



Department of Public Safety and Correctional Services

Office of Government & Legislative Affairs

45 Calvert Street, Suite 7A, Annapolis, MD 21401
(443) 240-8696 • www.dpscs.maryland.gov

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REENTRY SERVICES

JANELLE B. MUMMEY
DIRECTOR

BILL: SENATE BILL 1085

POSITION: OPPOSITION

EXPLANATION: This bill makes substantial changes on the usage of restrictive housing, requires mandated training; and establishes guidelines and procedures for the placement of individuals on restrictive housing in correctional facilities. The passage of this bill will not only have a significant fiscal and operational impact on the Department, it will put correctional officers, and mental health staff at a considerable safety risk.

COMMENTS:

- The Department of Public Safety and Correctional Services' Division of Correction operates 13 State correctional facilities housing offenders sentenced to periods of incarceration for 18 months and longer. The Department also oversees five facilities located in Baltimore City that houses pretrial detainees and incarcerated individuals sentenced to incarceration for periods of 18 months and less.
- SB 1085 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.
- **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.

- The bill defines a Residential Rehabilitation Unit as an alternative for restrictive housing, however, the Department does not have residential rehabilitation units.
- The bill would require that ALL personnel involved in the supervision and care of individuals placed in restrictive housing complete 16 hours of training and 4 hours annually; and ALL hearing officers complete at least 8 hours of training before being assigned to a restrictive housing unit, and shall receive at least 4 hours of additional training annually.
 - The Division of Correction (DOC) has over 5,200 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 16 hours of training to ALL correctional officers is estimated to cost approximately \$2.0M 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 12 hours of training to the Department's 12 hearing officers is estimated to cost approximately \$12,000 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.
- 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.

- Under the bill's vulnerable individual definition, an individual is between at least 18 years old and 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.
- Under the bill, an incarcerated individual may contest the placement on restrictive housing in an administrative hearing within 70 hours of the initial placement, and be represented by an attorney or an advocate of their choosing. 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 in 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.
- SB1085 establishes that an individual may not be subject to restrictive housing for more than 3 consecutive days or 6 days in any 60-day period. An individual may be placed in restrictive housing for a period of time exceeding the limit if a written decision is issued following an evidentiary hearing. This is an unworkable requirement as it will require a hearing and a decision to be made within the 3 days time period.

- The bill requires that an individual on restrictive housing be given a physical and mental health assessment every 24 hours, and shall be performed by a licensed mental health professional, a medical professional, and one member of the facility management team. Further, if an individual exhibit's "unusual" behavior, an assessment is required every 15 minutes. The cost to implement these assessments will be exorbitant, and estimated to be well over \$5M.
- 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.
- SB 1085 is extremely prescriptive and absolute. It seeks to legislate the manner in which the Department conducts daily operations and provides no flexibility to the correctional professionals operating the correctional facilities who work tirelessly to maintain safety and security.
- 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 vote **UNFAVORABLE** on Senate Bill 1085.