

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 786 (Delegate J. Lewis, *et al.*)
 Judiciary

Correctional Services - Restrictive Housing - Limitations

This bill establishes penalties for administrative and substantive infractions by an inmate and limits the placement of an inmate in “restrictive housing” within State and local correctional facilities. Unless necessary for the safety of the inmate, an inmate may not be released directly from restrictive housing to the community.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$11.5 million in FY 2019. Future year expenditures are annualized. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	11,539,300	14,403,300	14,844,900	15,373,400	15,921,200
Net Effect	(\$11,539,300)	(\$14,403,300)	(\$14,844,900)	(\$15,373,400)	(\$15,921,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in local expenditures to the extent that local correctional facilities must hire staff to meet the bill’s requirements. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: An inmate who has been found guilty of an administrative infraction may be subject to (1) for a first infraction, not more than a verbal warning; (2) for a second

infraction, not more than an incident report; and (3) for a third or subsequent infraction, not more than an “alternative disciplinary sanction.”

Generally, an inmate found guilty of a substantive infraction may be subject to up to 45 days in restrictive housing depending on whether it is a first, second, or subsequent infraction, as specified. Unless there is clear and convincing evidence that the inmate poses an immediate and substantial risk of physical harm to the security of the facility, to the inmate, or to others, an inmate may not be subject to more than 15 consecutive days or a total of 90 days in restrictive housing within a one-year period. An inmate may not be placed in restrictive housing for nondisciplinary reasons, refusing medical treatment, or self-harm behavior, as specified. In addition, unless there is a facility-wide lockdown, a “vulnerable inmate” may not be placed in restrictive housing, as specified.

Unless the reason for denial is recorded in the inmate’s file, an inmate in restrictive housing must be provided:

- weekly comprehensive physical and mental health assessment by a member of the evaluation team to determine if the inmate may be released from restrictive housing;
- the same standard of access that is provided to inmates not in restrictive housing to phone calls, visits, mail, basic necessities as specified, sanitary conditions, and medical care; and
- maximized access to recreation, education, and programming.

Definitions

“Alternative disciplinary sanction” includes the following penalties:

- reprimand;
- sanitation assignment for a specific period not to exceed 15 calendar days as an informal sanction or 30 calendar days as an alternative sanction;
- restitution; or
- suspension of the following privileges: (1) radio, compact disc or tape player, television, telephone, or commissary, excluding personal hygiene and legal correspondence items, privileges for a specific period not to exceed 60 calendar days as an informal sanction or three months as an alternative sanction; (2) catalog privileges for a specified period not to exceed six months as an informal sanction or one year as an alternative sanction; (3) visitation privilege, except legal and clergy, for a specific period not less than 15 calendar days but not more than two months as an informal sanction or not less than two months but not more than six months as an alternative sanction; or (4) a specified facility privilege for a specific period not to exceed 90 calendar days as an informal sanction or three to six months as an alternative sanction.

“Restrictive housing” means a form of physical separation in which the inmate is placed in a locked room or cell for approximately 22 hours or more out of a 24-hour period. “Restrictive housing” includes administrative segregation and disciplinary segregation.

“Vulnerable inmate” means an inmate who (1) is age 18 or younger; (2) is age 65 or older; (3) is pregnant, in the postpartum period, or has recently suffered a miscarriage or terminated a pregnancy; (4) is or is perceived to be lesbian, gay, bisexual, transgender, or intersex; (5) has a “serious mental illness”; or (6) has a physical disability.

“Serious mental illness” includes anxiety disorders, bipolar and related disorders, intellectual disabilities and autism spectrum disorders, major depressive disorders, major neurocognitive disorders, obsessive compulsive and related disorders, personality disorders, schizophrenia spectrum and other psychotic disorders, and trauma and stressor-related disorders.

Current Law: The Department of Public Safety and Correctional Services (DPSCS) is authorized to adopt regulations for the operation and maintenance of State correctional facilities, including regulations concerning the discipline and conduct of inmates, including the character of punishments for violations of discipline.

By regulation, the managing official of a correctional facility must maintain a written policy and procedure governing the placement, removal, supervision, and rights of an inmate assigned to “administrative segregation,” “disciplinary detention,” medical isolation, and protective custody status, which includes provisions for (1) identification of persons authorized to place and remove an inmate from special confinement; (2) designation of circumstances and conditions warranting assignment and release; (3) specification of timeframes, method, and persons authorized to review status; (4) access to services, programs, and activities consistent with the inmate’s status; and (5) maintenance of supervision records of specified activities and occurrences.

“Administrative segregation” means a form of physical separation of an inmate from the general population determined by the classification process or authorized personnel when the continued presence of an inmate in the general population would pose a serious threat to (1) life; (2) property; (3) self; (4) staff or other inmates; (5) the security or orderly functioning of the facility; or (6) the well-being of society. “Disciplinary detention” means a form of physical separation in which an inmate found guilty at a disciplinary hearing is confined apart from the general population for a designated period of time.

