



Department of Public Safety and Correctional Services
Office of Government & Legislative Affairs

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BILL: HOUSE BILL 385

POSITION: LETTER OF INFORMATION

EXPLANATION: This bill defines restrictive housing, and establishes guidelines and procedures for the placement of individuals on restrictive housing in correctional facilities.

COMMENTS:

- The Department of Public Safety and Correctional Services' (DPSSCS) Division of Correction is responsible for operating 13 correctional facilities that house offenders sentenced to a period of incarceration for 18 months or longer. The Department also operates the Division of Pretrial Detention and Services, which houses pretrial detainees and inmates sentenced to incarceration for 18 months and less.
- HB 385 establishes processes and procedures for the use of restrictive housing. The entire bill raises serious concerns and the Department touches on some of the disconcerting aspects below.
- **Correctional Services Article § 9-613.3 of the bill would require that ALL personnel involved in the supervision and care of individuals placed in restrictive housing and ALL hearing officers complete at least 40 hours of training before being assigned to a restrictive housing unit, and shall receive at least 8 hours of additional training annually.**
 - The Division of Correction (DOC) has over 6,000 correctional officers who ensure the safety of the incarcerated population, staff, and the facilities in which they work. All correctional officers may be assigned to a restrictive housing unit. To provide 40 hours of annual training to ALL correctional officers is estimated to cost approximately \$4.8M in the first year of implementation.
 - Although the bill is not clear as to whether or not the hearing officers are hearing officers employed by the Department or hearing officers with the Office of Administrative Hearings,

the estimated cost to provide 40 hours of training to the Department's 12 hearing officers is estimated to cost approximately \$20,000 annually.

- There is also a time factor to consider with developing and implementing training, in addition to the impact on the amount of correctional overtime and staffing that will be required to conduct the training.
- **Moving onto §9-614, the bill defines “restrictive housing” as ANY form of housing that separates incarcerated individuals from the general prison population that imposes restrictions on programs, services or interactions with other incarcerated individuals.**
 - This broad definition would include specialty placement units, and protective custody that incarcerated individuals may request in any of the Department's 13 correctional facilities (including Patuxent Institution) and the five facilities operated by the Division of Pretrial Detention and Services.
- HB 385 includes a Residential Rehabilitation Unit in the definition of restrictive housing, when in fact, the Department does not have such units.
- The bill defines serious mental illness (SMI) to include specific psychiatric disorders and aligns the definition with conditions recognized by the federal Bureau of Prisons. Whereas, the Department defines 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 incarcerated individuals diagnosed with SMI.
- According to the bill, a vulnerable individual can not be placed in restrictive housing. **As stated, the Department's normal operations involving non vulnerable individuals would raise concerns on the constitutional right to equal protection for all other incarcerated individuals. This would establish two tiers of sanctions for the same infraction based on an incarcerated individual's gender identity, or medical status.** The Department assigns sanctions solely based on infractions and an individuals' behavior regardless of their sex, race, gender identity, or medical status.
- Furthermore, these restrictions would pose operational challenges to the Department's ability to remain compliant with the Prison Rape Elimination Act (PREA) and the American with Disabilities Act (ADA). The use of protective custody under the bill conflicts with

the bill's definition of restrictive housing. The Department could not make decisions to protect the welfare of an incarcerated individual based on whether they were classified by this bill as vulnerable. The separation from threat that is common practice in response to a PREA concern could not be equally applied to 'vulnerable' and non vulnerable individuals under the current language of the bill.

- Under the bill's vulnerable individual definition, an individual under 26 is considered a vulnerable individual and therefore cannot be placed in restrictive housing.
- The population under 26 represented less than 20% of disciplinary segregation placements. However, this group is also associated with elevated risk of noncompliance which continues to be reflected in the recidivism rate post release. Placement on disciplinary segregation following a hearing is an important component of maintaining security in institutions to separate the small portion of this population who commit inmate assaults and major infractions.
- To mitigate the impact of sanctions, the Department instituted internal reforms in COMAR to decrease the length of time spent under disciplinary segregation specifically, to enable the Department to effectuate internal sanctions while also reducing the impact of restrictive housing length on individuals.
- Today, disciplinary segregation is 51% lower than 5 years prior, representing 37 fewer days spent on disciplinary segregation on average. The Department has continued to make progress in reducing the time spent on restrictive housing, which was further reduced by nearly 1 week in the past fiscal year.
- Under the bill, an incarcerated individual may contest the placement on restrictive housing in an administrative hearing within 72 hours of the initial placement and every 15 days thereafter, and be represented by an attorney or an advocate of their choosing. As previously stated, this requirement is not clear as to whether the administrative hearing would be held at a facility or the Office of Administrative Hearings.
- Moreover, this requirement would not only be extremely burdensome on the Department to implement, it would require many more hearing officers to handle the frequency of hearings creating a significant fiscal impact. Also, having counsel on disciplinary hearings runs contrary to the ability of the Department to schedule them as quickly and possible and will contribute to hearing delays.

Allowing an incarcerated individual to choose an advocate of their choice presents serious safety and security concerns.

- HB 385 contradicts itself throughout the bill, as it establishes different standards for how long an incarcerated individual can be placed in restrictive housing, administrative and disciplinary segregation. The bill switches from 15 days to 60 days in a 365 period, then only allows for 3 consecutive days of placement.
- The bill establishes guidelines and procedures for addressing first, second and most serious infractions without defining what constitutes an infraction. The Department has strict policies and procedures in place as to what constitutes an institutional violation, degrees of violations, and depending on the severity of the violation, how it is addressed which may not involve placement on restrictive housing.
- The most alarming requirement in the bill is - if the facility administrator or medical or mental health professional determines an incarcerated individual poses an extraordinary and unacceptable risk of imminent physical harm to the safety or security of other incarcerated individuals or staff, the facility shall provide access to programming and contact with persons other than correctional staff. Individuals who pose such a significant risk should not have access to others due to the safety risk. Some programming can continue in cell.
- Finally, the bill establishes a reporting requirement. However, the Department already submits a comprehensive, data driven mandated annual report on the use of restrictive housing to the Governor's Office of Prevention which is posted on their website.
- HB 385 is extremely prescriptive and seeks to legislate the manner in which the Department conducts daily operations. The bill hinders operations and seriously jeopardizes the safety and security of the Department's correctional facilities and places its officers, incarcerated individuals, and staff at serious risk.
- **CONCLUSION:** For these reasons, the Department of Public Safety and Correctional Services respectfully requests the Committee consider this information as it deliberates on House Bill 385.

