

**MARGARET MARTIN BARRY**  
*Testimony Submitted to*  
**THE SENATE JUDICIAL PROCEEDINGS COMMITTEE**

**IN SUPPORT OF HB 647, CORRECTIONAL SERVICES – RESTRICTIVE HOUSING**

Thank you for this opportunity to testify in support of HB 647, Correctional Services – Restrictive Housing. I thank Delegate Phillips for his leadership on this legislation and his co-sponsors, Delegates Acevero, Patterson, Ruff, Ruth, and Woods for their support. As a member of the Interfaith Action for Human Rights Coalition (IAHR) and on behalf of Maryland Alliance for Justice Reform (MAJR), I urge you to favorably vote HB 647 out of Committee and to support its passage into law.

I have worked in support of legislation to limit the use of solitary confinement for three sessions now. I have done so because solitary confinement is destructive and immoral. Solitary confinement, or restrictive housing, as it is called in Maryland, includes locking a person in a cell for upwards of 22 hours a day, for days, weeks, months and sometimes years. The impact of days in solitary can be devastating to mental and physical health - people locked up in this way suffer depression, anxiety, hypertension and other physical deterioration, and they are far more likely to mutilate themselves or commit or attempt suicide.

The Fiscal Note on HB 647 quotes the Department of Public Safety and Correctional Services (DPSCS) as saying that - in 2024 - **5,209** individuals spent more than 15 days in restrictive housing.

Sit with that number for a minute. The United Nations included strict limits on the use of solitary in its revised Minimum Standards for the Treatment of Prisoners, known as the Nelson Mandela Rules. The standards demand that, at a minimum, all nations restrict their use of solitary to no more than 15 consecutive days. Each of those 5,209 individuals in Maryland prisons and jails spent time that the United Nations identifies as torture.

That a practice that disregards rehabilitation and is so utterly cruel is such a common management tool in Maryland prisons is alarming.

The general population in Maryland prisons suffers from poor food, poor healthcare, fledgling rehabilitative services, inane, nerve bracing rules, and lockdowns. You might expect that a person in this environment who is then sent to restrictive housing did something terrible to deserve the decidedly worse treatment. This is

often not so. People are placed in isolation for running afoul of administrative rules, for mental health issues, for their own protection, because of sexual orientation - things that have nothing to do with violent acts that might arguably lead officials to momentarily reach for such an extreme and damaging response.

The last DPSCS report on the use of restrictive housing, covering fiscal year 2022, revealed that Maryland prisons *increased* their use of restrictive housing by 39% with restrictive housing experienced by almost 26% of the overall population.<sup>1</sup> The average length of confinement reported was 42.4 days. The majority of men and women placed in isolation were Black.

What this bill seeks is a change in the culture of prison disciplinary actions that takes into account the extreme nature of restrictive housing and the damage it does to the people isolated in this way. It encourages prison administrators to identify and use other approaches to maintaining discipline. Other jurisdictions have sought these approaches out having recognized that using solitary is counterproductive.<sup>2</sup>

Despite the Fiscal Note projection of significantly increased staffing, the bill instructs that far fewer people be put in restrictive housing, and this should amount to *savings*, particularly in staffing.

First of all, the bill excludes all but specified “prohibited acts” as the basis for sending an individual into restrictive housing. Those prohibited acts are primarily violent ones, eliminating the lesser bases for this damaging treatment.

Secondly, the bill would exclude the 5,209 who currently spend more than 15 days in restrictive housing, because, consistent with international rules against torture, the bill would not allow stays beyond 15 days at a time.

Third, the bill would exclude a set of people least likely to withstand the restrictive housing allowed under the bill, described as “vulnerable”. The Fiscal Note refers to a need to provide supervision of members of this population that could not be placed

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<sup>1</sup> DPSCS. FY22 Restrictive Housing Report. (2022). [https://goccp.maryland.gov/wp-content/uploads/MSAR10904\\_FY-22-Restrictive-Housing-Report.pdf](https://goccp.maryland.gov/wp-content/uploads/MSAR10904_FY-22-Restrictive-Housing-Report.pdf)

<sup>2</sup> See Vera Institute, Rethinking Restrictive Housing: Lessons from Five U.S. Jails and Prison Systems, 7 (May 2018) (Vera chose five applicants that expressed commitment to change - Nebraska, North Carolina, Oregon, New York City, and Middlesex County, New Jersey – for analysis and recommendation.) <https://vera-institute.files.svdcdn.com/production/downloads/publications/rethinking-restrictive-housing-report.pdf>

in restrictive housing. However, the exclusion of vulnerable people means that, as noted above, the alternatives considered do not require onerous supervision.<sup>3</sup>

Fourth, the Fiscal Note assumes that reference in the bill to requiring the least restrictive environment for those in restrictive housing means that more officers are needed and possibly renovations. This is not necessarily so. The least restrictive environment calls for lifting the harsh treatment to the extent possible.

