



## Department of Public Safety and Correctional Services

Office of the Secretary  
Office of Government and Legislative Affairs  
45 Calvert Street, Suite B7A-C, Annapolis MD 21401  
410-260-6070 • Fax: 410-974-2586 • www.dpscs.state.md.us

STATE OF MARYLAND

LAWRENCE J. HOGAN, JR.  
GOVERNOR

BOYD K. RUTHERFORD  
LT. GOVERNOR

ROBERT L. GREEN  
SECRETARY

RACHEL SESSA  
CHIEF OF STAFF

CHRISTOPHER McCULLY  
DEPUTY SECRETARY  
ADMINISTRATION

WAYNE HILL  
ACTING  
DEPUTY SECRETARY  
OPERATIONS

CAROLYN J. SCRUGGS  
ASSISTANT SECRETARY

GARY McHINNEY  
ASSISTANT SECRETARY

CATHERINE KAHL  
ACTING DIRECTOR

**BILL: HOUSE BILL 917**

**POSITION: LETTER OF INFORMATION**

**EXPLANATION:** This bill will prohibit the Department of Public Safety & Correctional Services (Department) from placing an inmate with a serious mental illness (SMI) in restrictive housing. The bill also requires the Department to track data about the placement of inmates in restrictive housing and publish it on the Department's website. **The bill proposes to statutorily mandate the manner in which the Department may utilize restrictive housing for all inmates and requires data that the Department does not currently track which will have a fiscal impact.**

### COMMENTS:

- The Department's Division of Correction (DOC) operates approximately 17 State correctional facilities that house offenders sentenced to incarceration for 18 months and longer. The Department also runs the Baltimore City Pretrial Complex which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less.
- HB917 defines serious mental illness to include specific psychiatric disorders and aligns the definition with conditions recognized by the federal Bureau of Prisons. Whereas, the Department defines a serious mental illness (SMI) in accordance with the Code of Maryland Regulations (COMAR) 10.21.17.02. The new definition has the potential to increase the number of inmates diagnosed with SMI.
- The bill provides that restrictive housing may not be used unless the inmate poses a substantial risk of physical harm to the facility, the inmate or others, and is not the result of a serious mental illness.
- During the ongoing COVID-19 pandemic the Department has relied on modifying movement during the COVID-19 pandemic to mitigate and prevent viral spread. While the Department makes every effort to provide out-of-cell time in a safe and socially distanced manner, limiting movement where multiple positives occur has been a key component of preventing transmission of COVID-19. Implementing laws that change housing processes and determinations during a pandemic would be incredibly challenging, especially given the identification of new variants.

- Restrictive housing primarily encompasses administrative segregation and disciplinary segregation. Administrative segregation is utilized when an inmate requests placement on protective custody, which enables staff enough time to investigate whether there is a substantial risk to safety or not. This bill would prohibit the agency from using administrative segregation in this manner as a determination has not yet been made as to whether a substantial risk of harm exists. Administrative segregation is also utilized when an inmate is suspected to have committed an institutional infraction and is awaiting a hearing as discussed below.
- Disciplinary segregation is utilized for every inmate who commits a serious infraction that presents an immediate and substantial risk of physical harm to the security of the facility, the inmate, or to staff and other inmates. The disciplinary process, including a matrix governing the periods of placement on restrictive housing, is outlined in COMAR.
- Based on the severity of the infraction, an inmate may be placed on administrative or disciplinary segregation. An inmate may only be placed on disciplinary segregation after a hearing has been held and the inmate was determined to be guilty of the infraction. As part of the hearing process, the inmate may appeal the decision.
- The bill also proposes any inmate may not be placed on restrictive housing unless all other less-restrictive options to address the risk have been exhausted. It is unclear as to what less-restrictive options are intended to be utilized.
- HB917 further mandates that an inmate is only in restrictive housing for the minimum period of time required to address the risk and does not compromise the mental and physical health of the inmate. This provision is unclear and would lead to additional litigation. As previously stated, an inmate may only be placed on disciplinary segregation after a hearing has been held and the inmate was determined to be guilty of the infraction. Facility leadership constantly review decisions made by the hearing officer to determine whether placements on restrictive housing can be abated prior to the expiration of the individual's time on disciplinary segregation.
- There will be a fiscal impact to implement the requirements mandated under the bill. Specifically, HB 917 would require the Department to publish information on its website that it does not currently track. To track all of the data points will not only require a modification to the Department's case management system, but additional staff will be necessary. The Department estimates the need for additional staff at a cost of over \$500,000.

- Under the requirements of the Correctional Services Article, §9-614, the Department submits an annual restrictive housing report to the Governor's Office of Crime Prevention, Youth, and Victim Services which is posted on their website. This report provides comprehensive data concerning the Department's usage of restrictive housing that include age, race, gender, and reasons for confinement among its data points.
- Over the past several years, the Department has taken measures to address its restrictive housing practices in an effort to reduce the number of inmates on restrictive housing and to reduce the amount of time in a restrictive housing environment, as defined in Correctional Services § 9-614, Annotated Code of Maryland.
- 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.
- It is imperative that as policies, practices and procedures continue to change with science and national best practices, 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 917.