



## Department of Public Safety and Correctional Services

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STATE OF MARYLAND

**BILL: HOUSE BILL 851**

LAWRENCE J. HOGAN, JR.  
GOVERNOR

**POSITION: LETTER OF INFORMATION**

BOYD K. RUTHERFORD  
LT. GOVERNOR

**EXPLANATION:** This bill defines Serious Mental Illness (SMI) and prohibits the placement of an inmate with SMI in restrictive housing, except in limited exigent circumstances and for no more than 15 days; requires a daily wellness check by certified healthcare and custody staff; allows for the inmate to be removed from restrictive housing when no longer a threat to the individual or others; and requires a daily record be maintained. **Developing a definition of SMI that is not consistent with the medical profession's nationally recognized definition creates a conflict for the treatment and care of all inmates with a medically recognized SMI and statutorily mandating certain policies and procedures would hinder the Department's ability to adapt and evolve with emerging best practices.**

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### COMMENTS:

GARY McLHINNEY  
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CATHERINE KAHL  
ACTING DIRECTOR

- The Department of Public Safety and Correctional Services (DPSCS) primary mission is to oversee the Division of Correction (DOC), which houses inmates sentenced to terms of incarceration exceeding 18 months, the Division of Parole and Probation, and the Baltimore City Pretrial Complex.
- House Bill 851 would have a significant operational and fiscal impact on the daily operations of the state correctional facilities overseen by the Department. House Bill 851 defines Serious Mental Illness (SMI) as “the condition of an individual with a diagnosis recognized by the American Psychiatric Association who demonstrates:
  - High symptom severity or the need for specialized care; and
  - A significant function impairment.
- The Department, however, defines SMI in accordance with the Code of Maryland Regulations (COMAR) 10.21.17.02. This generally includes individuals with schizophrenic disorder, major affective disorder, other psychotic disorder; or borderline or schizotypal personality disorder, based on a diagnosis consistent with the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5). These individuals have a demonstrated inability to maintain social support and

independence within the community and may require additional assistance with basic living skills.

- The bill will require the Department to utilize an SMI definition that is not only arbitrary, subjective, and hard to define with certainty; but differs significantly from both COMAR 10.21.17.02 and the Department's policy definition of COMAR.
- Passage of HB 851 will require that new COMAR regulations be promulgated to establish definitions and management of the Department's SMI population and will require a change to COMAR 12.03.02, *Inmate Disciplinary Process*.
- The bill also mandates a managing official require a daily wellness check conducted by a certified healthcare professional and custody staff. The Department conducts a comprehensive assessment when determining an individual no longer presents an immediate or ongoing threat of imminent harm to self or others.
- When providing a wellness check of an inmate, a confidential environment is necessary. To ensure the safety and security of the inmate, staff, and facility, two officers are required to escort an inmate when moving from place to place within the facility. To provide wellness checks on a daily basis, the Division of Correction estimates it will need to create the following custody PINs:
  - **14 Correctional Officer I PINs at a Corr Grade 3, Step 3 for a total of \$599,956.00 (excluding fringe and benefits); and**
  - **14 Correctional Officer II PINs at a Corr Grade 4, Step 3 for a total of \$638,190.00 (excluding fringe and benefits)**
- HB 851 conflicts with national best practices and standards set by the American Correctional Association and the Department has been making substantial progress to improve its utilization of restrictive housing.
- In January 2020, DPSCS signed a Memorandum of Understanding (MOU) with the American Correctional Association (ACA) to accredit all of the Department's correctional facilities. Accreditation requires adherence to the recently released performance based standards manual, *Performance-Based Standards and Expected Practices for Adult Correctional Institutions* (5<sup>th</sup> ed.). This includes the newly created comprehensive best practices concerning restrictive housing developed as the result of five years of comprehensive national research and community input.

- As it relates to placing an inmate with a serious mental illness on restrictive housing, the ACA performance-based standards and expected practices specifically state, an inmate diagnosed with a serious mental illness will not be placed in restrictive housing, unless it has been determined there is an immediate and present danger to others or the safety of the institution. There is also an active individualized treatment plan that includes weekly monitoring by mental health staff, treatment as necessary, and steps to facilitate the transition of the offender back into the general population.
- ACA standards and the Department's policies, practices, and procedures continue to change and evolve as science and evidence based national best practices change and improve over time. **This bill would create a statutory mandate on an area in the criminal justice system that is similarly subject to change. It is imperative the Department's operations have the ability to remain nimble based on the ever-changing framework of the criminal justice arena.**

**CONCLUSION:** For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates House Bill 851.