Fifth, the DPSCS in its comments seems to interpret the definition of restrictive housing under the bill, 17 or more hours out of 24, as requiring seven hours of out of cell time. Depending on the quality of that out of cell time, such a provision would be ideal, but it is not required under the bill. My understanding is that out of cell time is specifically excluded from the bill because of concern about the cost.

It reportedly takes at least twice as many staff to manage restrictive housing versus what is required for the general population. Federal Bureau of Prisons officials stated that segregated housing units are costly because they require more resources – specifically staff – to operate and maintain. They identified the staff-to-inmate ratio in segregated housing as significantly higher than in the general population, making segregated housing more expensive to operate.<sup>4</sup> The increased staffing was connected to greater supervision for any out of cell time and provision of services such as meals, laundry, and health-related visits.<sup>5</sup> The American Civil Liberties Union reported similar findings with regard to state facilities. They found that with more people in solitary more personnel are needed, and work that would have been done by those in the general population must be done by paid staff.<sup>6</sup> Indeed, in a Maryland Equal Justice Collaborative meeting on December 3, 2024 that I attended, Asst. DPSCS Commissioner Jeffrey Nines stated that it costs approximately two times as much to keep someone in restrictive housing as it does to keep them in the general population. With far fewer people in restrictive housing, that cost goes down.

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<sup>3</sup> *Id* at 36-37. See also, *Operation Place Safety: First Year in Review 2* (June 1, 2014)(discussing strategies for curbing prison violence in Washington State that include enforcement through privilege restrictions, help by assisting with pro-social alternatives to violence, and engagement and notification), [https://nnscommunities.org/wp-content/uploads/2017/10/Operation\\_Place\\_Safety\\_First\\_Year\\_Report\\_2014.pdf](https://nnscommunities.org/wp-content/uploads/2017/10/Operation_Place_Safety_First_Year_Report_2014.pdf)

<sup>4</sup> The United States Government Accountability Office, Bureau of Prisons: Improvements Needed in Bureau of Prisons' Monitoring and Evaluation of Impact of Segregated Housing, 30 (2013), <http://www.gao.gov/assets/660/654349.pdf> (GAO Report)

<sup>5</sup> *Id* at 30-31.

<sup>6</sup> *Paying the Price for Solitary Confinement*, ACLU Fact Sheet (2015), citing Daniel P. Mears and William D. Bales, *Supermax, Incarceration and Recidivism*, 47 *Criminology* 1131, 1135 (2009) <https://www.prisonlegalnews.org/media/publications/Paying%20the%20Price%20for%20Solitary%20Confinement%2C%20ACLU%20Factsheet%2C%202015.pdf>

The following list reflects costs for restrictive housing and savings related to limiting its use in state prisons:

- In 2010, Mississippi closed a segregated housing unit, projecting savings of \$8 million per year;<sup>7</sup>
- According to a 2014 study, Texas spends \$46 million per year over its normal costs to house people in solitary confinement within its prisons;<sup>8</sup>
- In 2013, Illinois expected to save \$26 million per year in closing its super max prison;<sup>9</sup>
- Looking at October 2021 to October 2022 data, the approximate annual cost of restrictive housing for California based on corrections data was \$410.1 million, and the estimated annual savings from eliminating the use was \$62.6 million;<sup>10</sup>
- Colorado projected \$13.6 million in savings in fy 2013-14 from closing one of its administrative segregation facilities in the course of significantly limiting its use of restrictive housing;<sup>11</sup>
- New York State's savings through enactment of the HALT legislation limiting the use of solitary confinement is estimated at \$132 million dollars per year, based on the closing of facilities, more paroles, decreased violence and medical costs, and fewer lawsuits.<sup>12</sup>

The Fiscal Note makes no attempt to assess what such savings might mean for Maryland under the bill. It adds a vague reference to the millions that would be needed for making restrictive housing less onerous, for residential mental health units that the prisons no doubt need, but not because of bill, and for training that should be included in current training, particularly given the extensive use of restrictive housing.

