

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 702 (Senator Love, *et al.*)
 Judicial Proceedings

Correctional Services - Restrictive Housing

This bill, with respect to State correctional facilities, (1) limits the amount of time that an individual may be placed in restrictive housing; (2) requires all restrictive housing units to create the least restrictive environment necessary for the safety of all incarcerated individuals and staff and for the security of the facility and (3) prohibits the placement of a “member of a vulnerable population” in restrictive housing for any period of time. The bill also modifies the definition of “restrictive housing” as it applies to pregnant incarcerated individuals, incarcerated individuals who are minors, and mandatory reporting for both State and local correctional facilities. By October 1, 2027, and October 1, 2029, the Correctional Ombudsman must review the status of the implementation of the bill and include a summary of the results of those reviews in required annual reports.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$5.3 million in FY 2026; *significant additional* costs have not been quantified, as discussed below. Future years reflect annualization, inflation, and ongoing minimum costs. Revenues are not affected.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	5,302,800	6,154,200	6,429,800	6,719,000	7,003,200
Net Effect	(\$5,302,800)	(\$6,154,200)	(\$6,429,800)	(\$6,719,000)	(\$7,003,200)

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

Local Effect: While the altered definition of “restrictive housing” applies to local correctional facilities, it is assumed that the change does not significantly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: With respect to State correctional facilities, an individual may not be kept in restrictive housing for longer than is necessary, longer than 15 consecutive days, and more than 20 total days in any 60-day period. If placement of an individual in restrictive housing would exceed 20 total days in any 60-day period, but the Department of Public Safety and Correctional Services (DPSCS) has found that the individual has committed a “prohibited act,” DPSCS may place the individual in restrictive housing until the individual can be placed in a residential mental health unit or for 48 hours, whichever is of shorter duration.

“Member of a vulnerable population” means an incarcerated individual who:

- is age 21 or younger;
- is at least age 55;
- has a disability based on a mental illness, has a history of psychiatric hospitalization, or has recently exhibited conduct, including serious self-mutilation, indicating the need for further observation or evaluation to determine the presence of serious mental illness;
- has a developmental disability;
- has a serious medical condition that cannot effectively be treated in restrictive housing;
- is pregnant, is fewer than 45 days postpartum, is caring for a child in a specified facility, or has recently suffered a miscarriage or terminated a pregnancy;
- has a significant auditory or visual impairment; or
- is perceived to be lesbian, gay, bisexual, transgender, or intersex.

“Prohibited act” includes:

- causing or attempting to cause serious physical injury to or the death of another person;
- making an imminent threat of serious physical injury or death to another person when (1) the individual making the threat has a history of causing physical injury or death and (2) the Commissioner of Correction reasonably determines that there is a strong likelihood that the person will carry out a threat of serious physical injury or death;
- compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
- extorting another, by force or threat of force, for property or money;
- coercing another, by force or threat of force, to violate a rule;

- leading, organizing, inciting, or attempting to cause a riot, an insurrection, or any other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;
- procuring deadly weapons or other dangerous contraband that pose a serious threat to the security of the institution; and
- escaping, attempting to escape, or facilitating an escape from a correctional facility or escaping or attempting to escape while under supervision outside a correctional facility.

The definition of “restrictive housing” – as it applies to both State and local correctional facilities – is modified to mean a form of physical separation that has not been requested by the incarcerated individual in which the incarcerated individual is placed in a locked room or cell for more than 17 hours out of a 24-hour period other than during a facility-wide emergency or for the purpose of providing medical or mental health treatment within a clinical area of the facility.

In conducting the reviews required by the bill, OCO may make unannounced visits to correctional facilities, review daily logs, and administer anonymous surveys.

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 incarcerated individuals and 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 incarcerated individual 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 incarcerated individual 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 incarcerated individual’s status; and (5) maintenance of supervision records of specified activities and occurrences.

“Administrative segregation” means a form of physical separation of an incarcerated individual from the general population determined by the classification process or authorized personnel when the continued presence of an incarcerated individual in the general population would pose a serious threat to (1) life; (2) property; (3) self; (4) staff or other incarcerated individuals; (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 incarcerated individual found guilty at a disciplinary hearing is confined apart from the general population for a designated period of time.

DPSCS regulations also address discipline of incarcerated individuals. An incarcerated individual who commits a rule violation is subject to the incarcerated individual disciplinary process of the department. Sanctions for incarcerated individual rule violations include (1) placement of an incarcerated individual on disciplinary segregation; (2) revocation of good conduct and special projects credits; (3) suspension of incarcerated individual 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 incarcerated individual rule violation and disciplinary hearing on the incarcerated individual, and a shift commander may isolate the incarcerated individual if the incarcerated individual poses a threat to security.

