



Department of Public Safety and Correctional Services  
Office of the Secretary

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STATE OF MARYLAND

**BILL: HOUSE BILL 67**

LARRY HOGAN  
GOVERNOR

**POSITION: LETTER OF INFORMATION**

BOYD K. RUTHERFORD  
LT. GOVERNOR

**EXPLANATION:** House Bill 67 requires the Commissioner of Correction (Commissioner) to establish a “step-down program” for offenders who have been placed in restrictive housing and who are within 180 days of returning to the general population or release. It further requires the Commissioner of Correction to document in writing why an inmate did not participate in a step-down program; and allows a former inmate to file a civil action for direct injury from a denial of the right to access a step-down program. **This bill will have a significant fiscal and operational impact on the Department of Public Safety and Correctional Services’ (DPSCS) Division of Correction (DOC) and the Division of Pretrial Detention and Services (DPDS).**

ROBERT L. GREEN  
SECRETARY

RACHEL SESSA  
CHIEF OF STAFF

SASHA VAZQUEZ-GONZALEZ  
ACTING  
DEPUTY SECRETARY  
ADMINISTRATION

**COMMENTS:**

WAYNE HILL  
DEPUTY SECRETARY  
OPERATIONS

- The Department of Public Safety and Correctional Services (Department) oversees the Division of Correction which operates 13 State correctional facilities, housing offenders sentenced to periods of incarceration for 18 months and longer. The Department also oversees the Division of Pretrial Detention and Services which operates the Baltimore City Pretrial Complex. The Department does not oversee any other local jail or detention facility.

CAROLYN L. COBBINS

**Restrictive Housing Usage Summary**

- The Department is obligated to submit annual reports that provide a detailed breakdown of placements on restrictive housing. Reports for fiscal years 2016 - 2021 can be accessed at: <http://goccp.maryland.gov/reports-publications/by-other-agencies/>
- In preparing the Department’s fiscal years 2020 and 2021 reports, the Department’s Office of Data Development made an alteration of the methodology utilized based on improvements in tracking restrictive housing, which prompted a review/update of prior years' data. The review discovered:
  - Restrictive housing usage is 60% lower than our previous estimates; and,

- Disciplinary segregation is 1/4 lower than previous estimates.
- Highlights from the FY 21 Report on Restrictive Housing:
  - In FY 2021, the Department decreased its usage of restrictive housing (disciplinary and administrative segregation) by 15.6%.
  - Disciplinary segregation decreased 22% from FY 20 and the placement length has fallen by 3.2 days.
  - Pregnant women are not placed on restrictive housing.
  - The median length of stay is 30 days on any restrictive housing.
  - Not all facilities have restrictive housing.
  - The Department has reduced the average length of disciplinary segregation placements by nearly 48% in three years.

### **Information on Impact of HB 67**

- HB 67 will require the Commissioner of Correction provide a step down program to an inmate before the inmate is transferred from restrictive housing to the general population or the direct release of an inmate from a facility to the community.
- Currently, 11 of the 13 DOC facilities house Administration and Disciplinary Segregation and the Department has an existing policy requiring a segregation review board for each facility that houses segregation inmates.
- Currently, when an inmate is placed in restrictive housing for disciplinary reasons, notification as to why, for how long, and appeal rights are provided to the inmate in accordance with COMAR 12.03, *Inmate Disciplinary Process*. After placement, a multi-disciplinary team reviews the placement. For both the disciplinary placement and the administrative placement, the inmate must sign an acknowledgment of receipt of the placement authorization.
- In January 2020, DPSCS signed a Memorandum of Understanding (MOU) with the American Correctional Association (ACA) to accredit all of our correctional facilities. Accreditation requires adherence to the performance based standards manual, *Performance- Based Standards and Expected Practices for Adult Correctional Institutions* (5<sup>th</sup> ed.).
- **This includes comprehensive best practices concerning restrictive housing that were developed as the result of five years of comprehensive national research and community input. This bill would conflict with the Department's MOU and the ACA process as these performance standards evolve over time and specifying restrictive housing practices legislatively would prohibit the Department from modifying the program without legislative involvement.**

- The ACA in their publication, *Performance-Based Standards and Expected Practices for Adult Correctional Institutions* (5<sup>th</sup> ed.), recommends a step down process for inmates who are returning to a general population from restrictive housing that includes a multidisciplinary approach including:
  - Pre-screening evaluation;
  - Monthly evaluations using a multidisciplinary approach to determine the inmate's compliance with program requirements;
  - Utilization of monthly evaluations to gradually increase out-of-cell time, gradually increasing group interaction, gradually increasing education and programming opportunities, and gradually increasing privileges;
  - A step down review compliance review; and,
  - A post-screening evaluation.
  
- The step down program stipulated under HB 67 requires that it be individualized to the needs of the inmate and involve a multidisciplinary treatment approach to include mental health practitioners and counselors, licensed social workers, activity therapists, medical staff as well as correctional staff.
  
- Implementation of HB 67 will require the DOC to create dedicated units at each facility operating a restrictive housing unit. The mandated services will have to be conducted either on the restrictive housing unit or at specifically designated locations within each facility capable of separating the segregated inmates from the general population to ensure the safety and security of the staff, inmate, and the facility. DPDS will be required to do the same.
  
- The DOC estimates that to provide a step-down program at each of its facilities that meet the mandates of the bill will cost over **\$2.7 million** in staffing.
  
- In accordance with current policies and procedures, every time an inmate is removed from restrictive housing, up to a two-man escort is needed per inmate, to ensure the safety and security of the staff and facility, but also to ensure the safety and security of the inmate. Once the detainee arrives at the location to which he or she is being escorted, the officer(s) must stay with the inmate. **The projected fiscal impact to DPSCS is over \$2.6 million for additional correctional officers.**
  
- HB 67 will substantially affect the fiscal operation of DPSCS in the provision that provides for an aggrieved inmate who seeks redress by legal remedy and recovery of court costs if DPSCS fails to satisfy the provisions set forth in § 9-614.2. Being that clear and convincing evidence is the threshold that must be met for the Department to prevail; determining such evidence existed prior to the denial of access to the

step-down unit will be left to the courts. Until the court has decided whether or not the Commissioner has met its burden, the cost to the Department and the Attorney General's office will be substantial in preparing to defend its position.

- It is important to keep in mind that the Department is still operating during a global pandemic. The Department enacted over 50 policies and procedures over the past 23 months. Limiting movement within the correctional facilities was a key COVID-19 prevention and mitigation strategy. A lesson learned from the current COVID-19 pandemic is the need for flexibility in operations.
- 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 urges the Committee to consider this information as it deliberates on House Bill 67.