Even if you ignore the cost savings that Maryland should expect in adopting this law, the hard number in the Fiscal Note is \$5,302,845. That is approximately 3/10 of 1%

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<sup>7</sup> *Id.*, citing Transcript of Proceedings at 8, *Presley v. Epps*, No. 4:05-CV-00148-JAD (N.D. Miss. Aug. 2, 2010)

<sup>8</sup> *A Solitary Failure: The Waste, Cost and Harm of Solitary Confinement in Texas*, ACLU of Texas and Texas Civil Rights Project at 9 (Feb. 2015)

<sup>9</sup> *Supra* note 6, citing at fn. 18, Heather Rice, *Close Tamms, limit the use of solitary confinement*, The State Journal Register (Dec. 4, 2003),

<https://www.sj-r.com/story/opinion/columns/2012/04/03/heather-rice-close-tamms-limit/43249887007/>

<sup>10</sup> *Policy Brief: Solitary Confinement and Fiscal Costs/Savings*, California Research Bureau, California State Library at 2 (February 2023) [https://www.library.ca.gov/wp-content/uploads/crb-reports/FINALPolicy\\_Brief\\_Solitary\\_Confinement\\_TDLindsey\\_TDL\\_20230222.pdf](https://www.library.ca.gov/wp-content/uploads/crb-reports/FINALPolicy_Brief_Solitary_Confinement_TDLindsey_TDL_20230222.pdf)

<sup>11</sup> *State Reforms to Limit the Use of Solitary Confinement*, Am. Civil Liberties Union, at 1-2, [https://www.aclu.org/wp-content/uploads/document/state\\_reforms\\_to\\_limit\\_the\\_use\\_of\\_solitary\\_confinement.pdf](https://www.aclu.org/wp-content/uploads/document/state_reforms_to_limit_the_use_of_solitary_confinement.pdf) (last visited January 22, 2025)

<sup>12</sup> *Save Money, Save Lives: An Analysis of the Fiscal Impact of the HALT Solitary Confinement Act*, Partnership for the Public Good, Policy Report (November 2020) at 3, [https://ppgbuffalo.org/files/documents/criminal-justice/incarceration/save\\_money\\_save\\_lives.pdf](https://ppgbuffalo.org/files/documents/criminal-justice/incarceration/save_money_save_lives.pdf)

of the DPSCS budget – A small price to pay, even in this fiscal climate, for reigning in this inhumane practice.

There are other costs to relying on restrictive housing as a disciplinary solution that the Fiscal Note fails to take into account. Studies have shown that placing a person in isolation has significant mental and physical health costs.<sup>13</sup> These health costs are borne by the State while the person is incarcerated and often after they are released.

Studies have also shown that people who are placed in restrictive housing become more prone to violence, with attendant costs to the institution.<sup>14</sup>

There is also a cost to families of those incarcerated when they are sent into restrictive housing. The families are aware of the suffering of their loved ones, and have little or no opportunity to visit with them. When the incarcerated person ultimately returns home, the family has to navigate the ongoing impact of that damaging experience.

Furthermore, studies have indicated that recidivism rates are higher for those who have experienced restrictive housing than for those who have not.<sup>15</sup>

Finally, and this is a cost that we rarely seem to calculate, there is the collective cost to us as a community in knowing that people we place in our prisons are made to suffer in this particularly damaging and senseless way.

Restrictive housing is counterproductive because it is destructive, undermining prison order and stated goals for rehabilitation.

As Marylanders, we are responsible for what happens to those we place in prison. We need to assure that people are not returned home wounded by the treatment they receive. Restrictive housing is destructive and a poor use of our investment as taxpayers. We expect humane treatment of those who are incarcerated, and we want a focus on practices promising rehabilitation and public safety.

Too much harm continues to be done if this legislation does not become law. Please favorably vote HB 647 out of Committee and support its passage into law.

Respectfully submitted, *Margaret Martin Barry*, Emeritus Professor of Law,  
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<sup>13</sup> See e.g., Kayla James and Elena Vanko, *The Impacts of Solitary Confinement*, Vera Institute of Justice (April 2021)

<sup>14</sup> *William THORPE, et al., Plaintiffs-Appellees, v. Harold CLARKE, et al., Defendants-Appellants*, Brief of Former Corrections Executives as Amici Curiae in Support of Plaintiffs-Appellees and Affirmance, 2021 WL 4846111, at 8-9.

<sup>15</sup> *Id* at 8-10.