Following a hearing, and upon a determination of guilt, a hearing officer may permit the defendant incarcerated individual or, if represented, the defendant incarcerated individual'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.

To the extent possible, the Commissioner of Correction may not prohibit an incarcerated individual placed in restrictive housing from having access to a reentry specialist or case manager within 180 days before the incarcerated individual is released to the community.

Chapter 324 of 2019 prohibits, with specified exceptions, the involuntary placement of a pregnant incarcerated individual in restrictive housing and sets forth requirements for when a pregnant incarcerated individual is placed in restrictive housing. Each correctional facility must have a written policy in place regarding the medical care of pregnant incarcerated individuals that addresses the use of involuntary medical isolation or restrictive housing for administrative, protective, or disciplinary purposes during pregnancy and eight weeks during the postpartum or post-pregnancy recovery period.

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 incarcerated individuals, or staff or to the security of the facility.

By December 31 each year, each correctional unit must submit data to the Governor's Office of Crime Prevention and Policy (GOCPP) showing, by correctional unit:

- the total population of the correctional unit;
- the number of incarcerated individuals who have been placed in restrictive housing during the preceding year by age, race, gender, classification of housing, and the basis for the incarcerated individual's placement in restrictive housing;
- the number of incarcerated individuals with serious mental illness that were placed in restrictive housing during the preceding year and the definition of "serious mental illness" used by the unit in making the report;
- the number of incarcerated individuals 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 incarcerated individuals placed in restrictive housing during the preceding year;
- the number of incidents of death, self-harm, and attempts at self-harm by incarcerated individuals in restrictive housing during the preceding year;
- the number of incarcerated individuals 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.

GOCPP must make the submitted information available on its website and, as specified, submit the information in a report to the General Assembly.

"Restrictive housing" means a form of physical separation that has not been requested by the incarcerated individual in which the incarcerated individual 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. The definition applies to both State and local correctional facilities.

State Expenditures:

Department of Public Safety and Correctional Services

According to DPSCS, in fiscal 2024, a total of 5,209 individuals spent more than 15 days in restrictive housing. DPSCS has taken several measures in recent years to reduce the number of incarcerated individuals in restrictive housing; however, DPSCS advises that to meet the bill’s requirements, a significant number of additional staff is needed.

As a result, general fund expenditures increase by *at least* \$5.3 million in fiscal 2026, which accounts for the bill’s October 1, 2025 effective date. This estimate reflects the cost of hiring 83 correctional officers to provide supervision in order to create the least restrictive environment for restrictive housing units and to provide supervision for members of vulnerable populations that may not be placed in restrictive housing. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate is based on information provided by DPSCS regarding staffing needs for increased out-of-cell activity, taking into account capacity, facility security, and existing staffing levels.

Positions	83.0
Salaries and Fringe Benefits	\$4,691,239
Operating Expenses	<u>611,606</u>
Minimum FY 2026 DPSCS Expenditures	\$5,302,845

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

This estimate does not include *significant* costs for the following, as they cannot be reliably estimated at this time:

- any necessary construction or renovation to existing correctional facilities to (1) create the least restrictive environment necessary for the safety of all incarcerated individuals and staff and for the security of the facility and (2) provide additional space in residential mental health units – which could cost more than \$100.0 million and would be funded through the capital budget, resulting in the delay or cancellation of other projects;
- modification of the contracts with medical vendors in order to expand available space in residential mental health units – which could cost tens of millions of dollars annually; and
- additional training, including any overtime necessary, for approximately 4,000 correctional officers.

Office of the Correctional Ombudsman

Among other duties, the Office of the Correctional Ombudsman (OCO) is required under current law to conduct independent reviews and assessments relating to (1) health and mental health services provided to individuals confined by any agency, as specified; (2) agency plans for the expansion, renovation, or closure of facilities; (3) educational and vocational programs for individuals confined by any agency; and (4) agency policies on restrictive and protective housing. OCO was established under Chapter 836 of 2024 and is still working to become fully staffed. This analysis assumes that once fully staffed, OCO can conduct the required reviews with existing resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 647 (Delegate Phillips, *et al.*) - Judiciary.

Information Source(s): Anne Arundel, Cecil, and Frederick counties; Maryland Association of Counties; Office of the Attorney General; Office of the Correctional Ombudsman; Department of Public Safety and Correctional Services; Department of Legislative Services

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