that may be used in an escape, if the implement is manufactured out of permissible property; failure to provide the required volume of urine or providing an adulterated urine sample in an effort to conceal controlled dangerous substance use or possession; and possession of articles or materials for a financial account that could be used to facilitate black market transactions within the facility and other forms of illegal activity;

- under the bill, an inmate may not be placed in restrictive housing for nondisciplinary reasons; however, restrictive housing is used for protective custody and is often requested as administrative segregation by an inmate for personal safety; and
- under the bill, placement of an inmate in administrative segregation or protective custody may not be noted in the inmate's file if the notation would serve to interrupt the inmate's programming eligibility, parole considerations, security status changes, or other opportunities; however, inmates who commit certain violations or repeated violations jeopardize the safety and security of a correctional facility. Currently, some violations result in a change in security status for the overall safety of the inmate or a facility.

Local Expenditures: Local expenditures increase, potentially significantly, in some counties for local correctional facilities to meet the bill's requirements. For example, while Carroll, Harford, and Montgomery counties advise that the bill does not increase local expenditures or cause operational impacts, St. Mary's County advises that the county does not currently have the staff or the contractual services necessary to implement the bill and that the county lacks the physical space to house the additional staff needed as a result of the bill. Thus, St. Mary's County reports that its expenditures increase significantly (in excess of \$200,000 for additional staff only). In addition, the county advises that the bill's limitations on the use of restrictive housing have significant operational impacts, as they jeopardize the safety and security of inmates and staff at the county detention center.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Carroll, Harford, Montgomery, and St. Mary's counties; Department of Public Safety and Correctional Services; Department of Legislative Services

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mm/lgc

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