

Department of Legislative Services

Maryland General Assembly

2021 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 917

(Delegate Amprey)

Judiciary

Corrections – Restrictive Housing – Prohibition

This bill prohibits the placement of an inmate of a State correctional facility in restrictive housing unless (1) the inmate poses an immediate and substantial risk of physical harm to the security of the facility, to the inmate, or to others that is not the result of a serious mental illness; (2) all other less-restrictive options to address the risk have been attempted and exhausted; and (3) the inmate is in restrictive housing only for the minimum time required to address the risk, and for a period of time that does not compromise the mental and physical health of the inmate. For each incident when restrictive housing is used, the facility must (1) document the usage of restrictive housing, as specified, and (2) promptly post any such record, excluding any identifying information, on the website of the Department of Public Safety and Correctional Services (DPSCS).

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$698,400 in FY 2022; future years are annualized and reflect minimum ongoing costs. Revenues are not affected.

| (in dollars) | FY 2022 | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 698,400 | 785,400 | 807,800 | 837,400 | 867,800 |
| Net Effect | (\$698,400) | (\$785,400) | (\$807,800) | (\$837,400) | (\$867,800) |

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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. The standard of proof required for the administrative process is “substantial evidence.” “Substantial evidence” means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

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 Prevention, Youth, and Victim Services and the General Assembly. The latest report can be found [here](#).

Chapters 526 and 527 of 2019 expanded the entities required to submit information relating to inmates in restrictive housing to include each correctional unit (all correctional units within each jurisdiction). The latest report can be found [here](#). In addition, Chapters 526 and 527 prohibit the placement of a minor in restrictive housing unless the managing official of the facility finds by clear and convincing evidence that there is an immediate and substantial risk of physical harm to the minor, other inmates, or staff or to the security of the facility. “Restrictive housing” means a form of physical separation that has not been requested by the inmate 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.

State Expenditures: General fund expenditures for DPSCS increase by *at least* \$698,375 in fiscal 2022, which accounts for the bill’s October 1, 2021 effective date. This estimate reflects the cost of hiring 14 administrative aides to document and post to the DPSCS website the required information relating to the usage of restrictive housing in all State correctional facilities. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes one-time programming costs for necessary changes to the Offender Case Management System to track and document the required information.

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|---|------------------|
| Positions | 14.0 |
| Salaries and Fringe Benefits | \$607,737 |
| Programming Costs | 12,500 |
| Other Operating Expenses | <u>78,138</u> |
| Minimum FY 2022 State Expenditures | \$698,375 |

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

In addition to the costs estimated above, additional costs are likely incurred. The current medical contract likely needs to be modified to increase the number of clinical staff in certain correctional facilities. Also, additional costs are likely incurred for hearings through the Inmate Grievance Office for inmates who challenge placement in restrictive housing.

The approximate cost for each hearing is \$3,000. However, without actual experience under the bill, any such costs cannot be determined and are not reflected in this analysis.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

Fiscal Note History: First Reader - February 26, 2021
rh/lgc

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