There are also DPSCS regulations concerning inmate discipline. An inmate who commits a rule violation is subject to the inmate disciplinary process of the department. Sanctions for inmate rule violations include (1) placement of an inmate on disciplinary segregation; (2) revocation of good conduct and special projects credits; (3) suspension of inmate privileges; or (4) restitution for lost, stolen, altered, damaged, or destroyed property of the

State, a person, or an entity. Rule violations are categorized according to the severity of the offense. When staff believe a rule violation has occurred, an investigation is initiated within one calendar day of the alleged violation, and a shift supervisor determines whether the violation merits a hearing, informal disposition, or reduction to an incident report. Staff serves a notice of inmate rule violation and disciplinary hearing on the inmate, and a shift commander may isolate the inmate if the inmate poses a threat to security.

Following a hearing, and upon a determination of guilt, a hearing officer may permit the defendant inmate or, if represented, the defendant inmate’s representative and, if assigned, the facility representative, to argue for appropriate sanctions. The hearing officer also (1) determines and imposes appropriate sanctions in regard to disciplinary segregation time and loss of diminution credits according to an adjustment history sentencing matrix and (2) informs the hearing participants of the sanction imposed and the period and effective date of the sanction.

Background: Chapters 596 and 597 of 2016 require DPSCS, by December 31 of each year, to submit specified information relating to inmates in “restrictive housing” to the Governor’s Office of Crime Control and Prevention and the General Assembly.

In the [report](#) released in December 2017, DPSCS reports that, during fiscal 2017, there were 14,578 placements on restrictive housing. This includes 4,346 placements on administrative segregation and 10,232 placements on disciplinary segregation. Some inmates were placed on restrictive housing more than once during the reporting period. There were no pregnant inmates placed on restrictive housing during the reporting period. There were 216 inmates diagnosed with a “serious mental illness” placed on restrictive housing. **Exhibit 1** shows the average and median length of stay in restrictive housing placements during fiscal 2017.

Exhibit 1
Restrictive Housing Placements
Length of Stay (in Days)
Fiscal 2017

	<u>Average</u>	<u>Median</u>
Restrictive Housing	45.8	31
Administrative Segregation	51.5	35
Disciplinary Segregation	43.5	30

Source: Department of Public Safety and Correctional Services

In 2015, DPSCS partnered with the National Institute of Corrections (NIC) for technical assistance to reform the segregation practices in the State. As a result, DPSCS established

a Structured Housing unit at the North Branch Correctional Institution that provides for an incentive-based plan to allow the most violent and dangerous inmates to slowly assimilate back into general population. Additionally, DPSCS established a progressive housing unit specific to the seriously mentally ill population. The specialized unit addresses the needs of inmates with serious mental illnesses to enhance the inmate’s ability to transition back to the general population. The partnership with NIC also led to the creation of Crisis De-escalation Teams throughout the department. The goal of the team is to increase facility safety and reduce the use of force incidents involving an inmate in crisis by using the correctional-based de-escalation training.

DPSCS recently submitted changes to its Inmate Disciplinary Process in regulations. The regulations unify and correct discrepancies in the inmate disciplinary process across the Division of Correction, Patuxent Institution, and the Division of Pretrial and Detention Services. DPSCS reports that the change is anticipated to result in a significant reduction in the number of days an offender may be placed in disciplinary segregation.

State Expenditures: General fund expenditures increase by a *minimum* of \$11,539,271 in fiscal 2019, which accounts for the bill’s October 1, 2018 effective date. This estimate reflects the cost of hiring 157 new positions within DPSCS to implement portions of the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below.

- In order to implement the bill’s provisions relating to weekly comprehensive *mental* health assessments by a member of the evaluation team, DPSCS advises that 87 additional medical staff are necessary. By statute, an evaluation team requires at least one social worker, one psychologist, and one psychiatrist. To meet the bill’s requirements 24 additional evaluation teams are needed.
- In order to escort an inmate from restrictive housing to weekly comprehensive physical and mental health assessments, DPSCS advises that 120 additional correctional officers are needed. However, the Department of Legislative Services disagrees and assumes that the bill’s requirements can be met with 70 additional correctional officers.

Positions	157
Salaries and Fringe Benefits	\$10,697,947
Operating Expenses	<u>841,324</u>
Minimum FY 2019 State Expenditures	\$11,539,271

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

In order to complete weekly comprehensive *physical* assessments, a substantial modification to the medical contract is necessary. DPSCS advises that a comprehensive physical assessment for a healthy patient includes a thorough review of the medical history and current health status by a physician, a comprehensive head-to-toe physical examination, pulmonary function testing, audiometry (hearing screening), visual acuity and glaucoma testing, immunization review, and administration of necessary immunizations. In addition, a full laboratory analysis and evaluation, a comprehensive cardiac risk assessment, nutritional evaluation and consultation, and diagnostic and testing procedures are part of a comprehensive exam. For an unhealthy patient, disease management specific testing is also needed; the cost estimate for blood tests for an unhealthy patient range from \$224 to \$650 each.

Any costs associated with modifying the medical contract are not included in the above estimate. Also not included in the estimate are costs for additional medical space and equipment needed to provide for onsite testing in each facility. Accordingly, costs could be significantly higher.

Local Expenditures: Although local jurisdictions did not respond to requests for information regarding the fiscal impact of the bill, it is assumed that many local jurisdictions do not have sufficient staff to provide weekly comprehensive physical and mental health assessments. Therefore, the bill's requirements likely result in a significant increase in expenditures for local correctional facilities.

Additional Information

Prior Introductions: None.

Cross File: SB 539 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): cities of Bowie and Takoma Park; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2018
md/lgc

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510