

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1299 (Delegate Ruth)
 Judiciary

Corrections - Housing - Serious Mental Illness

This bill, which applies to both State and local correctional facilities, with specified exceptions, requires that an inmate with a “serious mental illness” (SMI) be offered, within each 24-hour period, at least two hours and 30 minutes of time outside of a locked room or cell which may include structured or unstructured time. The managing official of the facility must require that a specified daily record is maintained. The bill requires the Department of Public Safety and Correctional Services (DPSCS) to provide an interim report by January 1, 2023, and a final report by January 1, 2024, to the General Assembly on steps the department has taken to improve access to confidential medical and mental health services, access to mail and telephone, congregate programming, and other out-of-cell opportunities for inmates with SMI.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$4.9 million in FY 2023; future years are annualized and reflect minimum ongoing costs. Revenues are not affected.

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	4.9	5.8	6.0	6.2	6.3
Net Effect	(\$4.9)	(\$5.8)	(\$6.0)	(\$6.2)	(\$6.3)

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

Local Effect: Potential significant increase in expenditures for at least some 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: An inmate with a SMI may be offered less than two hours and 30 minutes of time outside a locked room or cell within a 24-hour period if (1) in limited exigent circumstances, not to exceed 15 days, the inmate presents an immediate and ongoing threat of harm to the inmate or others or (2) a licensed health care professional certifies that a more restrictive setting is necessary for the inmate's course of care. When determined that the circumstances no longer exist, the required time outside a locked room or cell for an inmate with SMI must be restored.

SMI means a diagnosis recognized by the American Psychiatric Association that demonstrates high symptom severity or the need for specialized care, and a significant functional impairment that may be evidenced by (1) self-harming behaviors; (2) serious deficits in adaptive functioning that hamper conforming to institutional rules or engagement in activities; (3) a pattern of dysfunctional, bizarre, or disruptive social interactions; or (4) other behaviors identified by health care professionals to represent a significant functional impairment.

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.

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 Prevention, Youth, and Victim Services and the General Assembly. The latest report can be found [here](#).

Chapters 526 and 527 of 2019 expanded the entities required to submit information relating to inmates in restrictive housing to include each correctional unit (all correctional units within each jurisdiction). The latest report can be found [here](#). In addition, Chapters 526 and 527 prohibit 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.

State Expenditures: DPSCS has taken several measures in recent years to reduce the number of inmates in restrictive housing and to provide services to the seriously mentally ill inmate population; however, DPSCS currently uses the definition for SMI under the Code of Maryland Regulations ([COMAR 10.21.17.02](#)), which defines SMI to mean a mental disorder that is (1) manifest in an individual at least age 18; (2) diagnosed, according to a current diagnostic classification system that is recognized by the Secretary of Health

as schizophrenic disorder, major affective disorder, other psychotic disorder; or borderline or schizotypal personality disorder, with the exclusion of an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct; and (3) characterized by impaired functioning on a continuing or intermittent basis, for at least two years, and includes at least three of the following:

- inability to maintain independent employment;
- social behavior that results in interventions by the mental health system;
- inability, due to cognitive disorganization, to procure financial assistance to support living in the community;
- severe inability to establish or maintain a personal support system; or
- need for assistance with basic living skills.

DPSCS advises that the bill’s definition of SMI expands the number of inmates identified as having SMI and that such inmates qualify for special needs units (where, among other things, they are entitled to be out of their cells in a manner that meets the bill’s requirement) as well as additional services (such as group and individual therapy); therefore, due to the change in the definition, the department needs additional staff to provide those services to additional inmates. As a result, general fund expenditures for DPSCS increase by at least \$4.9 million in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. This estimate reflects the cost of hiring one psychologist, 22 mental health professional counselors, 40 social workers, and eight advanced social workers to staff and provide additional services in special needs housing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	71.0
Salaries and Fringe Benefits	\$4,407,857
Operating Expenses	<u>521,353</u>
Minimum FY 2023 State Expenditures	\$4,929,210

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

In addition to the costs estimated above, additional costs are likely incurred. The current medical contract likely needs to be modified. In addition, additional correctional officers and modifications within facilities to provide the additional services are likely needed. However, without actual experience under the bill, any such costs cannot be determined and are not reflected in this analysis.

Local Expenditures: Local government expenditures increase, potentially significantly, for at least some local correctional facilities to provide additional services as a result of the bill's changes. The effect likely varies by jurisdiction.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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