

**Department of Legislative Services**  
Maryland General Assembly  
2019 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 775  
Judiciary

(Delegate Bartlett)

Judicial Proceedings

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**Correctional Services - Maryland Correctional Institution for Women - Reforms**

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This bill states the intention of the General Assembly that, to the extent funds are available in the State budget, the Department of Public Safety and Correctional Services (DPSCS) implement, at the Maryland Correctional Institution for Women (MCIW), specified reforms relating to mental health care for inmates, restrictions on disciplinary sanctions, structure updates, and demolition, among other things. In addition, the bill states the intention of the General Assembly that, in implementing those reforms, DPSCS take into consideration the recommendations of Disability Rights Maryland (DRM) in its report entitled *Segregation and Suicide: Confinement at the Maryland Correctional Institution for Women*, and begin taking action to implement the reforms as soon as possible after the effective date of the bill. The Governor is requested and encouraged to appropriate sufficient funds to implement all necessary reforms at MCIW for each fiscal year beginning in fiscal 2020. In addition, by December 1, 2020, and each year thereafter, DPSCS must report to the General Assembly on the progress made in implementing the reforms.

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**Fiscal Summary**

**State Effect:** To meet the bill's stated intent, general fund expenditures increase, likely in excess of \$4.1 million annually, for DPSCS to staff a new prerelease unit, if required. In addition, to meet the bill's stated intent, the bill requires significant capital spending, as discussed below. Revenues are not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** It is the intention of the General Assembly that DPSCS implement the following reforms at MCIW, among others:

- adopt standards endorsed by the National Commission on Correctional Health Care to prohibit placement of individuals with serious disabilities in restrictive housing, except as specified, implement a mandatory prescreening evaluation process before placement in restrictive housing to identify such individuals, and develop alternatives to restrictive housing for such individuals;
- reduce periods of administrative segregation and disciplinary sanctions and probate existing segregation time to conform to nationally and clinically endorsed standards;
- subject treatment plans to external review, as specified;
- modify the contracts or policies that allow unacceptable conditions in the inpatient mental health treatment unit, as specified;
- develop a method to address the mental health needs of women, as specified;
- replace Plexiglas windows that limit visibility, obtain suicide-resistant mattresses and utensils, eliminate physical barriers that prevent persons using wheelchairs from accessing the gymnasium, demolish the older housing units, and construct alternatives to restrictive housing units;
- modify specified contracts or policies relating to the infirmary and mandate external review of certain situations relating to stays in the infirmary;
- revise policies requiring all pregnant women to be placed in the infirmary, as specified;
- offer more opportunities for individuals in restrictive housing to spend time out of their cells and to have access to activities such as meditation exercises, music, and television when in their cells;
- expand the use of medical parole;
- ensure that policies regarding the use of restraints require that an individual be released once the individual is calm or has stabilized;
- ensure that clinical encounters are offered in a confidential setting;
- develop contracts with Maryland's anchor health care institutions or universities to run health care operations at MCIW; and
- by February 1, 2020, provide and offer to female inmates designated in prerelease status comprehensive prerelease services that are the same as and of equal quality to the comprehensive prerelease services provided and offered to male inmates.

## **Current Law:**

*MCIW:* MCIW is a multi-level security institution for female inmates committed to DPSCS custody. The institution operates a reception, diagnostic and classification center for female offenders, and houses pre-release, minimum, medium, and maximum security inmates, as well as female federal detainees. MCIW serves an average daily population of approximately 800 inmates.

*Report on Restrictive Housing:* By December 31 of each year, DPSCS must submit data relating to inmates in restrictive housing to the Governor's Office of Crime Control and Prevention (GOCCP) and the General Assembly, showing, by correctional facility:

- the total population of the correctional facility;
- the number of inmates who have been placed in restrictive housing during the preceding year by age, race, gender, classification of housing, and the basis for the inmate's placement in restrictive housing;
- the department's definition of "serious mental illness" and the number of inmates with serious mental illness that were placed in restrictive housing during the preceding year;
- the number of inmates known to be pregnant when placed in restrictive housing during the preceding year;
- the average and median lengths of stay in restrictive housing of the inmates placed in restrictive housing during the preceding year;
- the number of incidents of death, self-harm, and attempts at self-harm by inmates in restrictive housing during the preceding year;
- the number of inmates released from restrictive housing directly into the community during the preceding year;
- any other data DPSCS considers relevant to the use of restrictive housing by correctional facilities in the State; and
- any changes to written policies or procedures at each correctional facility relating to the use and conditions of restrictive housing, including steps to reduce reliance on restrictive housing.

GOCCP must make that information available on its website.

*Restrictive Housing:* 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.

DPSCS regulations also address 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.

“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 and includes administrative segregation and disciplinary segregation.

*Medical Parole:* Chapter 299 of 2008 established medical parole as a form of release from incarceration in a State or local correctional facility for incapacitated inmates who, as a

result of a medical or mental health condition, disease, or syndrome, pose no danger to public safety. Chapter 515 of 2016 requires that, beginning October 1, 2017, if Maryland Parole Commission (MPC) decides to grant medical parole, the decision must be transmitted to the Governor. The Governor is then required to disapprove a recommendation for medical parole within 180 days of the decision by MPC. If the Governor does not disapprove the decision within that timeframe, the decision to grant parole becomes effective.

*Pregnant Inmates:* If a representation is made to the managing official of a local correctional facility that an inmate in the custody of the managing official is pregnant, the managing official may (1) before the anticipated birth, have the inmate transferred from the local correctional facility to another facility that provides comfortable accommodations, maintenance, and medical care under supervision and safeguards that the managing official determines necessary to prevent the inmate's escape from custody and (2) return the inmate to the local correctional facility as soon after giving birth as the inmate's health allows, as determined by the medical professional responsible for the care of the inmate. The use of physical restraints on an inmate during such a transfer must be in accordance with provisions applicable to inmates in a State correctional facility.

