

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 742
 Judiciary

(Delegate J. Lewis, *et al.*)

Corrections - Restrictive Housing - Serious Mental Illness - Assessments
 (Restrictive Housing Reform Act)

This bill prohibits the placement of an inmate with a “serious mental illness” in restrictive housing, with specified exceptions. An inmate with a serious mental illness placed in restrictive housing (1) must be provided daily physical and mental health assessments to determine whether the inmate may be released from restrictive housing and (2) absent compelling circumstances, may not be placed in restrictive housing for more than 15 days. The bill applies to both State and local correctional facilities. By January 1, 2021, the Department of Public Safety and Correctional Services (DPSCS) must report specified information to the General Assembly.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$8.3 million in FY 2021; future years are annualized and reflect ongoing costs. Revenues are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	8,318,300	9,902,900	10,138,300	10,488,800	10,851,600
Net Effect	(\$8,318,300)	(\$9,902,900)	(\$10,138,300)	(\$10,488,800)	(\$10,851,600)

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

Local Effect: Potential significant increase in expenditures for local correctional facilities. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: Exceptions to the prohibition on placing an inmate with a serious mental illness in restrictive housing include (1) in limited exigent circumstances when reasonable alternatives are not available and there is an actual threat of imminent harm and (2) if medically necessary, as determined by a medical professional and the inmate is placed in a clinically designated and supervised area.

The managing official of a correctional facility must require that:

- before placement in restrictive housing, each inmate be provided de-escalation techniques and opportunities;
- each inmate who is placed in restrictive housing be assessed not later than 4 hours after the beginning of placement and every following 24 hours; and
- each assessment that serves as a basis for continued placement in restrictive housing be documented.

By January 1, 2021, DPSCS must report to the General Assembly on steps the department has taken to improve conditions of confinement in restrictive housing by allowing opportunities for inmates to have access to out-of-cell time, congregate activity, daily outdoor recreation time, and productive in-cell activities.

“Serious mental illness” includes any condition, regardless of diagnosis, indicating a high level of mental health needs based on high symptom severity or high resource demands and demonstrating a significant functional impairment in an individual’s ability to function within a correctional facility, as evidenced by (1) engaging in deliberate self-harming behaviors, as specified; (2) demonstrated difficulty maintaining activities of daily living, as specified; or (3) a pervasive pattern of dysfunctional, bizarre, or disruptive social interaction as a consequence of an underlying mental disorder.

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.

Chapter 526 of 2019 prohibits the placement of a minor 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. “Restrictive housing” means a form of physical separation that has not been requested by the inmate 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 2018, there were 18,324 placements on restrictive housing: 4,578 on administrative segregation and 13,746 on disciplinary segregation. In fiscal 2018, a total of 287 inmates were released directly from restrictive housing, and no pregnant inmates were placed on restrictive housing.

State Expenditures: DPSCS has taken several measures in recent years to reduce the number of inmates on restrictive housing and to provide services to the seriously mentally ill inmate population; however, DPSCS advises that to provide daily mental health and physical assessments, additional staff is needed. As a result, general fund expenditures for DPSCS increase by at least \$8.3 million in fiscal 2021, which accounts for the bill’s October 1, 2020 effective date. This estimate reflects the cost of hiring 20 professional counselors, 15 social workers, 50 correctional officers, and 40 registered nurses to provide daily physical and mental health assessments, training, and escorts to assessments and training for inmates in restrictive housing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	125
Salaries and Fringe Benefits	\$7,647,530
Operating Expenses	<u>670,781</u>
Minimum FY 2021 State Expenditures	\$8,318,311

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

The current medical contract likely needs to be modified and modifications within facilities to provide the required assessments and training are likely needed. However, without actual experience under the bill, any associated costs cannot be determined and are not reflected in this analysis.

Local Expenditures: Local government expenditures increase, potentially significantly, for local correctional centers to provide staff and security to meet the bill’s requirements to limit the use of restrictive housing and to provide daily mental health and physical assessments.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 1002 (Senator Waldstreicher) - Rules.

Information Source(s): Baltimore City; Montgomery, Washington, and Worcester counties; Maryland Association of Counties; cities of Salisbury and Westminster; Maryland Municipal League; towns of Bel Air and Leonardtown; Department of Public Safety and Correctional Services; Department of Legislative Services

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