Chapters 827 and 828 of 2018 require each State and local correctional facility to have a written policy in place regarding the medical care of pregnant inmates, as specified. The managing official of a correctional facility must provide the required written policy to an inmate at the time of a positive pregnancy test result. The Maryland Commission on Correctional Standards must review each correctional facility's policy during regular inspections.

*Prerelease Services:* The Commissioner of Correction is statutorily authorized but not required to operate a prerelease unit for women. Under this authority, the commissioner must (1) develop comprehensive rehabilitative prerelease services and (2) make these services available to inmates of a prerelease unit for women. These comprehensive rehabilitative prerelease services must:

- assist inmates in improving their education, upgrading vocational skills, and obtaining suitable employment;
- provide inmates with the opportunity to strengthen family and community relationships through extended family leave;
- assist inmates in improving their physical and mental health and reducing any tendency to abuse alcohol or drugs; and
- provide appropriate counseling, instruction, supervision, and medical and psychological treatment as necessary to help inmates achieve stable and productive roles in society.

By contract or purchase of service agreement, the Division of Correction (DOC) may arrange for a person or governmental unit to provide comprehensive rehabilitative prerelease services in a prerelease unit for women.

DOC is not required by statute to provide comprehensive rehabilitative prerelease services systemwide or to make these services available to all prerelease inmates.

**Background:** The report entitled *Segregation and Suicide: Confinement at the Maryland Correctional Institution for Women* produced by DRM found, among other things, that MCIW over utilizes segregation, has inadequate staffing, has failed to exercise reasonable care of incarcerated women, and that more corrective actions are necessary. This bill includes DRM's recommendations for corrective action. DRM is a private, nonprofit organization advocating to improve the lives of Marylanders with disabilities.

DPSCS advises that current practices of the department meet several of the reforms identified in the bill. By contract, the medical and mental health providers within State correctional facilities must follow the standards set by the National Commission on Correctional Health Care and the American Correctional Association with regard to the medical and mental health treatment of inmates.

DPSCS advises that the mental health unit within MCIW is licensed through the Maryland Department of Health (MDH) and meets the standards of care for an inpatient mental health unit in corrections. The unit is staffed by the mental health contractor with psychiatry, licensed psychologists, psychiatric nurse practitioners, activity therapists, registered nurses, and licensed practical nurses. The unit is supported by State clinical staff, when needed, and inmates housed in the mental health unit are seen daily by a mental health professional. Inmates are seen by the psychiatric and psychology staff in staff offices to ensure confidentiality. Inmates who are considered not to be a danger to themselves are provided two periods of out-of-cell recreation, weather permitting. DPSCS advises that there is an outside recreation area adjacent to the mental health unit.

In addition, DPSCS advises that the medical infirmary is licensed through MDH and meets standards of care. Inmate patients in the infirmary unit are provided inside recreation, including access to television and telephones. Outside recreation is available as determined appropriate. Commissary purchases are allowed in the infirmary; however, food purchases are restricted to ensure that the inmate patient follows the diet as prescribed by the medical provider. Inmates who require extra calories per day, such as pregnant inmates, continue to receive snack bags through the dietary unit.

DPSCS further advises that pregnant inmates are placed in the infirmary during the last trimester of pregnancy. Pregnant inmates remain in the medical infirmary until they are

medically cleared at their postpartum visit, normally conducted four to six weeks post-delivery. The practices employed by the infirmary at MCIW for the care of pregnant inmates meet the evidence-based guidelines established by the American College of Obstetrics and Gynecology for care of safe performance of gynecology and obstetrics procedures.

DOC currently operates prerelease operations throughout the State correctional system identified as re-entry programs. All inmates due for release have a transition plan. After an inmate is released, the Division of Parole and Probation continues to monitor an inmate's transition plan.

**State Expenditures:** While DPSCS can handle the bill's reporting requirements with existing budgeted resources, the Governor's proposed fiscal 2020 budget does not include funds to implement all of the reforms specified in the bill. The bill's potential impact on both the capital budget and the operating budget are described below.

#### *Capital Expenditures*

While current practices of the department meet several of the reforms identified in the bill, some of the bill's provisions require additional capital spending. For example, demolishing the older housing units at MCIW is anticipated to cost approximately \$1.5 million, and the construction of a new restrictive housing unit is estimated to cost approximately \$4.0 million.

Until fiscal 2017, DPSCS operated a prerelease unit for women in Baltimore City; however, the facility is now closed. Since the closure of the facility, all prerelease programming for women has been transferred to MCIW, where the women are housed throughout the facility. DPSCS advises that the agency currently offers a range and quality of services for women that are substantially equivalent to those offered to men. However, male inmates have their own designated prerelease units. Although unclear, to the extent the bill requires DPSCS to provide a designated prerelease unit for women, building a new minimum security facility could cost in excess of \$80.0 million. Actual costs would depend on the design of the facility, the location of the facility, and existing infrastructure.

Although the bill has no effect on total capital spending, which is established annually by the Governor and the General Assembly through the capital budget process, funding for other capital projects is reduced due to the capital expenditures incurred as a result of the bill.

*Operating Expenditures*

To the extent the bill requires DPSCS to establish a separate prerelease unit for women, general fund expenditures increase for DPSCS to hire correctional officers and other staff necessary to operate such a unit. Although the total number of staff needed cannot be reliably estimated at this time, costs are anticipated to be in excess of \$4.1 million annually.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Health; Department of Public Safety and Correctional Services; Department of Legislative Services

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